

01-1488-CD  
PA Medical Society vs B. Yousufzai MD al



01-1488-CD  
PENNSYLVANIA MEDICAL SOCIETY -vs- BASHIR YOUSUFZAI, MD et al  
LIABILITY INSURANCE COMPANY

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PA

JURY TRIAL DEMANDED

NO. 01-1488-CO

TYPE OF PLEADING:  
**COMPLAINT FOR DECLARATORY  
JUDGMENT**

FILED ON BEHALF OF:  
**PLAINTIFF**

COUNSEL OF RECORD FOR THE NAMED  
PARTY:

PFAFF, McINTYRE, DUGAS, HARTYE &  
SCHMITT  
**ROBERT J. PFAFF, ESQUIRE**  
**PA I.D.#: 17371**  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581  
FAX (814) 696-9399

**FILED**

SEP 07 2001

*V. A. Shaw*  
**Prothonotary**

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

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

No.

Plaintiff,

vs.

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

Defendants.

JURY TRIAL DEMANDED

**NOTICE**

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

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

**David S. Meholick, Court Administrator**  
Clearfield County Courthouse, 230 E. Market Street, Clearfield, PA 16830 814/765-2641

**PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT**

Attorney for Plaintiff

**ROBERT J. PFAFF, ESQUIRE**  
PA I.D.# 17371  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
814/696-3581

IN THE COURT OF COMMON PLEASE OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

PENNSYLVANIA MEDICAL SOCIETY : NO.  
LIABILITY INSURANCE COMPANY,

Plaintiff,

VS.

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

Defendants.

JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT**

AND NOW, comes the plaintiff, PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY, by and through its attorneys, PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT, and files the within action for declaratory judgment:

1. Plaintiff Pennsylvania Medical Society Liability Insurance Company is a duly licensed insurance carrier with its principle place of business at 777 East Park Drive, Harrisburg, Pennsylvania.
2. Defendant Bashir Yousufzai, M.D. is an adult individual whose last known address was 2023 Green Glen Drive, DuBois, Clearfield County, Pennsylvania.

3. Defendant Liberty Physical Medicine & Rehabilitation Associates is a professional corporation with offices located at 145 Hospital Avenue, DuBois, Clearfield County, Pennsylvania.

4. Defendants Cindy Weber and Ricky Weber are or were husband and wife, adult individuals, with a last known address of R.D. #1, Box 38-1A, Penfield, Clearfield County, Pennsylvania.

5. Plaintiff issued to Bashir Yousufzai, M.D., a policy of physician and surgeons professional liability, Policy No. PO7212112, effective July 6, 1999 to January 1, 2000, on an occurrence basis. A copy of the declarations and schedule, associated endorsements, as well as a copy of the policy jacket is attached hereto, marked Exhibit "A" and incorporated herein by reference as though the same were set forth at length.

6. Plaintiff issued to Liberty Medical Associates, P.C., defendant designated in the caption of the within action as Liberty Physical Medicine & Rehabilitation Associates, P.C., a policy of physicians and surgeons professional liability insurance, Policy No. PO7211465, with a policy period from January 1, 1999 to January 1, 2000, on an occurrence basis. A copy of the declarations and schedule, associated endorsements, as well as a copy of the policy jacket is attached hereto, marked Exhibit "B" and incorporated herein by reference as though the same were set forth at length.

7. Plaintiff issued to Liberty Medical Associates, P.C. defendant designated in the caption of the within action as Liberty Physical Medicine & Rehabilitation Associates, P.C., an excess liability policy under Policy No. PO7211465e, with a policy period from January 1, 1999 to January 1, 2000. A copy of the excess policy is attached

hereto, marked Exhibit "C" and incorporated herein by reference as though the same were set forth at length.

8. Bashir Yousufzai, M.D., was added as an insured under the excess professional liability Policy No. PO7211465E by endorsement dated July 6, 1999, which endorsement is part of Exhibit "C" attached to the within Complaint and incorporated herein by reference as though the same were set forth at length.

9. The policies of insurance issued by plaintiff and as set forth in the previous paragraphs of the within Complaint for Declaratory Judgment, were cancelled effective September 22, 1999 as to Bashir Yousufzai, M.D.

10. Defendants Cindy E. Weber and Ricky L. Weber commenced an action in the Court of Common Pleas of Clearfield County, Pennsylvania, at Civil Action No. 01-361-CD against Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C., and have filed a Complaint and an Amended Complaint, copies of which are attached hereto as Exhibits "D" and "E", and incorporated herein by reference as though the same were set forth at length.

11. The defendants in the action at No. 01-361-CD in the Court of Common Pleas of Clearfield County, Pennsylvania, filed Preliminary Objections to the Complaint and Amended Complaint, resulting in Court Orders dated May 18, 2001, May 29, 2001, July 16, 2001 and July 20, 2001. The aforementioned Orders are attached hereto, marked Exhibits "F", "G", "H" and "I", all of which are incorporated herein by reference as though the same were set forth at length.

12. Based upon the Court Orders of May 18, 2001 and May 29, 2001, Exhibits "F" and "G", plaintiffs filed an Amended Complaint and, based upon the Orders of Court dated July 16, 2001 and July 20, 2001, attached hereto as Exhibits "H" and "I", the only remaining negligence allegations are those related to the claimed negligent prescription of drugs as contained in Paragraph No. 16 of the Amended Complaint.

13. The policies of insurance issued by Pennsylvania Medical Society Liability Insurance Company to Bashir Yousufzai, M.D., and Liberty Medical Associates, P.C., attached hereto as Exhibits "A", "B" and "C", do not provide coverage for intentional actions, criminal actions, or liability arising out of the performance by the insured of any sexual act. In addition, the policies do not provide coverage for punitive damages. Finally, it is the position of Pennsylvania Medical Society Liability Insurance Company if it is determined by the Court that Cindy and Ricky Weber are permitted to proceed with their claim based upon negligent prescribing of drugs, Pennsylvania Medical Society Liability Insurance Company's policies do not extend coverage because of the interrelationship between the prescribing of drugs and the intentional acts.

14. Pennsylvania Medical Society Liability Insurance Company is currently providing a defense to Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C. in the action at No. 01-361-CD, Civil Division, in the Court of Common Pleas of Clearfield County, Pennsylvania, pursuant to a reservation of rights, but is desirous of getting a judicial determination relative to its duty to provide coverage.

WHEREFORE, Pennsylvania Medical Society Liability Insurance Company  
requests this Honorable Court to declare that it is not obligated to provide further  
coverage under Policy Nos. PO7212112, PO7211465 and PO7211465e.

Respectfully submitted,

PFAFF, MCINTYRE, DUGAS, HARTYE  
& SCHMITT

\_\_\_\_\_  
Attorney for Plaintiff  
ROBERT J. PFAFF, ESQUIRE  
PA. ID. No. 17371  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

Notice to Plead

To: DEFENDANTS

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

\_\_\_\_\_  
Attorney for Plaintiff



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>

BEB

Issue Date 11-01-1999  
Effective Date of Cancellation 09-22-1999 12:01 AM EST

Policy Number P07212112  
Account Number YOUS0011  
License Number MD064208L

Named Insured:  
BASHIR A YOUSUFZAI MD  
41 TENTH STREET  
DUBOIS PA 15801

**OCCURRENCE  
CONFIRMATION OF CANCELLATION  
PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

You are hereby notified that the policy designated in this notice is being terminated pursuant to Section 1002 of the Health Care Services Malpractice Act (40 P.S. 1301.1002) and amendments thereto and the policy conditions. Your insurance will cease at and from the hour and date shown above.

**REASON FOR CANCELLATION:**

TERMINATION OF EMPLOYMENT

All other conditions and provisions remain unchanged.





BEB

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>

Issue Date 08-20-1999  
Endorse Effective 09-01-1999 12:01 AM EST

Endorse Number 001  
Policy Number PO7212112  
Account Number YOUS0011  
License Number MD064208L  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

Named Insured:  
BASHIR A YOUSUFZAI MD  
41 10TH STREET  
DUBOIS PA 15801

**ENDORSEMENT**  
**PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

THE ADDRESS OF THE INSURED IS CHANGED TO READ AS SHOWN ABOVE.

All other conditions and provisions remain unchanged.

PA-050

THIS IS NOT AN INVOICE



**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

BEB

Policy Issue 07-27-1999  
Policy Effective 07-06-1999 12:01 AM EST  
Policy Expiration 01-01-2000 12:01 AM EST

Policy Number PO7212112  
Account Number YOUS0011  
License Number MD064208L  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

Named Insured:  
BASHIR A YOUSUFZAI MD  
SUITE 300  
145 HOSPITAL AVENUE  
DUBOIS PA 15801

**OCCURRENCE  
DECLARATIONS & SCHEDULE  
PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

**COVERAGE A - INDIVIDUAL PROFESSIONAL LIABILITY**  
LIMITS: \$400,000 / \$1,200,000

NEUROLOGY - NO SURGERY 01511/80261 75% 1ST YEAR NEW DOCTOR DISCOUNT 07-06-1999 to 01-01-2000	\$1,585 \$1,189cr
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TOTAL PREMIUM COVERAGE A

\$396

TOTAL PMSLIC PREMIUM ALL COVERAGES

\$396

**CAT FUND ANNUAL SURCHARGE**  
LIMITS: \$800,000 / \$2,400,000

CAT FUND SURCHARGE BASED ON JUA CLASS 010 TERR 2	COVERAGE A
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\$289

TOTAL CAT FUND SURCHARGE

\$289

TOTAL COST OF INSURANCE

\$685

**THE ABOVE-NAMED PHYSICIAN IS ASSOCIATED WITH THE FOLLOWING PMSLIC ENTITY(S):**

EMPLOYEE OF	LIBERTY MEDICAL ASSOCIATES PC	LIBE0020
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**PMSLIC**

777 East Park Drive  
P.O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

**OCCURRENCE FORM**

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**PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY INSURANCE POLICY**

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**PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY**  
(A stock insurance company, herein called the Company)

In consideration of the payment of the premium, in reliance upon the statements in the declarations and schedule page made a part hereof, subject to all of the terms of this policy, and subject to the provisions of the Heath Care Services Malpractice Act of 1975, P.L. 390, No. 111, Chapter 4, Article VI(k) of the Pennsylvania Insurance Law, agrees with the named insured as follows:

**INSURING AGREEMENTS**

The Company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as **damages** because of:

**Coverage A - Individual Professional Liability**

**bodily injury** arising out of alleged negligence in the rendering of or failure to render, during the policy period, **medical professional services** by the **individual insured**, or by any person for whose acts or omissions such **insured** is legally responsible, except as a member, stockholder or partner of an association, corporation or partnership, performed in the practice of the **individual insured**'s profession as a physician and as described in the declarations and schedule page, and injury arising out of voluntary or mandated participation by the **insured** in a formal process of credentialling, quality assurance, peer review or utilization review except that such insurance as is afforded for claims arising out of participation in a formal process of credentialling, quality assurance, peer review or utilization review shall be excess over any other valid and collectible insurance including protection afforded by any self-insurance plan, and provided that such coverage is offered only to the extent permitted by law.

**Coverage B - Designated Employee Liability**

**bodily injury** arising out of alleged negligence in the rendering of or failure to render, during the policy period, **medical professional services** by a **designated employee**, if a premium charge is shown for Designated Employee Liability in the declarations and schedule page, while the employee is acting within the scope of his/her duties in the course of his/her employment by either the **individual insured** under Coverage A or the Association, Corporation, or Partnership **insured** under Coverage C. Such coverage shall apply to each such **designated employee** shown in the declarations and schedule page.

**Coverage C - Association, Corporation or Partnership Liability**

**bodily injury** arising out of alleged negligence in the rendering of or failure to render, during the policy period, **medical professional services** in the practice of the profession described in the declarations and schedule page by any person for whose acts or omissions the association, corporation or partnership **insured** is legally responsible, and injury arising out of voluntary or mandated participation by such person in a formal process of credentialling, quality assurance, peer review or utilization review except that such insurance as is afforded for claims arising out of participation in a formal process of credentialling, quality assurance, peer review or utilization review shall be excess over any other valid and collectible insurance, including protection afforded by any self-insurance plan, and provided that such coverage is offered only to the extent permitted by law.

And the Company shall have the right and duty to defend any suit against the **insured** seeking such **damages**, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any **claim** or suit as it deems expedient, but the Company shall not be obligated to pay any **claim** or judgment or to defend any suit for which coverage is expressly excluded by this policy, and the Company shall not be obligated to pay any **claim** or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements. The Company shall not be obligated to appeal any finding or decision of any arbitration panel or court of general jurisdiction except at its own sole and exclusive discretion.

The Company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the Company in any suit defended by the Company and all interest on the entire

- amount of an insured's proportionate share of any judgment therein which accrues after the entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- (b) prejudgment interest or delay damages awarded against the insured in any suit defended by the Company on that portion of the judgment that does not exceed the Company's limits of liability thereon; however, if the Company offers to pay its limit of liability, it will not pay such interest based on the time after the offer is made;
  - (c) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, but the Company shall have no obligation to apply for or furnish any such bonds;
  - (d) reasonable expenses incurred by an insured for attendance at hearings or trials at the Company's request, including actual loss of wages or salary (but not loss of other income) not to exceed \$250 a day.

## EXCLUSIONS

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.
- (d) to liability arising out of any claim which the insured has settled or attempted to settle without the written authorization of the Company.
- (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.
- (g) to liability arising out of the utterance of or publication of defamatory statements or allegedly defamatory statements by the insured except that when such statements were made by the insured as part of the insured's voluntary or mandated participation in a for-

mal process of credentialing, quality assurance, peer review or utilization review, coverage shall be available to the extent permitted under this contract and by law.

- (h) to liability growing out of 1) the insured's activities as a proprietor, superintendent or executive officer of any hospital, sanitarium or clinic with bed and board facilities or laboratory or business enterprise (but this exclusion does not apply with respect to an X-Ray or pathological laboratory utilized to provide medical professional services within a physician/patient relationship within the insured's practice) or 2) any activity or enterprise, whether or not related to patient care and/or treatment, if such activity or enterprise is not involved in the delivery of health care services to patients on an individual and within a direct professional provider-patient relationship. This exclusion pertains to but shall not be limited to publication of books or other written materials for general public consumption and participation in media broadcasts to the general public.
- (i) to any liability from products liability losses.
- (j) to any obligation for which the insured or any carrier acting as insurer is held liable under any workers' compensation, unemployment compensation, disability benefits law, or any similar law.
- (k) to any claim in which the insured attempts to defraud the Company or has misrepresented or concealed any material facts in the medical records.
- (l) to any claim arising from the actual, alleged or threatened discharge, dispersal, release or escape or any solid, liquid, gaseous or thermal irritant, pollutant or contaminant, radiation or other form of energy, or organism, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalies, chemicals or waste materials (including those to be recycled, reconditioned or reclaimed), into or upon land, the atmosphere or any water course or body of water, and any loss, cost or expense arising from any governmental direction or request for testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing of such irritants, pollutants or contaminants, radiation, energy or organisms.
- (m) bodily injury or property damage under any liability coverage:
  - (1) with respect to which an insured under this agreement is also an insured or insured under a Nuclear Energy Liability Policy issued by The Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured

- under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) resulting from the hazardous properties of **nuclear material** and with respect to which:
- any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
  - the **insured** is or, had this Agreement not been issued, would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- (3) **bodily injury** or property damage resulting from the hazardous properties of **nuclear material** if:
- the nuclear material**
    - is at any **nuclear facility** owned by, or operated by or on behalf of an insured, or
    - has been discharged or dispersed therefrom; or
  - the nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or
  - the bodily injury** or property damage arises out of the furnishing by an **insured** of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (3) applies only to property damage to such **nuclear facility** and any property threat.
- (4) As used in this Exclusion (m):  
**hazardous properties** include radioactive, toxic or explosive properties;

**nuclear material** means source material, special nuclear material or by-product material;

**source material**, **special nuclear material** and **by-product material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

**spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

**waste** means any waste material

- containing by-product material, and
- resulting from the operation by any person organization of any **nuclear facility** including within the definition of **nuclear facility** unparagraph (a) or (b) thereof;

**nuclear facility** means

- any nuclear reactor,
- any equipment or device designed or used for:
  - separating the isotopes of uranium or plutonium,
  - processing or utilizing **spent fuel**, or
  - handling, processing or packaging waste
- any equipment or device used for the processing, fabrication or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at any premises where such equipment or device is located consists of or contains more than twenty-five (25) grams of plutonium or uranium 233 or any combination thereof, or more than two-hundred-fifty (250) grams of uranium 235;
- any structure, basin excavation, premises or place prepared or used for the storage or disposal of wastes, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

**nuclear reactor** means any apparatus designed used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

**property damage** includes all forms of radioactive contamination of property.

## PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

- (a) Under Individual Professional Liability, each individual named in the declarations and schedule page as insured.
- (b) Under Designated Employee Liability, any person named in the declarations and schedule page as a **designated employee** if a premium charge is shown therefor in the declarations and schedule page and while the employee is acting within the scope of his/her duties in the course of his/her employment by either the individual insured under Coverage A or the Association, Corporation or Partnership insured under Coverage C.
- (c) Under Association, Corporation or Partnership Liability, the association, corporation or partnership described in the declarations and schedule page and any member, stockholder or partner thereof with respect to acts or omissions of others, provided that no member, stockholder, or partner of an association, corporation or partnership shall be an insured under this subparagraph with respect to liability for his/her personal acts of a professional nature.

## DEFINITIONS

When used in this policy:

**insured** means any person or organization qualifying as an insured in the "persons insured" provision. The insurance afforded applies separately to each insured against whom claim is made or suit is brought.

**damages** means all damages which are not expressly excluded or limited by the terms of this policy, including: damages which are payable because of injury to which this insurance applies, and damages or interest imposed as statutory or common law penalties.

**bodily injury** means physical harm, sickness or disease sustained by any person, including death resulting therefrom.

**medical professional services** means health care services provided to patients in the ordinary course of the practice of medicine by a physician or services provided by a **designated employee** within the scope of his/her employment.

**designated employee** means any person named in the declarations and schedule page and employed by the **named insured**.

**named insured** means the person or organization first named in the declarations and schedule page of this policy.

claim means:

- (1) an express demand for damages to which this insurance applies, arising from an injury allegedly caused by the insured; and express demand for damages shall be deemed to include a civil action in which damages to which this insurance applies are alleged and an arbitration proceeding to which the insured is required to submit by statute or court rule; or
- (2) an act or omission which the insured reasonably believes will result in an express demand for damages to which this insurance applies.

A report of a **claim** to the Company must comply with the requirements of Condition 2, of this policy.

## CONDITIONS

### 1. Premium:

All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

### 2. Insured's Duties in the Event of Claim or Suit:

- (a) Upon the insured becoming aware of any alleged injury to which this insurance applies, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of available witnesses, shall be given by or for the insured to the Company as soon as practicable.
- (b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
- (c) The insured shall cooperate with the Company and, upon the Company's request, assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury for which insurance is afforded under this policy, and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- (d) The insured shall not, except at his/her own cost; 1) voluntarily make any payment, assume any obligation or incur any expense at any time, or 2) make or attempt any settlement of a claim or suit hereunder without the written authorization of the Company.

- (e) The insured shall report to the Company any settlement of a **claim** or suit hereunder made by the insured without payment by the Company.
- (f) The insured shall not misrepresent or conceal any material facts.
- (g) Failure to comply with the above-noted conditions that compromise the **claim** or suit, may result in this contract being declared null and void.

### 3. Action Against Company:

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his/her legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

### 4. Limits of Liability:

- (a) Coverage A - Individual Professional Liability - The limit of the Company's liability for each **claim** for all damages due to each **claim** shall not exceed the limit of liability stated in the schedule as "each incident" for Coverage A. For the purpose of determining the Company's liability, the following shall be considered as arising from one **claim**: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the company's liability for all **claims** shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage A. Such limits of liability shall apply separately to each individual insured hereunder.
- (b) Coverage B - Designated Employee Liability - The limit of the Company's liability for each **claim** for all damages due to each **claim** shall not exceed the limit of

liability stated in the schedule as "each incident" for Coverage B. For the purpose of determining the Company's liability, the following shall be considered as arising from one **claim**: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the Company's liability for all **claims** shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage B. Such limits of liability shall apply separately to each individual insured hereunder.

- (c) Coverage C - Association, Corporation or Partners Liability - Regardless of the number of individual or designated employee insureds under Coverages (A) and (B), the limit of the Company's liability for each **claim** for all damages due to each **claim** shall not exceed the limit of liability stated in the schedule as "each incident" for Coverage C. For the purpose of determining the Company's liability, the following shall be considered as arising from one **claim**: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the Company's liability for all **claims** shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage C. Such limits of liability shall apply separately to each individual insured hereunder.

### 5. Other insurance:

The insurance afforded by this policy is primary insurance except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance. When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contributory provision below:

- (a) Contribution by Equal Shares: If all of such other valid and collectible insurance provides for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability.

der any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid, the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each insurer has paid its limit in full or the full amount of the loss is paid.

- (b) Contribution by Limits: If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss.
- (c) Designated Employees: The insurance afforded by this policy for **designated employees** shall be excess over any other insurance available to such **designated employee** for a loss covered hereunder.

#### 6. Subrogation:

In the event of any payment under this policy, the Company shall be subrogated to all of the **insured's** rights of recovery therefor against any person or organization and the **insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **insured** shall do nothing after loss to prejudice such rights.

#### 7. Changes:

Neither the terms or conditions of this policy may be waived or changed, except by endorsement issued by the Company to form a part of this policy.

#### 8. Policy Territory:

- (a) **Medical professional services** rendered in the practice and hospital locations designated on your application or approved in writing by the Company, or
- (b) **Medical professional services** and activities rendered anywhere in the United States of America (including its territories and possessions) on a non-routine and emergency basis if your liability is determined in a suit in the United States of America (including its territories and possessions).

#### 9. Assignment:

The interest hereunder of any **insured** is not assignable. If the **insured** shall die or be adjudged incompetent, this insurance shall thereupon terminate, but shall cover the **insured's** legal representative as the **insured** with respect to liability previously incurred and covered by this insurance. Pro rata return premium will be computed from the date of termination.

#### 10. Cancellation and Nonrenewal:

- (a) Cancellation by the **named insured**-His/her policy (or coverage afforded any **insured** by his/her policy) may

be canceled by the **named insured** by written notice to the Company, stating when such cancellation shall be effective.

- (b) Cancellation of policies in effect less than 60 days- His/her policy may be cancelled by the Company by mailing to the **named insured** at the address shown in the policy or last known address, written notice of cancellation stating the specific reason(s) for cancellation and the effective date and time thereof:
  - (1) at least 15 days prior to the effective date of cancellation if the **named insured** has:
    - (a) failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit; or
    - (b) made a material misrepresentation which affects the insurability of the risk;
  - (2) at least 30 days prior to the effective date of cancellation if the Company cancels for any other reason.

The mailing of notice by first class mail shall be sufficient proof of notice.

- (c) Cancellation of policies in effect for 60 days or more - If his/her policy has been in effect for 60 days or more, or if his/her policy is a renewal of a policy issued by the Company, it (or coverage afforded any **insured** by this policy) may be canceled by the Company only for one or more of the following reasons:
  - (1) the **named insured** has failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit;
  - (2) for reason of suspension or revocation of the **named insured's** (or an **insured's**) license or approval to provide professional health care service;
  - (3) the **insured** has requested cancellation;
- (d) If the Company cancels this policy based on reason:
  - (1) immediately above, the Company will mail to the **named insured** written notice of cancellation at least 15 days before the effective date of cancellation;
  - (2) immediately above, no written notice of cancellation is required and coverage shall be terminated on the effective date of such suspension or revocation;

- (3) immediately above, no written notice of cancellation is required and coverage shall be terminated on the date requested by the insured.

The mailing of notice by first class mail shall be sufficient proof of notice. Such notice shall state the specific reason(s) for cancellation and the effective date and time thereof.

- (e) Cancellation-General Provisions - The coverage afforded by this policy to any insured (other than the **named insured**) shall terminate upon the termination of the policy or upon the termination of that insured's employment, contract or association with the **named insured** which formed the basis for such coverage, if that occurs prior to the termination date of the policy.

If the **named insured** cancels, earned premium will be computed pro rata, but will not be less than the minimum premium; the unearned premium will be returned within 30 days after the effective date of cancellation. If the Company cancels, earned premium will be computed pro rata; the unearned premium will be returned to the **named insured** within 10 business days after the effective date of cancellation. However, in either event, payment or tender of unearned premium is not a condition of cancellation.

For purposes of this condition, cancellation shall not, unless otherwise provided for by the statutes of the jurisdiction in which the **named insured** is located, include nonrenewal.

- (f) Nonrenewal of policy - If the Company elects not to renew this policy, it shall mail to the **named insured** at the address shown in the policy or last known address, written notice of its intention not to renew stating the specific reasons for such nonrenewal at least 60 days prior to the effective date of termination. This provision shall not apply:

- (1) if the Company has manifested its willingness to renew to the **named insured** or his/her representative; or
- (2) if the **named insured** has failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit; or
- (3) if the **named insured** fails to pay any advance premium required by the Company for renewal; or
- (4) if the **named insured** has notified the Company in writing that renewal is not desired;

The mailing of notice by first class mail shall be sufficient proof of notice.

The above cancellation and nonrenewal provisions shall not apply to coverage obtained under policy provisions for an election of an extended reporting option.

#### 11. Appeal of Underwriting Actions:

The **named insured** may request a review of an underwriting action taken by the Company by requesting, in writing within thirty (30) days of notice of the final decision of the Underwriting Committee, an appeal to a committee appointed by or with the approval of the Pennsylvania Medical Society. Such review shall be in accordance with the written agreement between the Pennsylvania Medical Society and the Company, copy of which agreement shall be made available to the **named insured**. Such review shall not pertain to manual rates in Tier 1 and Tier 2 as approved by the Insurance Department or other underwriting actions as expressly excluded in the written agreement between the Pennsylvania Medical Society and the Company. The decision of such committee will be final and binding on the Company and the insured.

#### 12. Settlement of Claim or Suit:

The Company will not settle any claim or suit without the written consent of the **named insured** except, however, that if the **named insured** and the Company fail to agree that such claim or suit should be settled, either may request within thirty (30) days review and decision by a committee appointed by or with the approval of the Pennsylvania Medical Society. The decision of such committee will be final and binding on the Company and the insured. An exception to this policy condition shall apply with respect to a claim or suit arising out of an individual **named insured**'s voluntary or mandated participation in a formal process of credentialing, quality assurance, peer review or utilization review, wherein the Company shall decide whether the claim or suit should be settled or defended at the written consent of the **named insured** shall not be required.

#### 13. Declarations:

By acceptance of this policy, the **named insured** agrees that the statements in the declarations are his/her agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies the agreements existing between himself and the Company or any of its agents relating to this insurance.

#### 14. Participating Provision:

The **named insured** shall be entitled to participate in the distribution of dividends to the extent and upon the conditions fixed and determined by the Board of Directors in accordance with law after expiration of the policy period to which the dividend is applicable.

**15. Loss Prevention:**

The Company has adopted a Loss Prevention Program, the purpose of which is to reduce the incidence of malpractice and improve the practice, attitude, conduct and loss experience of policyholders. The Company reserves the right to impose and implement loss prevention measures during the policy period; the Loss Prevention Program may change from time to time within a policy period. Under said program, the Company reserves the right to impose restrictions on a physician's coverage and to eliminate coverage for certain procedures and practices to the extent that those procedures and practices, in the opinion of the Company, present an unreasonable risk of loss or risk to patients of such insured. In the event the insured fails to comply with the Company's Loss Prevention Program, this policy may be non-renewed by the Company.

**16. Rate Level Adjustments:**

The Company reserves the right to and shall adjust premium, effective the first day of the calendar quarter immediately following the day on which any adjustment in premium may be properly charged under applicable law, regulation, or any duly approved rating plan or amendment thereto filed by or adopted by the Company. Notice of an estimate of the renewal premium increase shall be given at least thirty (30) days before the effective date of such renewal.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary but this policy shall not be valid unless completed by the attachment hereto of a declarations and schedule page.



Theodore G. Otto, III, Esq.  
Secretary



Sarah H. Lawhorne  
President



BEB

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>

Issue Date 11-01-1999  
Endorse Effective 09-22-1999 12:01 AM EST

Endorse Number 007  
Policy Number PO7211465  
Account Number LIBE0020  
License Number MC542295C  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**ENDORSEMENT**  
**PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN, IT IS AGREED THAT THE CAT FUND SURCHARGE IS AMENDED TO DELETE:

JUA TER JUA CLASS

EMPLOYEE	YOU50011	BASHIR A YOUSUFZAI MD	2	010
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RETURN CAT FUND SURCHARGE	\$17.00 cr
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All other conditions and provisions remain unchanged.

PA-050

THIS IS NOT AN INVOICE



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>

BEB

Issue Date 07-27-1999  
Endorse Effective 07-21-1999 12:01 AM EST

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

Endorse Number 006  
Policy Number PO7211465  
Account Number LIBE0020  
License Number MC542295C  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

**ENDORSEMENT  
PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN, IT IS AGREED THAT THE CAT FUND SURCHARGE IS AMENDED TO CHANGE THE JUA RATING INFORMATION TO:

		JUA TER	JUA CLASS
EMPLOYEE	MATH0009	ANNE MATHEWS MD	2
			007

ADDITIONAL CAT FUND SURCHARGE	\$18.00
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DELETE THE 50% SECOND YEAR DOCTOR DISCOUNT AND ADD THE 25% THIRD YEAR DOCTOR DISCOUNT

All other conditions and provisions remain unchanged.

PA-050

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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>

BEB

Issue Date 07-27-1999  
Endorse Effective 07-06-1999 12:01 AM EST

Endorse Number 005  
Policy Number PO7211465  
Account Number LIBE0020  
License Number MC542295C  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**ENDORSEMENT**  
**PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN, IT IS AGREED THAT THE CAT FUND SURCHARGE IS AMENDED TO ADD:

		JUA TER	JUA CLASS
EMPLOYEE	YOUS0011	BASHIR A YOUSUFZAI MD	2
ADDITIONAL CAT FUND SURCHARGE		\$29.00	010

All other conditions and provisions remain unchanged.

PA-050

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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>

BEB

Issue Date 07-13-1999  
Endorse Effective 07-03-1999 12:01 AM EST

Endorse Number 004  
Policy Number P07211465  
Account Number LIBE0020  
License Number MC542295C  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**ENDORSEMENT**  
**PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN, IT IS AGREED THAT THE CAT FUND SURCHARGE IS AMENDED TO DELETE:

		JUA TER	JUA CLASS
EMPLOYEE	SHET0019	JAGADEESHA SHETTY MD	2
			020

RETURN CAT FUND SURCHARGE	\$57.00 cr
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All other conditions and provisions remain unchanged.

PA-050

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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>

BEB

Issue Date 07-13-1999  
Endorse Effective 06-12-1999 12:01 AM EST

Endorse Number	003
Policy Number	PO7211465
Account Number	LIBE0020
License Number	MC542295C
Territory	2-17(WEST)
County	CLEARFIELD
Rating Basis	TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**ENDORSEMENT**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN, IT IS AGREED THAT THE  
CAT FUND SURCHARGE IS AMENDED TO DELETE:

			JUA TER	JUA CLASS
EMPLOYEE	STEP0089	GORDANA P STEPCIC MD	2	010
EMPLOYEE	STEP0090	FRANKO STEPCIC MD	2	010

RETURN GAT FUND SURCHARGE \$52.00 cr

All other conditions and provisions remain unchanged.

PA-050

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Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375 717.558.7500

CYP  
CHANGE ENDORSEMENT

PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY

EFFECTIVE DATE OF ENDORSEMENT	Mo.	Day	Year	12:01 A.M. STANDARD TIME AT THE ADDRESS OF INSURED	ENDORSEMENT NUMBER	002
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POLICY NUMBER	PO7211465
ACCOUNT NUMBER	LIBE0020

ISSUED DATE	020899
LICENSE/FIRM NUMBER	MC542295C

NAMED INSURED AND MAILING ADDRESS	
LIBERTY MEDICAL ASSOCIATES PC 41 TENTH STREET DUBOIS PA 15801	

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN IT IS AGREED TO CHANGE:

<u>EMPLOYEE</u>	<u>POLICY NUMBER</u>	<u>JUA CLASS</u>
JAGADEESHA SHETTY MD	PO7211044	020

All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-050

Sarah H. Lawhorne, JD  
President

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PMSLIC

Pennsylvania Medical Society  
Liability Insurance Company  
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

CYP

Policy Issue 12-22-1998  
Policy Effective 01-01-1999 12:01 AM EST  
Policy Expiration 01-01-2000 12:01 AM EST

Policy Number PO7211465  
Account Number LIBE0020  
License Number MC542295C  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**OCCURRENCE  
DECLARATIONS & SCHEDULE  
PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

**Policy Term  
Premium**

**COVERAGE C - CORPORATION/ASSOCIATION/PARTNERSHIP LIABILITY**  
LIMITS: \$400,000 / \$1,200,000

LIBERTY MEDICAL ASSOCIATES PC 80250/80999	\$0
41 TENTH STREET	
DUBOIS PA 15801	

TOTAL PREMIUM COVERAGE C	\$0
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**COVERAGE B - DESIGNATED EMPLOYEE PROFESSIONAL LIABILITY**  
LIMITS: \$400,000 / \$1,200,000 Per Employee

KELLY SCHAEFFER NPT 90008/80116	\$1,306
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TOTAL PREMIUM COVERAGE B	\$1,306
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TOTAL PMSLIC PREMIUM ALL COVERAGES	\$1,306
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**CAT FUND ANNUAL SURCHARGE**  
LIMITS: \$800,000 / \$2,400,000

CAT FUND SURCHARGE BASED ON JUA CLASSES & TERRITORIES	
COVERAGE C	\$471

NOT APPLICABLE	COVERAGE B	\$0
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(OVER)

## DECLARATIONS &amp; SCHEDULE

TOTAL CAT FUND SURCHARGE	\$471
TOTAL COST OF INSURANCE	\$1,777

THE CONSIDERATION FOR THE COVERAGE PROVIDED IN THIS POLICY IS INCLUDED  
IN THE PMSLIC PREMIUM(S) OF THE FOLLOWING SHAREHOLDER(S):

MARTIN A SCHAEFFER MD SCHA0037

THE ABOVE-NAMED ENTITY EMPLOYS THE FOLLOWING PHYSICIAN(S):

ANNE MATHEWS MD	MATH0009
JAGADEESHA SHETTY MD	SHET0019
GORDANA P STEPCIC MD	STEP0089
FRANKO STEPCIC MD	STEP0090



**PMSLIC**

777 East Park Drive  
P.O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

**OCCURRENCE FORM**

**PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY INSURANCE POLICY**

**PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY**  
(A stock insurance company, herein called the Company)

In consideration of the payment of the premium, in reliance upon the statements in the declarations and schedule page made a part hereof, subject to all of the terms of this policy, and subject to the provisions of the Heath Care Services Malpractice Act of 1975, P.L. 390, No. 111, Chapter 4, Article VI(k) of the Pennsylvania Insurance Law, agrees with the named insured as follows:

**INSURING AGREEMENTS**

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

**Coverage A - Individual Professional Liability**

**bodily injury** arising out of alleged negligence in the rendering of or failure to render, during the policy period, **medical professional services** by the individual insured, or by any person for whose acts or omissions such insured is legally responsible, except as a member, stockholder or partner of an association, corporation or partnership, performed in the practice of the individual insured's profession as a physician and as described in the declarations and schedule page, and injury arising out of voluntary or mandated participation by the insured in a formal process of credentialing, quality assurance, peer review or utilization review except that such insurance as is afforded for claims arising out of participation in a formal process of credentialing, quality assurance, peer review or utilization review shall be excess over any other valid and collectible insurance including protection afforded by any self-insurance plan, and provided that such coverage is offered only to the extent permitted by law.

**Coverage B - Designated Employee Liability**

**bodily injury** arising out of alleged negligence in the rendering of or failure to render, during the policy period, **medical professional services** by a **designated employee**, if a premium charge is shown for Designated Employee Liability in the declarations and schedule page, while the employee is acting within the scope of his/her duties in the course of his/her employment by either the individual insured under Coverage A or the Association, Corporation, or Partnership insured under Coverage C. Such coverage shall apply to each such **designated employee** shown in the declarations and schedule page.

**Coverage C - Association, Corporation or Partnership Liability**

**bodily injury** arising out of alleged negligence in the rendering of or failure to render, during the policy period, **medical professional services** in the practice of the profession described in the declarations and schedule page by any person for whose acts or omissions the association, corporation or partnership insured is legally responsible, and injury arising out of voluntary or mandated participation by such person in a formal process of credentialing, quality assurance, peer review or utilization review except that such insurance as is afforded for claims arising out of participation in a formal process of credentialing, quality assurance, peer review or utilization review shall be excess over any other valid and collectible insurance, including protection afforded by any self-insurance plan, and provided that such coverage is offered only to the extent permitted by law.

And the Company shall have the right and duty to defend any suit against the insured seeking such damages, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit for which coverage is expressly excluded by this policy, and the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements. The Company shall not be obligated to appeal any finding or decision of any arbitration panel or court of general jurisdiction except at its own sole and exclusive discretion.

The Company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the Company in any suit defended by the Company and all interest on the entire

- amount of an insured's proportionate share of any judgment therein which accrues after the entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- (b) prejudgment interest or delay damages awarded against the insured in any suit defended by the Company on that portion of the judgment that does not exceed the Company's limits of liability thereon; however, if the Company offers to pay its limit of liability, it will not pay such interest based on the time after the offer is made;
- (c) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, but the Company shall have no obligation to apply for or furnish any such bonds;
- (d) reasonable expenses incurred by an insured for attendance at hearings or trials at the Company's request, including actual loss of wages or salary (but not loss of other income) not to exceed \$250 a day.

## EXCLUSIONS

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.
- (d) to liability arising out of any claim which the insured has settled or attempted to settle without the written authorization of the Company.
- (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.
- (g) to liability arising out of the utterance of or publication of defamatory statements or allegedly defamatory statements by the insured except that when such statements were made by the insured as part of the insured's voluntary or mandated participation in a formal process of credentialing, quality assurance, peer review or utilization review, coverage shall be available to the extent permitted under this contract and by law.
- (h) to liability growing out of 1) the insured's activities as a proprietor, superintendent or executive officer of any hospital, sanitarium or clinic with bed and board facilities or laboratory or business enterprise (but this exclusion does not apply with respect to an X-Ray or pathological laboratory utilized to provide medical professional services within a physician/patient relationship within the insured's practice) or 2) any activity or enterprise, whether or not related to patient care and/or treatment, if such activity or enterprise is not involved in the delivery of health care services to patients on an individual and within a direct professional provider-patient relationship. This exclusion pertains to but shall not be limited to publication of books or other written materials for general public consumption and participation in media broadcasts to the general public.
- (i) to any liability from products liability losses.
- (j) to any obligation for which the insured or any carrier acting as insurer is held liable under any workers' compensation, unemployment compensation, disability benefits law, or any similar law.
- (k) to any claim in which the insured attempts to defraud the Company or has misrepresented or concealed any material facts in the medical records.
- (l) to any claim arising from the actual, alleged or threatened discharge, dispersal, release or escape or any solid, liquid, gaseous or thermal irritant, pollutant or contaminant, radiation or other form of energy, or organism, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalies, chemicals or waste materials (including those to be recycled, reconditioned or reclaimed), into or upon land, the atmosphere or any water course or body of water, and any loss, cost or expense arising from any governmental direction or request for testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing of such irritants, pollutants or contaminants, radiation, energy or organisms.
- (m) bodily injury or property damage under any liability coverage:
- (1) with respect to which an insured under this agreement is also an insured or insured under a Nuclear Energy Liability Policy issued by The Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured

under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the hazardous properties of **nuclear material** and with respect to which:

(a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or

(b) the **insured** is or, had this Agreement not been issued, would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

(3) **bodily injury** or property damage resulting from the hazardous properties of **nuclear material** if:

(a) the **nuclear material**

(i) is at any **nuclear facility** owned by, or operated by or on behalf of an **insured**, or

(ii) has been discharged or dispersed therefrom; or

(b) the **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an **insured**; or

(c) the **bodily injury** or property damage arises out of the furnishing by an **insured** of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (3) applies only to property damage to such **nuclear facility** and any property threat.

(4) As used in this Exclusion (m):

**hazardous properties** include radioactive, toxic or explosive properties;

**nuclear material** means source material, special nuclear material or by-product material;

**source material**, **special nuclear material** and **by-product material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

**spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

**waste** means any waste material

(a) containing by-product material, and

(b) resulting from the operation by any person organization of any **nuclear facility** including within the definition of **nuclear facility** under paragraph (a) or (b) thereof;

**nuclear facility** means

(a) any nuclear reactor,

(b) any equipment or device designed or used for:

- (i) separating the isotopes of uranium or plutonium,

- (ii) processing or utilizing **spent fuel**, or

- (iii) handling, processing or packaging waste

(c) any equipment or device used for the processing, fabrication or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than twenty-five (25) grams of plutonium or uranium 233 or any combination thereof, or more than two-hundred-fifty (250) grams of uranium 235;

(d) any structure, basin excavation, premises or place prepared or used for the storage or disposal of wastes, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

**nuclear reactor** means any apparatus designed to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissile material;

**property damage** includes all forms of radioactive contamination of property.

## PERSONS INSURED

Each of the following is an **insured** under this insurance to the extent set forth below:

- (a) Under Individual Professional Liability, each individual named in the declarations and schedule page as insured.
- (b) Under Designated Employee Liability, any person named in the declarations and schedule page as a **designated employee** if a premium charge is shown therefor in the declarations and schedule page and while the employee is acting within the scope of his/her duties in the course of his/her employment by either the individual **insured** under Coverage A or the Association, Corporation or Partnership **insured** under Coverage C.
- (c) Under Association, Corporation or Partnership Liability, the association, corporation or partnership described in the declarations and schedule page and any member, stockholder or partner thereof with respect to acts or omissions of others, provided that no member, stockholder, or partner of an association, corporation or partnership shall be an **insured** under this subparagraph with respect to liability for his/her personal acts of a professional nature.

## DEFINITIONS

When used in this policy:

**insured** means any person or organization qualifying as an insured in the "persons insured" provision. The insurance afforded applies separately to each **insured** against whom claim is made or suit is brought.

**damages** means all **damages** which are not expressly excluded or limited by the terms of this policy, including: **damages** which are payable because of injury to which this insurance applies, and **damages** or interest imposed as statutory or common law penalties.

**bodily injury** means physical harm, sickness or disease sustained by any person, including death resulting therefrom.

**medical professional services** means health care services provided to patients in the ordinary course of the practice of medicine by a physician or services provided by a **designated employee** within the scope of his/her employment,

**designated employee** means any person named in the declarations and schedule page and employed by the **named insured**.

**named insured** means the person or organization first named in the declarations and schedule page of this policy.

claim means:

- (1) an express demand for damages to which this insurance applies, arising from an injury allegedly caused by the **insured**; and express demand for **damages** shall be deemed to include a civil action in which **damages** to which this insurance applies are alleged and an arbitration proceeding to which the **insured** is required to submit by statute or court rule; or
- (2) an act or omission which the **insured** reasonably believes will result in an express demand for damages to which this insurance applies.

A report of a **claim** to the Company must comply with the requirements of Condition 2, of this policy.

## CONDITIONS

### 1. Premium:

All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

### 2. Insured's Duties in the Event of Claim or Suit:

- (a) Upon the **insured** becoming aware of any alleged injury to which this insurance applies, written notice containing particulars sufficient to identify the **insured** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of available witnesses, shall be given by or for the **insured** to the Company as soon as practicable.
- (b) If **claim** is made or suit is brought against the **insured**, the **insured** shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
- (c) The **insured** shall cooperate with the Company and, upon the Company's request, assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **insured** because of injury for which insurance is afforded under this policy, and the **insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- (d) The **insured** shall not, except at his/her own cost; 1) voluntarily make any payment, assume any obligation or incur any expense at any time, or 2) make or attempt any settlement of a **claim** or suit hereunder without the written authorization of the Company.

- (e) The insured shall report to the Company any settlement of a claim or suit hereunder made by the insured without payment by the Company.
- (f) The insured shall not misrepresent or conceal any material facts.
- (g) Failure to comply with the above-noted conditions that compromise the claim or suit, may result in this contract being declared null and void.

### 3. Action Against Company:

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his/her legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

### 4. Limits of Liability:

- (a) Coverage A - Individual Professional Liability - The limit of the Company's liability for each claim for all damages due to each claim shall not exceed the limit of liability stated in the schedule as "each incident" for Coverage A. For the purpose of determining the Company's liability, the following shall be considered as arising from one claim: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the company's liability for all claims shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage A. Such limits of liability shall apply separately to each individual insured hereunder.

- (b) Coverage B - Designated Employee Liability - The limit of the Company's liability for each claim for all damages due to each claim shall not exceed the limit of

liability stated in the schedule as "each incident" for Coverage B. For the purpose of determining the Company's liability, the following shall be considered as arising from one claim: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the Company's liability for all claims shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage B. Such limits of liability shall apply separately to each individual insured hereunder.

- (c) Coverage C - Association, Corporation or Partners' Liability - Regardless of the number of individual designated employee insureds under Coverages (A) and (B), the limit of the Company's liability for each claim for all damages due to each claim shall not exceed the limit of liability stated in the schedule as "each incident" for Coverage C. For the purpose of determining the Company's liability, the following shall be considered as arising from one claim: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the Company's liability for all claims shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage C. Such limits of liability shall apply separately to each individual insured hereunder.

### 5. Other insurance:

The insurance afforded by this policy is primary insurance except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance. When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

- (a) Contribution by Equal Shares: If all of such other valid and collectible insurance provides for contribution equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability.

der any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid, the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each insurer has paid its limit in full or the full amount of the loss is paid.

- (b) Contribution by Limits: If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss.
- (c) Designated Employees: The insurance afforded by this policy for **designated employees** shall be excess over any other insurance available to such **designated employee** for a loss covered hereunder.

#### **6. Subrogation:**

In the event of any payment under this policy, the Company shall be subrogated to all of the **insured's** rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

#### **7. Changes:**

Neither the terms or conditions of this policy may be waived or changed, except by endorsement issued by the Company to form a part of this policy.

#### **8. Policy Territory:**

- (a) **Medical professional services** rendered in the practice and hospital locations designated on your application or approved in writing by the Company, or
- (b) **Medical professional services** and activities rendered anywhere in the United States of America (including its territories and possessions) on a non-routine and emergency basis if your liability is determined in a suit in the United States of America (including its territories and possessions).

#### **9. Assignment:**

The interest hereunder of any **insured** is not assignable. If the **insured** shall die or be adjudged incompetent, this insurance shall thereupon terminate, but shall cover the **insured's** legal representative as the **insured** with respect to liability previously incurred and covered by this insurance. Pro rata return premium will be computed from the date of termination.

#### **10. Cancellation and Nonrenewal:**

- (a) Cancellation by the **named insured**-His/her policy (or coverage afforded any insured by his/her policy) may

be canceled by the **named insured** by written notice to the Company, stating when such cancellation shall be effective.

- (b) Cancellation of policies in effect less than 60 days- His/her policy may be cancelled by the Company by mailing to the **named insured** at the address shown in the policy or last known address, written notice of cancellation stating the specific reason(s) for cancellation and the effective date and time thereof:
  - (1) at least 15 days prior to the effective date of cancellation if the **named insured** has:
    - (a) failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit; or
    - (b) made a material misrepresentation which affects the insurability of the risk;
  - (2) at least 30 days prior to the effective date of cancellation if the Company cancels for any other reason.

The mailing of notice by first class mail shall be sufficient proof of notice.

- (c) Cancellation of policies in effect for 60 days or more - If his/her policy has been in effect for 60 days or more, or if his/her policy is a renewal of a policy issued by the Company, it (or coverage afforded any **insured** by this policy) may be canceled by the Company only for one or more of the following reasons:
  - (1) the **named insured** has failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit;
  - (2) for reason of suspension or revocation of the **named insured's** (or an **insured's**) license or approval to provide professional health care service;
  - (3) the **insured** has requested cancellation;
- (d) If the Company cancels this policy based on reason:
  - (1) immediately above, the Company will mail to the **named insured** written notice of cancellation at least 15 days before the effective date of cancellation;
  - (2) immediately above, no written notice of cancellation is required and coverage shall be terminated on the effective date of such suspension or revocation;

- (3) immediately above, no written notice of cancellation is required and coverage shall be terminated on the date requested by the insured.

The mailing of notice by first class mail shall be sufficient proof of notice. Such notice shall state the specific reason(s) for cancellation and the effective date and time thereof.

- (e) Cancellation-General Provisions - The coverage afforded by this policy to any insured (other than the named insured) shall terminate upon the termination of the policy or upon the termination of that insured's employment, contract or association with the named insured which formed the basis for such coverage, if that occurs prior to the termination date of the policy.

If the named insured cancels, earned premium will be computed pro rata, but will not be less than the minimum premium; the unearned premium will be returned within 30 days after the effective date of cancellation. If the Company cancels, earned premium will be computed pro rata; the unearned premium will be returned to the named insured within 10 business days after the effective date of cancellation. However, in either event, payment or tender of unearned premium is not a condition of cancellation.

For purposes of this condition, cancellation shall not, unless otherwise provided for by the statutes of the jurisdiction in which the named insured is located, include nonrenewal.

- (f) Nonrenewal of policy - If the Company elects not to renew this policy, it shall mail to the named insured at the address shown in the policy or last known address, written notice of its intention not to renew stating the specific reasons for such nonrenewal at least 60 days prior to the effective date of termination. This provision shall not apply:

- (1) if the Company has manifested its willingness to renew to the named insured or his/her representative; or
- (2) if the named insured has failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit; or
- (3) if the named insured fails to pay any advance premium required by the Company for renewal; or
- (4) if the named insured has notified the Company in writing that renewal is not desired;

The mailing of notice by first class mail shall be sufficient proof of notice.

The above cancellation and nonrenewal provisions shall not apply to coverage obtained under policy provisions for an election of an extended reporting option.

#### **11. Appeal of Underwriting Actions:**

The named insured may request a review of an underwriting action taken by the Company by requesting, in writing within thirty (30) days of notice of the final decision of the Underwriting Committee, an appeal to a committee appointed by the Company with the approval of the Pennsylvania Medical Society. Such review shall be in accordance with the written agreement between the Pennsylvania Medical Society and the Company, copy of which agreement shall be made available to the named insured. Such review shall not pertain to manual rates in Tier 1 and Tier 2 as approved by the Insurance Department or other underwriting actions as expressly excluded in the written agreement between the Pennsylvania Medical Society and the Company. The decision of such committee will be final and binding on the Company and the insured.

#### **12. Settlement of Claim or Suit:**

The Company will not settle any claim or suit without the written consent of the insured except, however, that if the insured and the Company fail to agree that such claim or suit should be settled, either may request within thirty (30) days review and decision by a committee appointed by or with the approval of the Pennsylvania Medical Society. The decision of such committee will be final and binding on the Company and the insured. An exception to this policy condition shall apply with respect to a claim or suit arising out of an individual insured's voluntary or mandated participation in a formal process of credentialing, quality assurance, peer review or utilization review, wherein the Company shall decide whether the claim or suit should be settled or defended and the written consent of the insured shall not be required.

#### **13. Declarations:**

By acceptance of this policy, the named insured agrees that the statements in the declarations are his/her agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies the agreements existing between himself and the Company or any of its agents relating to this insurance.

#### **14. Participating Provision:**

The named insured shall be entitled to participate in the distribution of dividends to the extent and upon the conditions fixed and determined by the Board of Directors in accordance with law after expiration of the policy period to which the dividend is applicable.

**15. Loss Prevention:**

The Company has adopted a Loss Prevention Program, the purpose of which is to reduce the incidence of malpractice and improve the practice, attitude, conduct and loss experience of policyholders. The Company reserves the right to impose and implement loss prevention measures during the policy period; the Loss Prevention Program may change from time to time within a policy period. Under said program, the Company reserves the right to impose restrictions on a physician's coverage and to eliminate coverage for certain procedures and practices to the extent that those procedures and practices, in the opinion of the Company, present an unreasonable risk of loss or risk to patients of such insured. In the event the insured fails to comply with the Company's Loss Prevention Program, this policy may be non-renewed by the Company.



Theodore G. Otto, III, Esq.  
Secretary

**16. Rate Level Adjustments:**

The Company reserves the right to and shall adjust premium, effective the first day of the calendar quarter immediately following the day on which any adjustment in premium may be properly charged under applicable law, regulation, or any duly approved rating plan or amendment thereto filed by or adopted by the Company. Notice of an estimate of the renewal premium increase shall be given at least thirty (30) days before the effective date of such renewal.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary but this policy shall not be valid unless completed by the attachment hereto of a declarations and schedule page.



Sarah H. Lawhorne  
President



PMSLIC

Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375 717.558.7500

CYP  
CHANGE ENDORSEMENT

EXCESS PROFESSIONAL LIABILITY

EFFECTIVE DATE OF ENDORSEMENT	Mo.	Day	Year	12:01 A.M. STANDARD TIME AT THE ADDRESS OF INSURED	ENDORSEMENT NUMBER	005
POLICY NUMBER	09	22	99		ISSUE DATE	11-05-99

ACCOUNT NUMBER	PO7211465e
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LICENSE/FIRM NUMBER	MC542295C
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NAMED INSURED AND MAILING ADDRESS	
LIBERTY MEDICAL ASSOCIATES PC 41 TENTH STREET DUBOIS PA 15801	

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF A RETURN PREMIUM OF \$53, IT IS AGREED THAT COVERAGE Z IS AMENDED TO REFLECT THE DELETION OF ONE (1) CLASS 015 PHYSICIAN:

BASHIR YOUSUFZAI MD

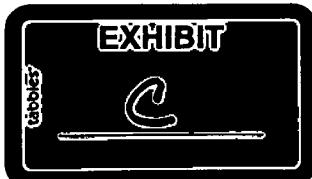
All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-END001

Sarah H. Lawhorne, JD  
President

THIS IS NOT AN INVOICE





Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive \*  
P. O. Box 8375  
Harrisburg, PA 17105-8375 717.558.7500

cyp  
CHANGE ENDORSEMENT

EXCESS PROFESSIONAL LIABILITY

EFFECTIVE DATE OF ENDORSEMENT	Mo 07	Day 06	Year 99	12:01 A.M. STANDARD TIME AT THE ADDRESS OF INSURED	ENDORSEMENT NUMBER	004
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POLICY NUMBER	PO7211465E
ACCOUNT NUMBER	

ISSUE DATE	07-27-99
LICENSE/FIRM NUMBER	MC542295C

NAMED INSURED AND MAILING ADDRESS
LIBERTY MEDICAL ASSOCIATES PC 41 TENTH STREET DUBOIS PA 15801

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF AN ADDITIONAL PREMIUM OF \$94, IT IS AGREED THAT COVERAGE Z IS AMENDED TO REFLECT THE ADDITION OF ONE (1) CLASS 007 PHYSICIANS:

BASHIR YOUSUFZAI MD

All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-END001

Sarah H. Lawhorne, JD  
President

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PMSLIC

Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375 717.558.7500

cyp  
CHANGE ENDORSEMENT

EXCESS PROFESSIONAL LIABILITY

EFFECTIVE DATE OF ENDORSEMENT	Mo.	Day	Year	12:01 A.M. STANDARD TIME AT THE ADDRESS OF INSURED	ENDORSEMENT NUMBER	003
POLICY NUMBER	07	03	99	PO7211465E	ISSUE DATE	07-27-99

ACCOUNT NUMBER	MC542295C
LICENSE/FIRM NUMBER	

NAMED INSURED AND MAILING ADDRESS	
LIBERTY MEDICAL ASSOCIATES PC 41 TENTH STREET DUBOIS PA 15801	

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF A RETURN PREMIUM OF \$204, IT IS AGREED THAT COVERAGE Z IS AMENDED TO REFLECT THE DELETION OF ONE (1) CLASS 007 PHYSICIANS:

JAGADEESHA SHETTY MD

All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-END001

Sarah H. Lawhorne, JD  
President

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**PMSLIC**

Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375 717.558.7500

cyp  
**CHANGE ENDORSEMENT****EXCESS PROFESSIONAL LIABILITY**

<b>EFFECTIVE DATE OF ENDORSEMENT</b>	<b>Mo.</b> 06	<b>Day</b> 12	<b>Year</b> 99	<b>12:01 A.M. STANDARD TIME AT THE ADDRESS OF INSURED</b>	<b>ENDORSEMENT NUMBER</b>	<b>002</b>
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<b>POLICY NUMBER</b>	PO7211465E
<b>ACCOUNT NUMBER</b>	

<b>ISSUE DATE</b>	07-27-99
<b>LICENSE/FIRM NUMBER</b>	MC542295C

<b>NAMED INSURED AND MAILING ADDRESS</b>	
LIBERTY MEDICAL ASSOCIATES PC 41 TENTH STREET DUBOIS PA 15801	

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF A RETURN PREMIUM OF \$118, IT IS AGREED THAT COVERAGE Z IS AMENDED TO REFLECT THE DELETION OF TWO (2) CLASS 007 PHYSICIANS:

GORDANA STEPCIC MD  
FRANKO STEPCIC MD

All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-END001

Sarah H. Lawhorne, JD  
President

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PMSLIC

Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

cyp  
CHANGE ENDORSEMENT

EXCESS PROFESSIONAL LIABILITY

EFFECTIVE DATE OF ENDORSEMENT	Mo. 01	Day 11	Year 99	12:01 A.M. STANDARD TIME AT THE ADDRESS OF INSURED
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ENDORSEMENT NUMBER	001
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POLICY NUMBER	PO7211465E
ACCOUNT NUMBER	

ISSUE DATE	03-09-99
LICENSE/FIRM NUMBER	MC542295C

NAMED INSURED AND MAILING ADDRESS

LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF AN ADDITIONAL PREMIUM OF \$295, IT IS AGREED THAT THE CLASSIFICATION OF JAGADEESHA SHETTY MD IS CHANGED FROM 007 TO 020.

All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-END001

Sarah H. Lawhorne, JD  
President

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Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

EXCESS PROFESSIONAL  
LIABILITY INSURANCE  
POLICY DECLARATIONS  
AND SCHEDULE PAGE  
OCCURRENCE

POLICY NUMBER: **PO7211465E**

Named Insured and Address  
**Liberty Medical Associates, PC**  
**41 Tenth Street**  
**DuBois, PA 15801**

In consideration of the required premium, the policy is effective for the policy period from **January 1, 1999 to January 1, 2000** beginning and ending at 12:01 A.M. standard time at the address of the named insured stated above.

This declarations page together with the policy provisions and endorsement, if any, issued to form a part hereof, constitutes the above numbered Excess Professional Liability Insurance Policy. This is only an excess following form insurance policy.

**PART I - EXCESS PROFESSIONAL LIABILITY INSURANCE COVERAGE**

**AMOUNT OF INSURANCE**

- Coverage X - Individual Coverage  
 Coverage Y - Designated Employee Coverage  
 Coverage Z - Association/Corporate/  
Partnership Coverage

**\$ 5 million Each Medical Incident**  
**\$ 5 million Annual Aggregate**

The insured's principal practice is:

Territory: 2-17  
County: Clearfield  
Rating Basis: Tier 1  
License/Firm No.: MC542295C

**PART II - STATEMENT OF UNDERLYING COVERAGE**

**PROFESSIONAL LIABILITY INSURANCE**

**AMOUNT OF INSURANCE**

Carrier: PA Medical Society Liability Insurance Company

**\$400,000 Each Medical Incident**

Policy Number: **PO7211465**

**\$1.2 Million Annual Aggregate**

Policy Period: **January 1, 1999 to January 1, 2000**

Pennsylvania Medical Professional  
Liability Catastrophe Fund:

**\$800,000 Each Medical Incident**

**\$2.4 Million Annual Aggregate**

**Total Policy Premium \$ Page 1 of 3**

Authorized Representative



Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

EXCESS PROFESSIONAL  
LIABILITY INSURANCE  
POLICY DECLARATIONS  
AND SCHEDULE PAGE  
OCCURRENCE

POLICY NUMBER: **PO7211465E**

Named Insured and Address  
**Liberty Medical Associates, PC**  
**41 Tenth Street**  
**DuBois, PA 15801**

In consideration of the required premium, the policy is effective for the policy period from **January 1, 1999 to January 1, 2000** beginning and ending at 12:01 A.M. standard time at the address of the named insured stated above.

This declarations page together with the policy provisions and endorsement, if any, issued to form a part hereof, constitutes the above numbered Excess Professional Liability Insurance Policy. This is only an excess following form insurance policy.

**PART I - EXCESS PROFESSIONAL LIABILITY INSURANCE COVERAGE**  
**AMOUNT OF INSURANCE**

- Coverage X - Individual Coverage  
 Coverage Y - Designated Employee Coverage  
    **Kelly Schaeffer, NPT**  
 Coverage Z - Association/Corporate/  
    Partnership Coverage

The insured's principal practice is:

**\$ 600,000 Each Medical Incident**  
**\$ 1.8 million Annual Aggregate**

Territory: 2-17  
County: Clearfield  
Rating Basis: Tier 1  
License/Firm No.: MC542295C

**PART II - STATEMENT OF UNDERLYING COVERAGE**  
**PROFESSIONAL LIABILITY INSURANCE**

Carrier: PA Medical Society Liability Insurance Company  
Policy Number: **PO7211465**  
Policy Period: **January 1, 1999 to January 1, 2000**

**AMOUNT OF INSURANCE**

Pennsylvania Medical Professional  
Liability Catastrophe Fund:

**\$400,000 Each Medical Incident**  
**\$1.2 Million Annual Aggregate**

**N/A**

**Total Policy Premium \$ Page 2 of 3**

Authorized Representative



Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

EXCESS PROFESSIONAL  
LIABILITY INSURANCE  
POLICY DECLARATIONS  
AND SCHEDULE PAGE  
OCCURRENCE

POLICY NUMBER: **PO7211465E**

Named Insured and Address  
**Liberty Medical Associates, PC**  
**41 Tenth Street**  
**DuBois, PA 15801**

In consideration of the required premium, the policy is effective for the policy period from **January 1, 1999 to January 1, 2000** beginning and ending at 12:01 A.M. standard time at the address of the named insured stated above.

This declarations page together with the policy provisions and endorsement, if any, issued to form a part hereof, constitutes the above numbered Excess Professional Liability Insurance Policy. This is only an excess following form insurance policy.

**PART I - EXCESS PROFESSIONAL LIABILITY INSURANCE COVERAGE**

**AMOUNT OF INSURANCE**

- Coverage X - Individual Coverage  
 Coverage Y - Designated Employee Coverage  
    **Kelly Schaeffer, NPT**  
 Coverage Z - Association/Corporate/  
    Partnership Coverage

The insured's principal practice is:

**\$ 5 million Each Medical Incident**  
**\$ 5 million Annual Aggregate**

Territory: 2-17  
County: Clearfield  
Rating Basis: Tier 1  
License/Firm No.: MC542295C

**PART II - STATEMENT OF UNDERLYING COVERAGE**

**PROFESSIONAL LIABILITY INSURANCE**

**AMOUNT OF INSURANCE**

Carrier: PA Medical Society Liability Insurance Company  
Policy Number: **PO7211465**  
Policy Period: **January 1, 1999 to January 1, 2000**

**\$400,000 Each Medical Incident**  
**\$1.2 Million Annual Aggregate**

Pennsylvania Medical Professional  
Liability Catastrophe Fund:

**N/A**

**Total Policy Premium \$ 2,177**

Authorized Representative

**EXCESS PROFESSIONAL LIABILITY POLICY**  
(“following form basis”)  
**OCCURRENCE FORM**

**PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY**

in consideration of the payment of the premium, in reliance upon the statements in the application and declarations made a part hereof, subject to all the terms of this policy, agrees with the named insured as follows:

Throughout this policy the words “you” and “yours” refer to the Named Insured shown in the declarations. The words “The Company”, “our” and “we” refer to PMSLIC providing this insurance.

The words “this insurance” means the excess professional liability insurance provided under this Coverage Form.

The word “insured” means any person or organization qualifying as such under any underlying insurance.

Other words or phrases that appear in quotation marks have special meaning. Refer to Section V -Definitions of this Coverage Form.

**Section I - Insuring Agreement**

A. The Company will pay on your behalf those sums, in excess of the amount payable under the terms of any “underlying insurance,” that you become legally obligated to pay as damages because of:

**Coverage X - Individual Professional Liability**

bodily injury arising out of alleged negligence in the rendering of or failure to render, during the policy period, medical professional services by the named insured, or by any person for whose acts or omissions such insured is legally responsible, except as a member, stockholder or partner of an association, corporation or partnership, performed in the practice of the individual insured’s profession as a physician or surgeon and as described in the declarations and schedule page.

**Coverage Y - Designated Employee Liability**

bodily injury arising out of alleged negligence in the rendering of or failure to render, during the policy period, medical professional services by a designated employee, if a premium charge is shown for Designated Employee in the declarations and schedule page, while the employee is acting within the scope of his duties arising from his employment. Such coverage shall apply to each such designated employee shown in the declarations and schedule page.

**Coverage Z - Association/Corporate/Partnership Liability**

bodily injury arising out of alleged negligence in the rendering of or failure to render, during the policy period, medical professional services in the practice of the profession described in the declarations and schedule page by any person for whose acts or omissions the association, corporation or partnership insured is legally responsible.

provided that the “underlying insurance” also applies or would apply but for the exhaustion of its applicable amount of insurance.

B. The Company will have the right to participate in the defense of claims or suits against you seeking damages because of injury to which this insurance may apply. The Company will have a duty to defend such claims or suits when the applicable amount of insurance of the underlying insurance has been used up by payment of judgments, settlements and any cost or expense subject to such limit.

This right or duty to defend is limited as set forth in paragraph C below.

C. The amount the Company will pay for damages is limited as described in Section IV - Amount of Insurance.

D. This insurance does not apply to bodily injury caused by a medical incident which occurred before or after the “policy period”.

E. This insurance is subject to the same terms, conditions, agreements and definitions as the “underlying insurance,” except:

(1) the Company will have no obligation under this insurance with respect to any claim or suit that is settled without our consent; and

(2) with respect to any provisions to the contrary contained in this insurance.

## Section II - Exclusions

The exclusions applicable to the "underlying insurance" also apply to this policy. Additionally, this policy does not apply to:

- (1) liability arising out of the performance by the insured of any intentional, deceitful or fraudulent act or willful tort.
- (2) 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.
- (3) liability arising out of the performance by the insured of an act of fornication, adultery, or any sexual act.
- (4) liability arising out of any claim which the insured has settled or attempted to settle without the written authorization of the Company.
- (5) liability of the insured for punitive, exemplary or treble damages, and any other damages assessed which are not compensatory in nature.
- (6) liability of others assumed by the insured under any written or oral contract or agreement.
- (7) liability arising out of the utterance of or publication of defamatory statements or allegedly defamatory statements by the insured.
- (8) liability growing out of a) the insured's activities as a proprietor, superintendent or executive officer of any hospital, sanitarium or clinic with bed and board facilities or laboratory or business enterprise (but this exclusion does not apply with respect to an X-ray or pathological laboratory if the insured is a radiologist or pathologist) or b) any activity or enterprise, whether or not related to patient care and/or treatment, if such activity or enterprise is not involved in the delivery of health care services to patients on an individual basis and within a direct professional provider-patient relationship. This exclusion pertains to but shall not be limited to publication of books or other written materials for general public consumption and participation in media broadcasts to the general public.
- (9) any liability from products liability losses not involving physician negligence.
- (10) any obligation for which the insured or any carrier acting as insurer is held liable under any worker's compensation, unemployment compensation, disability benefits law, or any similar law.
- (11) any loss, cost, or expense arising out of any governmental direction or request that the insured test for, monitor, clean

up, remove, contain, treat, detoxify or neutralize pollutants. As used in this Exclusion, pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalies, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- (12) bodily injury or property damage under any liability coverage:

(a) with respect to which an insured under this agreement is also an insured or insured under a Nuclear Energy Liability Policy issued by The Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the hazardous properties of nuclear material and with respect to which: (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the insured is or, had this Agreement not been issued, would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

- (13) bodily injury or property damage resulting from the hazardous properties of nuclear material, if:

(a) the nuclear material (i) is at any nuclear facility owned by, or operated by or on behalf of an insured, or (ii) has been discharged or dispersed therefrom; or

(b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or

(c) the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (c) applies only to property damage to such nuclear facility and any property threat.

- (14) As used in exclusions (12) and (13): "hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or by-product material;

"source material," "special nuclear material," and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material

(a) containing by-product material, and

(b) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for: (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabrication or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than twenty-five (25) grams of plutonium or uranium 233 or any combination thereof, or more than two-hundred-fifty (250) grams of uranium 235,

(d) any structure, basin excavation, premises or place prepared or used for the storage or disposal of wastes, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

### **Section III - Defense of Claims or Suits**

A. When the Company has the duty to defend, we will pay for all defense expense once our duty to defend begins.

B. If the Company exercises our right to defend when there is no duty, the Company will pay only that defense expense we incur.

C. If we provide a defense, we may investigate any claim or suit at our discretion. We have the right to select defense counsel and make settlement of any claim or suit as we deem expedient.

D. We are not obligated to:

(1) pay any claim or judgment after the Amount of Insurance is exhausted by payment of judgments or settlements; or

(2) take an appeal on any judgment.

E. Our right or duty to defend ends when we have used up the Amount of Insurance available in the payment of any combination of judgments or settlements as provided under Section IV - Amount of Insurance. This applies both to claims and suits pending at that time and filed thereafter.

F. When we control the defense of a claim or suit, we will pay for the defense expense. If by mutual agreement or court order, you assume control before the applicable Amount of Insurance available is used up, we will reimburse you for reasonable defense expense.

G. As soon as practicable after we become aware that an Amount of Insurance available is used up:

(1) We will notify you of any outstanding claims and suits subject to that Amount; and

(2) You will then arrange to assume control of the defense of all such claims and suits against you or any other insured when our right or duty to defend them ends.

H. We will assist you in the transfer of control of the defense of claims and suits under F or G above. Until such arrangements are completed, we will take on behalf of any insured those steps that we think appropriate:

(1) to avoid a default in any claim or suit; or

(2) to the continued defense of a claim or suit.

You agree that if we take such steps:

(3) We do not waive or give up any of our rights under this insurance; and

(4) You will reimburse us for any defense expense that arises out of such steps if the applicable Amount of Insurance available has been used up.

## **Section IV - Amount of Insurance**

A. The Amount of Insurance shown in the declarations as "each medical incident" and the rules below fix the most we will pay under the terms of this policy regardless of the number of:

- (1) Insureds;
- (2) Claims made or suits brought; or
- (3) "Persons" or organizations making claims or bringing suits.

B. The Amount of Insurance stated as the "annual aggregate" amount is the most we will pay for the sum of damages due to all "medical incidents" during any one "policy period".

C. Each payment we make for such damages reduces by the amount of payment the annual aggregate amount of insurance available for further damages.

D. The Amounts of Insurance of this policy apply separately to each annual period of this coverage.

E. The applicable amount of insurance shall not be increased by:

- (1) an allegation that a "medical incident" took place in more than one "policy period";
- (2) the number of claims or suits brought on account of a "medical incident";
- (3) the inclusion of more than one insured; or
- (4) the fact that a claim with respect to a "medical incident" is made in more than one "policy period".

F. Our liability for accrued prejudgment interest for each "medical incident" is limited to the amount which bears the same ratio to the total accrued prejudgment interest as our liability for damages other than accrued prejudgment interest bears to the total damages other than accrued prejudgment interest.

## **Section V - Definitions**

When used in reference to this insurance:

"Medical incident" means a single act or omission or a series of related acts or omissions in the rendering of or failure to render medical professional services to any one "person".

"Medical professional services" means health care services provided to patients in the ordinary course of the practice of

medicine by a physician or services provided by a designated employee within the scope of his employment.

"Person" means an individual, natural person.

"Policy period" means the period so designated in the declarations page, subject to the termination and cancellation provisions set forth in this policy, and the term "expiration" shall be deemed to include early termination or cancellation.

"Underlying Insurance" means the Amounts of Insurance stated in Part II of the declarations;

## **Section VI - Conditions**

If any of the following conditions are contrary to Conditions contained in the "underlying insurance" the provisions contained in this policy apply.

### **A. Appeals**

In the event the underlying insurer elects not to appeal a judgment in excess of the limits of the "underlying insurance," we may elect to make such appeal. If we so elect, we shall be liable, in addition to the applicable Amount of Insurance, for all defense expenses we incur.

### **B. Bankruptcy Of Underlying Insurer**

In the event of bankruptcy or insolvency of any underlying insurer, the insurance afforded by this policy shall not replace such "underlying insurance," but shall apply as if the "underlying insurance" was valid and collectible.

### **C. Insured's Duties In The Event Of Occurrence, Claim Or Suit:**

(1) Upon the insured becoming aware of any alleged bodily injury to which this insurance applies, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured, available witnesses, and the name and address of the underlying insurer shall be given by or for the insured to the Company as soon as practicable.

(2) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.

(3) The insured shall cooperate with the Company (including using best efforts to secure the cooperation of the underlying insurer) and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right

of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury for which insurance is afforded under this policy; and the insured shall attend hearing and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

(4) The insured shall not, except at his own cost: a) voluntarily make any payment, assume any obligation, or incur any expense at any time, or b) make or attempt any settlement of a claim or suit hereunder without the written consent of the Company.

(5) The insured shall report to the Company any settlement of a claim or suit hereunder made by the insured without payment by the Company.

#### **D. Maintenance Of Underlying Insurance**

(1) You agree to maintain the "underlying insurance" in full force and effect during the term of this policy, to furnish us copies of the primary insurance and all endorsements thereto which in any manner affect this policy and to inform us within thirty (30) days of any replacement of that "underlying insurance" by the same or another company. If the "underlying insurance" is not available for any reason, except for a reduction therein solely by amounts paid in settlement of claims or in satisfaction of awards or judgments, you agree to assume the obligation to pay damages up to the "underlying insurance"; to defend claims and suits and to pay expenses, costs and interest associated therewith, as would be required if the underlying insurance was insured rather than assumed by you.

(2) You must notify us immediately:

(a) of any changes to the "underlying insurance." We may adjust our premium accordingly from the effective date of the change to the "underlying insurance";

(b) if any "underlying insurance" is cancelled or not renewed and you do not replace it, except as provided in paragraph (3) below, this excess insurance shall continue in full force and effect, however this excess coverage shall only be liable for any loss or damages in excess of the limits of the Medical Professional Liability Catastrophe Loss Fund, if any, as if the underlying coverage was in full force and effect.

(3) Reduction or exhaustion of the aggregate limit of any "underlying insurance" by payments for judgments, settlements or defense expense will not be a failure to maintain underlying insurance in full force and effect.

(4) If at any time, you fail to meet the requirements of the Health Care Services Malpractice Act to secure coverage from the Medical Professional Liability Catastrophe Fund, the

policy will not provide coverage for any claim, suit or defense expense which arises after the date you failed to meet the requirements cited above.

(5) If pursuant to Section 605 of the Health Care Services Malpractice Act P.L. 390, No. 111 the Medical Professional Liability Catastrophe Loss Fund drops down and covers the primary limits, coverage under this policy will drop down and attach over the Catastrophe Loss Fund with no gap in coverage.

(6) No statement contained in this Condition limits our right to cancel or not renew this policy.

#### **E. Other Insurance**

This insurance is excess over any other valid and collectible insurance whether primary, excess, contingent or any other basis, except other insurance written specifically to be excess over this insurance.

#### **F. Policy Period**

This policy will respond to injury or damage that occurs, or arises from a "medical incident" committed during the "policy period".

#### **G. Declarations And Application**

By accepting the policy, you agree that the statements in the policy declarations and the application are your agreements and representations, that this policy is issued relying on your application and that the policy is the total agreement between you and us or any of our agents relating to this policy.

#### **H. Changes**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by an endorsement issued to form a part of this policy.

#### **I. Subrogation**

In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery therefore against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

Because this policy provides excess coverage, the insured's right of recovery cannot always be exclusively subrogated to the Company. It is, therefore, agreed that the Company shall act in concert with all other interests concerned, including the insured, in the enforcement of any subrogation rights or in the recovery of amounts by any other means. The apportioning of any amounts so recovered shall follow the principle that any interest, including the insured, that shall have paid an amount over and above any payment under this policy shall first be reimbursed up to the amount paid by such interest. The company shall then be reimbursed out of any balance then remaining, up to the amounts paid as the result of loss covered under this policy. Finally, the interests (including that of the insured), over which this coverage is in excess, are then entitled to claim any residue remaining. Expenses and costs necessary to the recovery of any such amounts shall be apportioned between the interests concerned and including the insured, in the ratio of their respective recoveries or, in the event of a totally unsuccessful attempt to recover, in the ratio of the respective amounts sought to be recovered.

## **J. Policy Territory**

This policy applies with respect to medical incidents taking place anywhere in the world, provided that claim is first made and suit first brought in the United States of America, its territories or possessions, Puerto Rico or Canada.

## **K. Cancellation And Nonrenewal**

### **How you can cancel.**

To cancel this policy or any part of it, you must deliver the policy, or the part you want cancelled, to us or any of our authorized agents. If this isn't possible, notify us by mail and include the future date you want coverage to end. You'll get a refund for the unused premium, calculated according to tables or formulas in our rating plan filed with the Commissioner of Insurance.

### **How we can cancel.**

#### **(1) Policies in Effect Less Than 60 Days.**

We may cancel this policy by mailing or delivering to the first named insured written notice of cancellation not less than 30 days prior to the effective date of cancellation.

#### **(2) Policies in Effect 60 Days or More.**

If this policy has been in effect for 60 days or more or is a renewal of a policy with us, we may cancel only for one or more of the following reasons by mailing or delivering to the first named insured written notice of cancellation:

- a. You have made a material misrepresentation which affects the insurability of the risk.

- b. You fail to pay a premium when due—whether the premium is payable directly to us or our agents or indirectly under a premium finance plan or extension of credit.
- c. A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become known during the policy period.
- d. Loss of reinsurance or a substantial decrease in reinsurance has occurred. Such loss or decrease must be certified to the Insurance Commissioner as directly affecting in-force policies at such time of cancellation.
- e. You materially fail to comply with policy terms, conditions or contractual duties.
- f. Any other reason approved by the Insurance Commissioner.
- g. This policy may also be cancelled by us effective from inception upon discovery that the policy was obtained through fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by us.

Notice of cancellation/termination must be mailed or delivered by us:

- Not less than 15 days prior to the cancellation effective date as to a and b;
- Not less than 60 days prior to the cancellation effective date as to c, d, e, and f.

If the Company elects not to renew this policy, we will mail or deliver written notice of nonrenewal, stating the specific reasons for nonrenewal, to the first named insured at least sixty (60) days prior to the expiration date of the policy.

We mail or deliver our notice to the first named insured's last mailing address known to us. If notice is mailed, it will be by registered or first class mail. Proof of mailing or delivery will be sufficient proof of notice.

Our notice must state:

- a. The specific reasons for cancellation; and
- b. The effective date of cancellation; the policy period will end on this date.

#### **(3) Return of Premium**

If the Company cancels, the pro-rata unearned premium will be returned to the named insured within ten (10) business days after the effective date of cancellation. If the named insured cancels, the pro-rata unearned premium will be returned within thirty (30) days after the effective date of cancellation.

- (4) If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.

## **L. Increase Of Premium**

If we increase your renewal premium, we must mail or deliver to the first named insured not less than 30 days prior to the effective date of the increase, an estimate of the increased premium.

Any notice of renewal premium increase will be mailed or delivered to the named insured's last known address. If notice is mailed, it will be registered or first class mail. Proof of mailing will be sufficient proof of notice.

## **M. Other Physical Policy Condition**

It is a condition of this policy that you will not perform any procedure in conjunction with any doctor:

- a. That is not fully licensed, or
- b. For whom valid and collectible professional liability insurance, affording limits of liability of at least \$200,000 each medical incident and \$600,000 aggregate, is not provided.

It is agreed that for the purpose of this policy condition, "procedure" includes, but is not limited to, all diagnosis and treatments of injury, deformity, and disease.

## **N. Risk Management**

The Company has adopted a Loss Prevention Program, the purpose of which is to reduce the incidence of malpractice and improve the practice, attitude, conduct and loss experience of policyholders. The Company reserves the right to impose and implement loss prevention measures during the policy period; the Loss Prevention Program may change from time to time within a policy period. Under said program, the Company reserves the right to impose restrictions on a

physician's coverage and to eliminate coverage for certain procedures and practices, in the opinion of the Company, present an unreasonable risk of loss or risk to patients of such insured. In the event the insured fails to comply with the Company's Loss Prevention Program, this policy may be non-renewed by the Company.

## **O. Actions Against the Company**

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent to the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

## **P. Assignment**

The interest hereunder of any insured is not assignable. If the insured shall die or be adjudged incompetent, this insurance shall thereupon terminate, but shall cover the insured's legal representative as the insured with respect to liability previously incurred and covered by this insurance. Pro rata return of premium will be computed from the date of termination.

In Witness whereof, the Company, has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless completed by the attachment hereto of a declaration and schedule page.



Theodore G. Otto, III, Esq.  
Secretary and General Counsel  
PMSLIC



Sarah H. Lawhorne  
President  
PMSLIC

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

01-361-CD

Civil Action No. 01-361-CD

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiff:  
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 certified copy of the original  
statement filed in this case.

MAR 12 2001

Attest:

Robert B. Woomer  
Pittsburgh

JURY TRIAL DEMANDED

EXHIBIT

tabbed

D

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

01-361-C.D

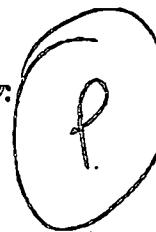
Civil Action No. 01-361-C.D

COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiff:  
Cindy Weber & Ricky Weber

Counsel of Record for this Party:

Robert E. Woerner, Esquire  
PA I.D.# 59030



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

(412) 563-7980

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

MAR 12 2001

Attest:

  
Cindy Weber

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

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) 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.

*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

*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

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.,

) AMENDED COMPLAINT

Defendants.

Filed on behalf of Plaintiff:  
Cindy Weber & Ricky Weber

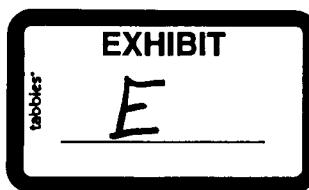
Counsel of Record for this Party:

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



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

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,

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 relied 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. Woomer, Esquire  
PA I.D. 59030

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

(412) 563-7980

ORIG P.O'S

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.

RECEIVED  
MAY 22 2001

**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.

EXHIBIT

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

...st.   
William J. Ober  
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. and  
LIBERTY PHYSICAL MEDICINE &  
REHABILITATION ASSOCIATES, P.C.

RECEIVED  
MAY 22 2001

No. 01 - 361 - CD

O R D E R

NOW, this 18<sup>th</sup> day of May, 2001, following argument and briefs into Preliminary Objections filed on behalf of Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., it is the ORDER of this Court that Plaintiffs shall be and are hereby granted 20 days within which to file an Amended Complaint to specifically plead the factual bases alleging that said Defendant may or should have known of Bashir Yousufzai's conduct as contained in said Complaint; and to specifically allege this as a basis for punitive damages in Counts 1 and 4. Said Amended Complaint to be filed within 20 days from date hereof and Plaintiffs supplemental brief within 20 days of filing said Amended Complaint. Said Defendant shall have 10 days to respond to Plaintiffs' supplemental brief.

It is the further ORDER of this court that Defendant's demurrer to Paragraph 16 (a,b,c) of said Complaint shall be and are hereby dismissed and Plaintiffs directed to more specifically plead Paragraph 16 (d,e,f) to provide a factual basis for said allegations.

Preliminary Objections to Count 3 alleging lack of informed consent shall be and are hereby granted and said Count dismissed.

With regards to Preliminary Objections to Plaintiffs' allegations of intentional and negligent conduct in Counts 4 and 5, it is the ORDER of this Court that ruling thereon

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,

/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

st.

*John K. Reilly*  
President Judge

ORIG POS  
RECEIVED  
MAY 8 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

vs.

JURY TRIAL DEMANDED

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

AMENDED ORDER

AND NOW this 24<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. 16

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

7/8/2001  
John K. Reilly, Jr., P.J.

EXHIBIT

6

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.

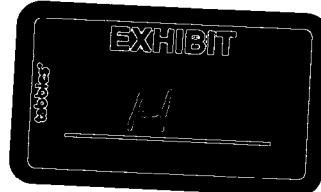
By the Court,

/s/ JOHN K. REILLY, JR.

President Judge



JUL 13 2001



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.

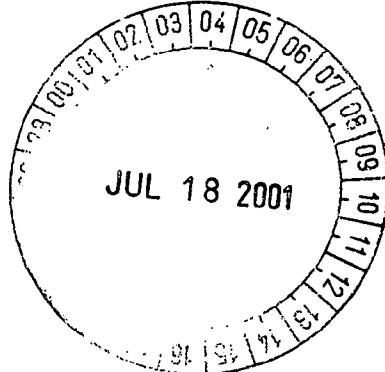
President Judge

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

JUL 16 2001

Attest:

*W.L.R.*  
W.L.R.  
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,

/s/ JOHN K. REILLY, JR.

---

President Judge

I hereby certify this to be a true and attested copy of the original statement of facts filed.

JUL 24 2001

Attest:



RECEIVED  
JUL 24 2001

PMS 017 OH

VERIFICATION

I, Donna Turner, of Pennsylvania Medical Society Liability Insurance Company, do hereby verify that I have read the foregoing Complaint for Declaratory Judgment. The statements therein are correct to the best of my personal knowledge or information and belief.

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

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY

By Donna Turner

Date: 9/5/01

FILED

SEP 07 2001  
12:09 AM  
Latty Pfd \$80.00  
William A. Shaw  
Prothonotary  
4cc Sheriff

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff

vs.

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

Defendants

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 01-1488-CD

**PRAECIPE FOR ENTRY OF  
APPEARANCE**

Filed on behalf of Defendant, Liberty Physical  
Medicine & Rehabilitation Associates, P.C.

Counsel of record for this party:

John W. Heslop, Jr., Esquire  
Attorney I.D. #32299

GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR

414 N. Logan Boulevard  
Altoona, PA 16602

(814) 946-4391

**FILED**

SEP 28 2001  
mjl:46/noc  
William A. Shaw  
Prothonotary  
*[Signature]*

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY, : IN THE COURT OF COMMON PLEAS OF  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. : CIVIL ACTION - LAW  
BASHIR YOUSUFZAI, M.D., LIBERTY :  
PHYSICAL MEDICINE & : ACTION FOR DECLARATORY JUDGMENT  
REHABILITATION ASSOCIATES, P.C., :  
CINDY E. WEBER, and RICKY L. :  
WEBER, :  
Defendants : JURY TRIAL DEMANDED

**PRAECIPE FOR ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Please enter the appearance of Goldstein, Heslop, Steele, Clapper, Oswalt & Stoehr as  
counsel for the Defendant, **LIBERTY PHYSICAL MEDICINE & REHABILITATION  
ASSOCIATES, P.C.**, in the above-captioned matter.

GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR

By   
John W. Heslop, Jr., Esquire  
Attorney for Defendant, Liberty Physical  
Medicine & Rehabilitation Associates, P.C.  
I.D. No. 32299

414 North Logan Boulevard  
Altoona, PA 16602

(814) 946-4391

DATED: 9-27-01

PENNSYLVANIA MEDICAL SOCIETY : IN THE COURT OF COMMON PLEAS OF  
LIABILITY INSURANCE COMPANY, : CLEARFIELD COUNTY, PENNSYLVANIA  
Plaintiff : CIVIL ACTION - LAW  
vs. : NO. 01-1488-CD  
BASHIR YOUSUFZAI, M.D., LIBERTY :  
PHYSICAL MEDICINE & :  
REHABILITATION ASSOCIATES, P.C., : ACTION FOR DECLARATORY JUDGMENT  
CINDY E. WEBER, and RICKY L. :  
WEBER, :  
Defendants : JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

This is to certify that I, John W. Heslop, served a copy of the Praeclipe for Entry of  
Appearance on the 27 <sup>th</sup> day of Sept., 2001, via First Class United States Mail,  
postage prepaid and addressed to the following:

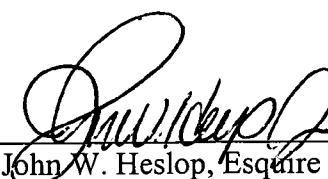
Robert J. Pfaff, Esquire  
PFAFF, MCINTYRE, DUGAS,  
HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648

Cindy and Ricky Weber  
RD 1 Box 38-1A  
Penfield, PA 15849

Bashir Yousufzai, M.D.  
2023 Green Glen Drive  
DuBois, PA 15801

GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR

By

  
John W. Heslop, Esquire  
Attorney for Defendant, Liberty Physical  
Medicine & Rehabilitation Associates, P.C.  
I.D. No. 32299  
414 N. Logan Boulevard  
Altoona, PA 16602

(814) 946-4391

**In The Court of Common Pleas of Clearfield County, Pennsylvania**

Sheriff Docket #

11496

PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY      01-1488-CD

VS.

YOUSUFZAI, BASHIR, M.D. al

**COMPLAINT FOR DECLARATORY JUDGMENT**

**SHERIFF RETURNS**

**NOW SEPTEMBER 18, 2001 AT 9:55 AM DST SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON CINDY WEBER, DEFENDANT AT RESIDENCE, RD#1 BOX 38-1A, PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CINDY WEBER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN TO HER THE CONTENTS THEREOF.**

**SERVED BY: NEVLING/MARSHALL**

**FILED**

OCT 01 2001  
013:30pm  
William A. Shaw  
Prothonotary

*EOT*

**NOW SEPTEMBER 18, 2001 AT 9:55 AM DST SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON RICKY WEBER, DEFENDANT AT RESIDENCE, RD#1 BOX 38-1A, PENFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO RICKY WEBER A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.**

**SERVED BY: NEVLING/MARSHALL**

**NOW SEPTEMBER 18, 2001 AT 10:40 AM DST SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, DEFENDANT AT SUITE 300, MEDICAL ARTS BLDG., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO CONNIE PENDOLINO, OFFICE MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN TO HER THE CONTENTS THEREOF.**

**SERVED BY: NEVLING/MARSHALL**

**NOW SEPTEMBER 21, 2001 SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON BASHIR YOUSUFZAI, M.D., DEFENDANT BY CERTIFIED MAIL # 7000 0600 0022 9001 8348 AT 54 ARBORHILL ROAD, APT. B, RICHMOND, VA. 23233-3137 BEING HIS LAST KNOWN ADDRESS. THE RETURN RECEIPT IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.**

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11496

PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY 01-1488-CD

VS.

YOUSSUFZAI, BASHIR, M.D. et al

**COMPLAINT FOR DECLARATORY JUDGMENT**

**SHERIFF RETURNS**

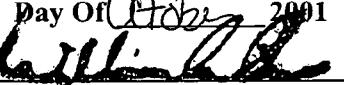
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**Return Costs**

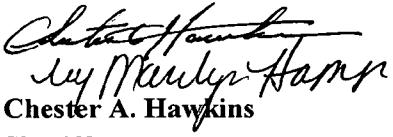
Cost	Description
66.53	SHFF. HAWKINS PAID BY: ATTY.
40.00	SURCHARGE PAID BY: ATTY.

**Sworn to Before Me This**

1st Day Of October 2001  


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

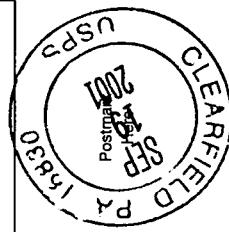
**So Answers,**

  
Chester A. Hawkins  
Sheriff

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

Article Sent To:

Postage	\$ 3.50
Certified Fee	\$ 2.10
Return Receipt Fee (Endorsement Required)	\$ 1.50
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 7.10</b>



Name (Please Print Clearly) (to be completed by mailer)  
**BASHIR YOUSUFZAI, M.D.**

Street: **54 Arbor Hill Road, Apt B**

City: **Richmond**

State: **VA** Zip: **23233-3137**

Stamps

Handstamps

Handstamps

8469 2003 2200 0090 0000 7002

**Certified Mail Provides:**

- A mailing receipt
  - A unique identifier for your mailpiece
  - A signature upon delivery
  - A record of delivery kept by the Postal Service for two years
- Important Reminders:**
- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
  - Certified Mail is not available for any class of international mail.
  - NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
  - For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
  - For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
  - If a postmark on the Certified Mail receipt is desired, please present the article at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

**IMPORTANT: Save this receipt and present it when making an inquiry.**

PS Form 3800, July 1999 (Reverse)

10255-99-M-2087

11496

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

BASHIR YOUSUFZAI, M.D. *21 SEP 21*  
54 Arborhill Road  
Apt B  
Richmond, VA. 23233-3137

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)	B. Date of Delivery
<i>RAJIA YOUSUFZAI</i>	

**C. Signature**

Rajia Yousufzai

Agent

Addressee

D. Is delivery address different from item 1?  
If YES, enter delivery address below:

Yes

No

**3. Service Type**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Certified Mail | <input type="checkbox"/> Express Mail                   |
| <input type="checkbox"/> Registered                | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Insured Mail              | <input type="checkbox"/> C.O.D.                         |

**4. Restricted Delivery? (Extra Fee)**

Yes

**2. Article Number (Copy from service label)**

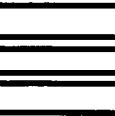
7000 0600 0022 9001 8348

PS Form 3811, July 1999

102595-00 M-0952

Domestic Return Receipt

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

- **Sender:** Please print your name, address, and ZIP+4 in this box •

CHESTER A. HAWKINS  
Sheriff of Clearfield County  
1 N. 2nd St. Suite 116  
Clearfield, Pa. 16830

96h1

०  
३

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PA

JURY TRIAL DEMANDED

NO. 01-1488-CD

TYPE OF PLEADING:

PRAECIPE FOR ENTRY OF  
APPEARANCE/PRAECIPE FOR  
WITHDRAWAL OF APPEARANCE

FILED ON BEHALF OF:  
PLAINTIFF

COUNSEL OF RECORD FOR PLAINTIFF

ROBERT J. PFAFF, ESQUIRE  
PA I.D.#: 17371  
P.O. Box 113252  
Pittsburgh, PA 15241  
412/831-9681  
412/831-9682 (FAX)

I HEREBY CERTIFY THAT A TRUE  
AND CORRECT COPY OF THE WITHIN  
WAS MAILED TO ALL PARTIES OF  
RECORD THIS 12 DAY OF  
October 2001.

  
Attnorneys for Plaintiff

**FILED**

OCT 04 2001

William A. Shaw  
Prothonotary

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

PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY,	NO. 01-1488-CD
Plaintiff,	
vs.	
BASHIR YOUSUFZAI, M.D., LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C., CINDY E. WEBER and RICKY L. WEBER,	
Defendants.	JURY TRIAL DEMANDED

**PRAECIPE FOR ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Kindly enter the appearance of ROBERT J. PFAFF, ESQUIRE, as counsel of record for plaintiff, PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY, in the above-entitled action noting that all papers and process for service upon said party may be served upon the undersigned at his office, P.O. Box 113252, Pittsburgh, PA 15241.

  
\_\_\_\_\_  
Robert J. Pfaff, Esquire

**PRAECIPE FOR WITHDRAWAL OF APPEARANCE**

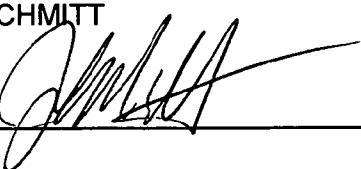
TO THE PROTHONOTARY:

Kindly withdraw the appearance of PFAFF, MCINTYRE, DUGAS, HARTYE & SCHMITT, entered on behalf of plaintiff, PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY, in the above-entitled action, based upon the

appearance of Robert J. Pfaff, Esquire, as counsel of record for plaintiff,

PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY

PFAFF, MCINTYRE, DUGAS, HARTYE  
& SCHMITT

By 

PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY,	)	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff,	)	JURY TRIAL DEMANDED
BASHIR YOUSUFZAI, M.D.,	)	NO. 01-1488-CD
LIBERTY PHYSICAL MEDICINE &	)	
REHABILITATION ASSOCIATES, P.C.,	)	
CINDY E. WEBER, and RICKY L.	)	TYPE OF PLEADING:
WEBER,	)	
Defendants.	)	<b>ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT</b>
)	)	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**

OCT 25 2001  
m 11:32 pm no  
William A. Shaw  
Prothonotary  
cc

## **JURY TRIAL DEMANDED**

PENNSYLVANIA MEDICAL SOCIETY	)	IN THE COURT OF COMMON
LIABILITY INSURANCE COMPANY,	)	PLEAS OF CLEARFIELD
	)	COUNTY, PENNSYLVANIA
Plaintiff,	)	JURY TRIAL DEMANDED
	)	
BASHIR YOUSUFZAI, M.D.,	)	NO. 01-1488-CD
LIBERTY PHYSICAL MEDICINE &	)	
REHABILITATION ASSOCIATES, P.C.,	)	
CINDY E. WEBER, and RICKY L.	)	
WEBER,	)	
	)	
Defendants.	)	

**ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT**

AND NOW, comes Plaintiffs by and through their attorneys, Woomer & Friday, LLP, and files the following Answer To Complaint For Declaratory Judgment as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Defendants, Cindy E. Weber and Ricky L. Weber are without sufficient information with which to form a belief as to the truth of the matter asserted in paragraph
5. As such, the averment is denied. By way of further answer, the document speaks for itself.
6. Defendant, Cindy E. Weber and Ricky L. Weber are without sufficient information with which to form a belief as to the truth of the matter asserted in paragraph
6. As such, the averment is denied. By way of further answer, the document speaks for itself.

7. Defendant, Cindy E. Weber and Ricky L. Weber are without sufficient information with which to form a belief as to the truth of the matter asserted in paragraph 7. As such, the averment is denied. By way of further answer, the document speaks for itself.

8. Defendant, Cindy E. Weber and Ricky L. Weber are without sufficient information with which to form a belief as to the truth of the matter asserted in paragraph 8. As such, the averment is denied. By way of further answer, the document speaks for itself.

9. Defendant, Cindy E. Weber and Ricky L. Weber are without sufficient information with which to form a belief as to the truth of the matter averred in paragraph 9. As such, the averment is denied.

10. Admitted.

11. Admitted.

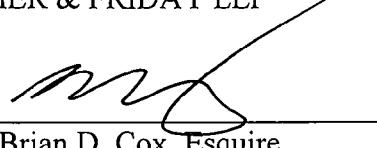
12. Admitted.

13. The averments contained in paragraph 13 constitute a conclusion of law to which no response is necessary. To the extent that a response is deemed to be necessary, Plaintiff Cindy and Ricky Weber deny that Pennsylvania Medical Society Liability Insurance Company's policy do not extend coverage with regard to the negligent prescription of drugs.

14. Admitted.

WHEREFORE, defendant Cindy E. Weber and Ricky L. Weber respectfully request that this Court deny Pennsylvania Medical Society Liability Insurance Company's request for a declaratory judgment.

WOOMER & FRIDAY LLP

By: 

Brian D. Cox, Esquire  
Pa. I.D. 69238

Attorney for Plaintiffs

Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216  
412-563-7980

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of October 2001, a true and correct copy of the foregoing **Answer To Complaint For Declaratory Judgment** 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  
Pa. I.D. 69238

Attorney for Plaintiffs

Woomer & Friday, LLP  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216  
412-563-7980

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff

vs.

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

Defendants

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 01-1488-CD

**ANSWER AND NEW MATTER**

Filed on behalf of Defendant, Liberty Medical  
Associates, PC

Counsel of record for this party:

John W. Heslop, Jr., Esquire  
Attorney I.D. #32299

GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR

414 N. Logan Boulevard  
Altoona, PA 16602

(814) 946-4391

**FILED**

OCT 26 2001

11110811000

William A. Shaw  
Prothonotary

PENNSYLVANIA MEDICAL SOCIETY : IN THE COURT OF COMMON PLEAS OF  
LIABILITY INSURANCE COMPANY, : CLEARFIELD COUNTY, PENNSYLVANIA  
Plaintiff :  
: CIVIL ACTION - LAW  
vs. :  
: NO. 01-1488-CD  
: BASHIR YOUSUFZAI, M.D., LIBERTY :  
: PHYSICAL MEDICINE & :  
: REHABILITATION ASSOCIATES, P.C., : ACTION FOR DECLARATORY JUDGMENT  
: CINDY E. WEBER, and RICKY L. :  
: WEBER, :  
: Defendants : JURY TRIAL DEMANDED

**NOTICE TO PLEAD**

TO: PLAINTIFFS

IN ACCORDANCE WITH RULES 1026 AND 1361 OF THE PENNSYLVANIA RULES OF CIVIL PROCEDURE, YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED ANSWER AND NEW MATTER WITHIN TWENTY (20) DAYS FROM SERVICE HEREOF OR A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.

GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR

By

  
John W. Heslop, Jr., Esquire  
Attorney for Defendant, Liberty Medical  
Associates, PC  
Attorney I.D. #32299

414 N. Logan Boulevard  
Altoona, PA 16602  
(814) 946-4391

PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	CIVIL ACTION - LAW
vs.	:	NO. 01-1488-CD
BASHIR YOUSUFZAI, M.D., LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C., CINDY E. WEBER, and RICKY L. WEBER,	:	ACTION FOR DECLARATORY JUDGMENT
Defendants	:	JURY TRIAL DEMANDED

**ANSWER AND NEW MATTER**

**AND NOW**, comes named Defendant, **LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.**, by its counsel, Goldstein, Heslop, Steele, Clapper, Oswalt & Stoehr and files this Answer to the Complaint for Declaratory Judgment:

1. Admitted.
2. Admitted that Dr. Yousufzai did reside in Dubois, Pennsylvania. Answering Defendant believes he currently resides in Virginia.
3. The averments of Paragraph 3 are specifically denied. On the contrary, **LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.**, is no longer the correct name of this answering Defendant. The correct name is **LIBERTY MEDICAL ASSOCIATES, PC.** The correct address for answering Defendant is P.O. Box 347, DuBois, Pennsylvania, 15801.
4. Admitted.
5. The averments of Paragraph 5 are admitted with the following qualification. It is admitted that various insurance documents relative to **BASHIR YOUSUFZAI** are attached as exhibits to the Complaint. As to whether these documents constitute all insurance documentation

relevant to this matter, Defendant avers that after reasonable investigation, it is without knowledge or information sufficient to form a belief as to the truth of the averments and proof thereof is demanded at the time of trial.

6. The averments of Paragraph 6 are admitted with the following qualification. It is admitted that various insurance documents relative to **LIBERTY MEDICAL ASSOCIATES, PC**, are attached as exhibits to the Complaint. As to whether these documents constitute all insurance documentation relevant to this matter, Defendant avers that after reasonable investigation, it is without knowledge or information sufficient to form a belief as to the truth of the averments and proof thereof is demanded at the time of trial.

7. The averments of Paragraph 7 are admitted with the following qualification. It is admitted that various insurance documents relative to **LIBERTY MEDICAL ASSOCIATES, PC**, are attached as exhibits to the Complaint. As to whether these documents constitute all insurance documentation relevant to this matter, Defendant avers that after reasonable investigation, it is without knowledge or information sufficient to form a belief as to the truth of the averments and proof thereof is demanded at the time of trial.

8. Admitted.

9. The averments of Paragraph 9 are specifically denied. They are first denied as a conclusion of law to which no response is required under the Pennsylvania Rules of Civil Procedure. They are further denied in that while Exhibit "C" indicates that the effective date of the endorsement was 9/22/99, Exhibit "C" contains an issue date of 11/05/99.

10. It is admitted that the Complaint and Amended Complaint were filed and that copies are attached to this Complaint for Declaratory Judgment as exhibits. This admission is not an

admission of the allegations contained in the Complaint and Amended Complaint and all actual allegations contained in the Complaint and Amended Complaint against answering Defendant are specifically denied.

11. Admitted.

12. Admitted.

13. The averments of Paragraph 13 are specifically denied. On the contrary, the terms of the insurance policies speak for themselves as to what coverage they provide. By way of further answer, it is specifically denied that Plaintiff does not have a duty to defend and/or indemnify this answering Defendant regarding claims related to the negligent prescription and/or administering of drugs. Said claims of negligence fall within the coverage of the policy.

14. Admitted.

WHEREFORE, Defendant, **LIBERTY MEDICAL ASSOCIATES, PC**, requests that your Honorable Court deny the relief requested by the Plaintiff as it relates to this answering Defendant. Furthermore, answering Defendant requests that your Honorable Court declare that the Plaintiff remains obligated to provide coverage in terms of both a duty to defend and indemnification for the remaining allegations in the underlying action.

**NEW MATTER**

15. Defendant, **LIBERTY MEDICAL ASSOCIATES, PC**, hereby incorporates by reference as if fully set forth at length Paragraphs 1 through 14, inclusive, of this Answer and New Matter.

16. It is averred by this answering Defendant that the Plaintiff remains obligated under the policies to defend this answering Defendant and to indemnify this answering Defendant for any claims remaining against this answering Defendant in the underlying lawsuit.

17. It is averred that Plaintiff does not have any basis at this point to take the position that it does not have a duty to defend and/or indemnify the remaining averments in the Complaint against this answering Defendant especially those relating to the alleged negligent prescribing of medications.

WHEREFORE, Defendant, **LIBERTY MEDICAL ASSOCIATES, PC**, requests that your Honorable Court deny the relief requested by the Plaintiff as it relates to this answering Defendant. Furthermore, answering Defendant requests that your Honorable Court declare that the Plaintiff remains obligated to provide coverage in terms of both a duty to defend and indemnification for the remaining allegations in the underlying action.

**NEW MATTER PURSUANT TO P.A.R.C.P. 2252(d)**

18. Defendant, **LIBERTY MEDICAL ASSOCIATES, PC**, hereby incorporates by reference as if fully set forth at length Paragraphs 1 through 17, inclusive, of this Answer and New Matter.

19. In or around the spring and/or early summer of 1999, Defendant, **BASHIR YOUSUFZAI, M.D.**, entered into a written agreement with Liberty Medical Associates, PC.

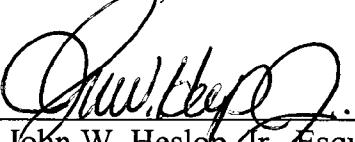
20. Section 1.8 of said written agreement indicates that "Physician" (which in this case is Bashir Yousufzai) will indemnify and hold harmless "Employer" (in this case Liberty Medical Associates, PC) from any and all loss including reasonable attorney's fees arising out of or related to any action taken as a result of alleged unprofessional acts, conduct or behavior on the part of the Physician. A copy of Page 2 containing the applicable language of the agreement is attached hereto, incorporated herein by reference as if fully set forth at length, and marked as Exhibit "A".

21. Accordingly, Liberty Medical Associates, PC hereby requests all counsel fees and costs associated with the defense of this action, if the Court determines such attorney's fees and costs fall within Section 1.8 of the agreement.

WHEREFORE, Defendant, **LIBERTY MEDICAL ASSOCIATES, PC**, demands all attorney's fees and costs associated with the defense of this action against Defendant, **BASHIR YOUSUFZAI, M.D.**

GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR

By

  
John W. Heslop, Jr., Esquire

Attorney for Defendant, Liberty Medical  
Associates, PC  
I.D. No. 32299

414 North Logan Boulevard  
Altoona, PA 16602  
(814) 946-4391

DATED: 10/24/01

1.5. Recordkeeping. Physician shall prepare, in accordance with generally accepted medical practice and Employer's policies, records of all examinations, procedures and other professional services rendered by Physician. The ownership and right of control of all reports, records, and supporting documents prepared by Physician shall vest exclusively with Employer; provided, however, that Physician shall have such right of access to such reports, records and supporting documentation with respect to patients treated by Physician as required in connection with the defense of malpractice claims and in connection with physician compliance matters, including without limitation licensure related matters and peer review matters. Upon termination or expiration of this Agreement, all records of patients treated by Physician shall remain in the possession of Employer.

1.6. Devotion of Time and Effort. Physician shall devote Physician's best skills, abilities, knowledge, efforts and attention, and Physician's full working time, to the performance of Physician's duties under this Agreement. During the term of this Agreement, Physician will not be allowed to engage in any other professional medical, compensable or charitable, work without the express prior written consent of Employer. Any limited exception will not in any way imply liability by Employer for services performed outside the scope of this Employment Agreement.

1.7. Policies and Performance Standards. Physician shall abide by all policies, procedures and guidelines from time to time instituted by Employer, including without limitation those related to quality assurance, utilization review, practice protocols, clinical record keeping and charting, clinical outcomes assessment, patient/family satisfaction and peer review, and shall comply with the performance standards to be established from time to time by Employer.

1.8. Unprofessional Behavior. Physician will indemnify and hold harmless Employer and Employer's officers, directors, agents, employees, and independent contractors from any and all loss, damage, liability, cost, or expense (including reasonable attorneys' fees) arising out of or related to any action taken as a result of alleged unprofessional acts, conduct, or behavior on the part of Physician outside the scope of Physician's Medical Malpractice Insurance referred to in Exhibit A.

## Article II QUALIFICATIONS AND COMPLIANCE STANDARDS

### 2.1. Licensure; DEA Registration.

(a) Physician represents, warrants, and agrees that Physician shall be qualified and licensed to practice medicine without restriction or limitation in the Commonwealth of Pennsylvania, on or before the date Physician is to commence employment under this Agreement and Physician shall maintain such licensure throughout the term of this Agreement. Physician shall be registered with the Federal Drug Enforcement Agency ("DEA") to prescribe controlled substances without restriction

EXHIBIT

A

VERIFICATION OF CORPORATE PARTY

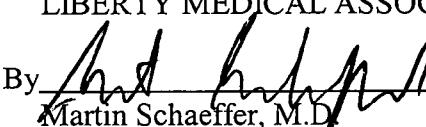
I, Martin Schaeffer, M.D., hereby certify that I have read the foregoing Answer and New Matter.

The averments of fact made therein are true and correct to the best of my knowledge, information and belief. I am authorized to sign this verification on behalf of Liberty Medical Associates, PC, because of my position as President.

I understand that false statements herein are made subject to penalty of 18 Pa. C.S.A. §4904 relating to unsworn falsification to authorities.

LIBERTY MEDICAL ASSOCIATES, PC

By

  
Martin Schaeffer, M.D.

Dated: 10/9/11

PENNSYLVANIA MEDICAL SOCIETY : IN THE COURT OF COMMON PLEAS OF  
LIABILITY INSURANCE COMPANY, : CLEARFIELD COUNTY, PENNSYLVANIA  
Plaintiff : CIVIL ACTION - LAW  
vs. : NO. 01-1488-CD  
BASHIR YOUSUFZAI, M.D., LIBERTY :  
PHYSICAL MEDICINE & :  
REHABILITATION ASSOCIATES, P.C., : ACTION FOR DECLARATORY JUDGMENT  
CINDY E. WEBER, and RICKY L. :  
WEBER, :  
Defendants : JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

This is to certify that I, John W. Heslop, served a copy of the Answer and New Matter on the 25 day of Oct., 2001, via First Class United States Mail, postage prepaid and addressed to the following:

Robert J. Pfaff, Esquire  
P.O. Box 113252  
Pittsburgh, PA 15241

Bashir Yousufzai, M.D.  
500 First Street  
DuBois, PA 15801

Cindy and Ricky Weber  
RD 1 Box 38-1A  
Penfield, PA 15849

GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR

By

  
John W. Heslop, Esquire  
Attorney for Defendant, Liberty Medical  
Associates, PC  
I.D. No. 32299  
414 N. Logan Boulevard  
Altoona, PA 16602  
(814) 946-4391

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff,

vs.

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

Defendants.

CIVIL DIVISION

No. 01-1488-CD

ACTION FOR DECLARATORY  
JUDGMENT

PRAECIPE FOR APPEARANCE

Filed on behalf of plaintiff

Counsel of Record for this Party:

Robert J. Pfaff, Esquire  
PA I.D. #17371

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

(412) 232-3400

**FILED**

NOV 14 2001

**PRAECIPE FOR APPEARANCE**

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter our appearance on behalf of plaintiff.

JURY TRIAL DEMANDED.

THOMSON, RHODES & COWIE, P.C.

By   
Robert J. Pfaff, Esquire  
PA I.D. #17371  
Attorneys for plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PRAECIPE FOR APPEARANCE has been served upon the following on this 8<sup>th</sup> day of November, 2001, by the United States Postal Service, first class mail, postage prepaid:

Bashir Yousufzai, M.D.  
500 First Street  
DuBois, PA 15801

John W. Heslop, Esquire  
Goldstein, Heslop, Steele, Clapper,  
Oswalt & Stoehr  
414 N. Logan Boulevard  
Altoona, PA 16602

Brian D. Cox, Esquire  
Woomer & Friday, LLP  
3220 West Liberty Avenue, Suite 200  
Pittsburgh, PA 15216

THOMSON, RHODES & COWIE, P.C.

By   
Robert J. Pfaff, Esquire  
Attorneys for plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff,

vs.

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

Defendants.

CIVIL DIVISION

No. 01-1488-CD

ACTION FOR DECLARATORY  
JUDGMENT

PLAINTIFF'S REPLY TO NEW MATTER

Filed on behalf of plaintiff

Counsel of Record for this Party:

Robert J. Pfaff, Esquire  
PA I.D. #17371

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

(412) 232-3400

**FILED**

NOV 26 2001

WILLIAM A. SHAW  
Prothonotary

**PLAINTIFF'S REPLY TO NEW MATTER**

AND NOW, comes the plaintiff, Pennsylvania Medical Society Liability Insurance Company, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the within Reply to New Matter filed on behalf of Liberty Physical Medicine & Rehabilitation Associates, P.C./Liberty Medical Associates, P.C.:

1. In response to paragraph 15 of the New Matter of defendant, it is denied that plaintiff has a duty to defend and/or indemnify defendant regarding claims related to the negligent prescription and/or administering of drugs. The allegation contained in the Complaint filed by Cindy E. Weber and Ricky L. Weber relative to the negligent prescribing of drugs is contained in paragraph 15(a) of the Amended Complaint and first of all does not apply to Liberty Physical Medicine & Rehabilitation Associates, P.C./Liberty Medical Associates, P.C., and, secondly, a review of the factual averments of the Amended Complaint for the underlying action makes it clear that the medications were prescribed to enable Dr. Yousufzai to carry out his intentional and improper actions.
2. The allegations contained in paragraph 16 of the New Matter of defendant are denied as stated. It is denied that plaintiff should be obligated under the policies to defend Liberty Physical Medicine & Rehabilitation Associates, P.C./Liberty Medical Associates, P.C. In support of this denial, plaintiff incorporates by reference the previous paragraph of the within Reply as though the same were set forth at length.
3. The allegations contained in paragraph 17 of the New Matter of defendant are denied as stated. First of all, to the best of plaintiff's knowledge, the only remaining averment of negligence applicable in the underlying suit is the averment of the Webers that Dr. Yousufzai negligently prescribed drugs. As previously set forth in the first paragraph of the within Reply to New Matter, which paragraph is incorporated herein by reference as though the same were set forth at length, plaintiff is not obligated to defend on that remaining negligence allegation and thus the declaratory judgment action filed by plaintiff should be granted.

WHEREFORE, Pennsylvania Medical Society Liability Insurance Company prays that the New Matter of Liberty Physical Medicine & Rehabilitation Associates, P.C./Liberty Medical Associates, P.C., be dismissed and judgment entered in favor of plaintiff.

**Reply to New Matter Pursuant to Pa.R.C.P. 2252(d)**

4. Plaintiff incorporates by reference the previous paragraphs of the within Reply to New Matter as though the same were set forth at length in response to paragraph 18 of the New Matter.

5. In response to paragraph 19 of the New Matter of defendant, plaintiff is, after reasonable investigation, without knowledge as to the truth of said paragraph. Therefore, the allegations are denied and strict proof thereof is demanded at time of trial.

6. The allegations contained in paragraph 20 contain legal conclusions plus are not directed to plaintiff and thus no response is necessary.

7. The allegations contained in paragraph 21 contain legal conclusions plus are not directed to plaintiff and thus no response is necessary.

WHEREFORE, Pennsylvania Medical Society Liability Insurance Company requests this Honorable Court to declare that it is not obligated to provide further coverage under Policy Nos. PO7212112, PO7211465 and PO7211465e.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

By   
Robert J. Pfaff, Esquire  
PA I.D. #17371  
Attorneys for plaintiff

VERIFICATION

The undersigned, Donna M. Turner, hereby states that she is West Team Leader for Pennsylvania Medical Society Liability Insurance Company, that she is duly authorized to make this Verification on its behalf, that the averments of fact set forth in the foregoing Plaintiff's Reply to New Matter are true and correct to the best of her knowledge, information and belief.

This Verification is made pursuant to Rule 76 of the Pennsylvania Rules of Civil Procedure and subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 11/14/01

Donna M. Turner

RECEIVED

HARRISBURG, PA 17111  
PMSLC

NOV 09 2001

RECEIVED

HARRISBURG, PA 17111  
PMSLC

NOV 09 2001

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PLAINTIFF'S REPLY TO NEW MATTER has been served upon the following on this 21st day of November, 2001, by the United States Postal Service, first class mail, postage prepaid:

Bashir Yousufzai, M.D.  
500 First Street  
DuBois, PA 15801

John W. Heslop, Esquire  
Goldstein, Heslop, Steele, Clapper,  
Oswalt & Stoehr  
414 N. Logan Boulevard  
Altoona, PA 16602

Brian D. Cox, Esquire  
Woomer & Friday, LLP  
3220 West Liberty Avenue, Suite 200  
Pittsburgh, PA 15216

THOMSON, RHODES & COWIE, P.C.

By   
Robert J. Pfaff, Esquire  
Attorneys for plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff,

vs.

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

Defendants.

CIVIL DIVISION

No. 01-1488-CD

ACTION FOR DECLARATORY  
JUDGMENT

MOTION FOR SUMMARY JUDGMENT

Filed on behalf of plaintiff

Counsel of Record for this Party:

Robert J. Pfaff, Esquire  
PA I.D. #17371

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

(412) 232-3400

**FILED**

FEB 04 2002

William A. Shaw  
Prothonotary

**MOTION FOR SUMMARY JUDGMENT**

AND NOW, comes the plaintiff, Pennsylvania Medical Society Liability Insurance Company, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the within Motion for Summary Judgment:

1. Plaintiff commenced the above-captioned action by filing a complaint for declaratory judgment on September 7, 2001, and the defendants, with exception of Dr. Bashir Yousufzai, were served on September 18, 2001. The sheriff served Dr. Yousufzai by certified mail on September 21, 2001.
2. An answer to the complaint was filed by defendants Cindy E. and Ricky L. Weber and an answer and new matter was filed by Liberty Medical Associates. Plaintiff replied to the new matter of Liberty Medical Associates.
3. In addition to the pleadings, and exhibits attached to these pleadings, counsel for the respective parties to the instant action have agreed to submit a separate record to effectively present all issues to the court for resolution by summary judgment.
4. There is no genuine issue of any material fact as to a necessary element of the cause of action and plaintiff is entitled to judgment as a matter of law.

WHEREFORE, Pennsylvania Medical Society Liability Insurance Company prays that this Honorable Court grant the within Motion for Summary Judgment and enter judgment in favor of plaintiffs' as a matter of law.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

By

Robert J. Pfaff, Esquire  
PA I.D. #17371

Attorneys for Pennsylvania Medical  
Society Liability Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION FOR SUMMARY JUDGMENT has been served upon the following on this 31<sup>st</sup> day of January, 2002, by the United States Postal Service, first class mail, postage prepaid:

Bashir Yousufzai, M.D.  
500 First Street  
DuBois, PA 15801

John W. Heslop, Esquire  
Goldstein, Heslop, Steele, Clapper,  
Oswalt & Stoehr  
414 N. Logan Boulevard  
Altoona, PA 16602

Brian D. Cox, Esquire  
Woomer & Friday, LLP  
3220 West Liberty Avenue, Suite 200  
Pittsburgh, PA 15216

THOMSON, RHODES & COWIE, P.C.

By   
Robert J. Pfaff, Esquire  
Attorneys for plaintiff

**FILED**

1cc

Atty

RECEIVED  
FEB 04 2002

RECEIVED  
William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

vs.

No. 01-1488-CD

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

Defendants.

**ORDER OF COURT**

AND NOW, to wit, this \_\_\_\_ day of \_\_\_\_\_, 2002, it is hereby  
ORDERED, ADJUDGED and DECREED that plaintiffs' motion for summary judgment  
was granted and judgment is entered in favor of Pennsylvania Medical Society Liability  
Insurance Company and against defendants, Bashir Yousufzai, M.D., Liberty Physical  
Medicine & Rehabilitation Associates, P.C., Liberty Medical Associates, P.C., Cindy E.  
Weber and Ricky L. Weber, and thus plaintiff no longer is obligated to defend or  
indemnify the aforementioned defendants in the act filed at No. 01-361-CD.

By:

\_\_\_\_\_  
J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff,

vs.

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

Defendants.

CIVIL DIVISION

No. 01-1488-CD

ACTION FOR DECLARATORY  
JUDGMENT

RECORD FOR MOTION FOR SUMMARY  
JUDGMENT

Filed on behalf of plaintiff

Counsel of Record for this Party:

Robert J. Pfaff, Esquire  
PA I.D. #17371

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

(412) 232-3400

**FILED**  
FEB 22 2002  
William A. Shaw  
Prothonotary

**INDEX OF RECORD FOR MOTION FOR SUMMARY JUDGMENT**

1. Complaint.
2. ROA report listing the matters on a criminal docket.
3. Criminal Complaint.
4. Voluntary Statement of Cindy E. Weber.
5. Transcript of Cindy E. Weber's testimony at the preliminary hearing.
6. Sentence Order dated November 21, 2000.
7. Affidavit of probable cause.
8. Bail release conditions.
9. Warrant of arrest.
10. April 17, 2001 letters directed to Dr. Yousufzai and Liberty Medical Associates from PMSLIC reserving the rights to decline coverage under the policy.
11. January 14, 2002 Order of Court.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

By   
Robert J. Pfaff, Esquire  
Attorneys for plaintiff



PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PA

JURY TRIAL DEMANDED

NO.

TYPE OF PLEADING:  
**COMPLAINT FOR DECLARATORY  
JUDGMENT**

FILED ON BEHALF OF:  
**PLAINTIFF**

COUNSEL OF RECORD FOR THE NAMED  
PARTY:

PFAFF, McINTYRE, DUGAS, HARTYE &  
SCHMITT  
**ROBERT J. PFAFF, ESQUIRE**  
**PA I.D.#: 17371**  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581  
FAX (814) 696-9399

I hereby certify that this is a true and  
correct copy of the original as filed.

\_\_\_\_\_  
Attorney For

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

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

No.

Plaintiff,

vs.

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

Defendants.

JURY TRIAL DEMANDED

**NOTICE**

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

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

**David S. Meholic, Court Administrator**  
Clearfield County Courthouse, 230 E. Market Street, Clearfield, PA 16830 814/765-2641

**PFAFF, McINTYRE, DUGAS, HARTYE  
& SCHMITT**

\_\_\_\_\_  
Attorney for Plaintiff  
**ROBERT J. PFAFF, ESQUIRE**  
PA I.D.# 17371  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
814/696-3581

IN THE COURT OF COMMON PLEASE OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – LAW

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY, : NO.

Plaintiff, : :

vs. : :

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

Defendants. : JURY TRIAL DEMANDED

**COMPLAINT FOR DECLARATORY JUDGMENT**

AND NOW, comes the plaintiff, PENNSYLVANIA MEDICAL SOCIETY LIABILITY  
INSURANCE COMPANY, by and through its attorneys, PFAFF, MCINTYRE, DUGAS,  
HARTYE & SCHMITT, and files the within action for declaratory judgment:

1. Plaintiff Pennsylvania Medical Society Liability Insurance Company is a  
duly licensed insurance carrier with its principle place of business at 777 East Park  
Drive, Harrisburg, Pennsylvania.
2. Defendant Bashir Yousufzai, M.D. is an adult individual whose last known  
address was 2023 Green Glen Drive, DuBois, Clearfield County, Pennsylvania.

3. Defendant Liberty Physical Medicine & Rehabilitation Associates is a professional corporation with offices located at 145 Hospital Avenue, DuBois, Clearfield County, Pennsylvania.

4. Defendants Cindy Weber and Ricky Weber are or were husband and wife, adult individuals, with a last known address of R.D. #1, Box 38-1A, Penfield, Clearfield County, Pennsylvania.

5. Plaintiff issued to Bashir Yousufzai, M.D., a policy of physician and surgeons professional liability, Policy No. PO7212112, effective July 6, 1999 to January 1, 2000, on an occurrence basis. A copy of the declarations and schedule, associated endorsements, as well as a copy of the policy jacket is attached hereto, marked Exhibit "A" and incorporated herein by reference as though the same were set forth at length.

6. Plaintiff issued to Liberty Medical Associates, P.C., defendant designated in the caption of the within action as Liberty Physical Medicine & Rehabilitation Associates, P.C., a policy of physicians and surgeons professional liability insurance, Policy No. PO7211465, with a policy period from January 1, 1999 to January 1, 2000, on an occurrence basis. A copy of the declarations and schedule, associated endorsements, as well as a copy of the policy jacket is attached hereto, marked Exhibit "B" and incorporated herein by reference as though the same were set forth at length.

7. Plaintiff issued to Liberty Medical Associates, P.C. defendant designated in the caption of the within action as Liberty Physical Medicine & Rehabilitation Associates, P.C., an excess liability policy under Policy No. PO7211465e, with a policy period from January 1, 1999 to January 1, 2000. A copy of the excess policy is attached

hereto, marked Exhibit "C" and incorporated herein by reference as though the same were set forth at length.

8. Bashir Yousufzai, M.D., was added as an insured under the excess professional liability Policy No. PO7211465E by endorsement dated July 6, 1999, which endorsement is part of Exhibit "C" attached to the within Complaint and incorporated herein by reference as though the same were set forth at length.

9. The policies of insurance issued by plaintiff and as set forth in the previous paragraphs of the within Complaint for Declaratory Judgment, were cancelled effective September 22, 1999 as to Bashir Yousufzai, M.D.

10. Defendants Cindy E. Weber and Ricky L. Weber commenced an action in the Court of Common Pleas of Clearfield County, Pennsylvania, at Civil Action No. 01-361-CD against Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C., and have filed a Complaint and an Amended Complaint, copies of which are attached hereto as Exhibits "D" and "E", and incorporated herein by reference as though the same were set forth at length.

11. The defendants in the action at No. 01-361-CD in the Court of Common Pleas of Clearfield County, Pennsylvania, filed Preliminary Objections to the Complaint and Amended Complaint, resulting in Court Orders dated May 18, 2001, May 29, 2001, July 16, 2001 and July 20, 2001. The aforementioned Orders are attached hereto, marked Exhibits "F", "G", "H" and "I", all of which are incorporated herein by reference as though the same were set forth at length.

12. Based upon the Court Orders of May 18, 2001 and May 29, 2001, Exhibits "F" and "G", plaintiffs filed an Amended Complaint and, based upon the Orders of Court dated July 16, 2001 and July 20, 2001, attached hereto as Exhibits "H" and "I", the only remaining negligence allegations are those related to the claimed negligent prescription of drugs as contained in Paragraph No. 16 of the Amended Complaint.

13. The policies of insurance issued by Pennsylvania Medical Society Liability Insurance Company to Bashir Yousufzai, M.D., and Liberty Medical Associates, P.C., attached hereto as Exhibits "A", "B" and "C", do not provide coverage for intentional actions, criminal actions, or liability arising out of the performance by the insured of any sexual act. In addition, the policies do not provide coverage for punitive damages. Finally, it is the position of Pennsylvania Medical Society Liability Insurance Company if it is determined by the Court that Cindy and Ricky Weber are permitted to proceed with their claim based upon negligent prescribing of drugs, Pennsylvania Medical Society Liability Insurance Company's policies do not extend coverage because of the interrelationship between the prescribing of drugs and the intentional acts.

14. Pennsylvania Medical Society Liability Insurance Company is currently providing a defense to Bashir Yousufzai, M.D. and Liberty Physical Medicine & Rehabilitation Associates, P.C. in the action at No. 01-361-CD, Civil Division, in the Court of Common Pleas of Clearfield County, Pennsylvania, pursuant to a reservation of rights, but is desirous of getting a judicial determination relative to its duty to provide coverage.

WHEREFORE, Pennsylvania Medical Society Liability Insurance Company  
requests this Honorable Court to declare that it is not obligated to provide further  
coverage under Policy Nos. PO7212112, PO7211465 and PO7211465e.

Respectfully submitted,

PFAFF, MCINTYRE, DUGAS, HARTYE  
& SCHMITT

---

Attorney for Plaintiff  
ROBERT J. PFAFF, ESQUIRE  
PA. ID. No. 17371  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

Notice to Plead

To: DEFENDANTS

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

---

Attorney for Plaintiff



**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>

BEB

Issue Date	11-01-1999	Policy Number	PO7212112
Effective Date of Cancellation	09-22-1999 12:01 AM EST	Account Number	YOUS0011
		License Number	MD064208L

**Named Insured:**

BASHIR A YOUSUFZAI MD  
41 TENTH STREET  
DUBOIS PA 15801

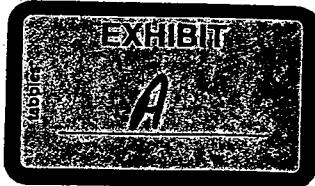
**OCCURRENCE  
CONFIRMATION OF CANCELLATION  
PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

You are hereby notified that the policy designated in this notice is being terminated pursuant to Section 1002 of the Health Care Services Malpractice Act (40 P.S. 1301.1002) and amendments thereto and the policy conditions. Your insurance will cease at and from the hour and date shown above.

**REASON FOR CANCELLATION:**

**TERMINATION OF EMPLOYMENT**

All other conditions and provisions remain unchanged.





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>

BEB

Issue Date 08-20-1999  
Endorse Effective 09-01-1999 12:01 AM EST

Endorse Number	001
Policy Number	PO7212112
Account Number	YOUS0011
License Number	MD064208L
Territory	2-17(WEST)
County	CLEARFIELD
Rating Basis	TIER 1

Named Insured:  
BASHIR A YOUSUFZAI MD  
41 10TH STREET  
DUBOIS PA 15801

**ENDORSEMENT**  
**PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

THE ADDRESS OF THE INSURED IS CHANGED TO READ AS SHOWN ABOVE.

All other conditions and provisions remain unchanged.

PA-050



# 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>

BEB

Policy Issue	07-27-1999	Policy Number	PO7212112
Policy Effective	07-06-1999	Account Number	YOUS0011
Policy Expiration	01-01-2000	License Number	MD064208L
		Territory	2-17(WEST)
		County	CLEARFIELD
		Rating Basis	TIER 1

Named Insured:  
BASHIR A YOUSUFZAI MD  
SUITE 300  
145 HOSPITAL AVENUE  
DUBOIS PA 15801

**OCCURRENCE  
DECLARATIONS & SCHEDULE  
PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

**Policy Term  
Premium**

**COVERAGE A - INDIVIDUAL PROFESSIONAL LIABILITY**  
LIMITS: \$400,000 / \$1,200,000

NEUROLOGY - NO SURGERY 01511/80261  
75% 1ST YEAR NEW DOCTOR DISCOUNT 07-06-1999 to 01-01-2000

\$1,585  
\$1,189cr

TOTAL PREMIUM COVERAGE A

\$396

TOTAL PMSLIC PREMIUM ALL COVERAGES

\$396

**CAT FUND ANNUAL SURCHARGE**  
LIMITS: \$800,000 / \$2,400,000

CAT FUND SURCHARGE BASED ON JUA CLASS 010 TERR 2

COVERAGE A \$289

TOTAL CAT FUND SURCHARGE

\$289

TOTAL COST OF INSURANCE

\$685

**THE ABOVE-NAMED PHYSICIAN IS ASSOCIATED WITH THE FOLLOWING PMSLIC ENTITY(S):**

EMPLOYEE OF

LIBERTY MEDICAL ASSOCIATES PC

LIBE0020



**PMSLIC**

777 East Park Drive  
P.O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

**OCCURRENCE FORM**

**PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY INSURANCE POLICY**

**PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY**  
(A stock insurance company, herein called the Company)

In consideration of the payment of the premium, in reliance upon the statements in the declarations and schedule page made a part hereof, subject to all of the terms of this policy, and subject to the provisions of the Heath Care Services Malpractice Act of 1975, P.L. 390, No. 111, Chapter 4, Article VI(k) of the Pennsylvania Insurance Law, agrees with the named insured as follows:

**INSURING AGREEMENTS**

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

**Coverage A - Individual Professional Liability**

**bodily injury** arising out of alleged negligence in the rendering of or failure to render, during the policy period, **medical professional services** by the individual insured, or by any person for whose acts or omissions such insured is legally responsible, except as a member, stockholder or partner of an association, corporation or partnership, performed in the practice of the individual insured's profession as a physician and as described in the declarations and schedule page, and injury arising out of voluntary or mandated participation by the insured in a formal process of credentialing, quality assurance, peer review or utilization review except that such insurance as is afforded for claims arising out of participation in a formal process of credentialing, quality assurance, peer review or utilization review shall be excess over any other valid and collectible insurance including protection afforded by any self-insurance plan, and provided that such coverage is offered only to the extent permitted by law.

**Coverage B - Designated Employee Liability**

**bodily injury** arising out of alleged negligence in the rendering of or failure to render, during the policy period, **medical professional services** by a **designated employee**, if a premium charge is shown for Designated Employee Liability in the declarations and schedule page, while the employee is acting within the scope of his/her duties in the course of his/her employment by either the individual insured under Coverage A or the Association, Corporation, or Partnership insured under Coverage C. Such coverage shall apply to each such **designated employee** shown in the declarations and schedule page.

**Coverage C - Association, Corporation or Partnership Liability**

**bodily injury** arising out of alleged negligence in the rendering of or failure to render, during the policy period, **medical professional services** in the practice of the profession described in the declarations and schedule page by any person for whose acts or omissions the association, corporation or partnership insured is legally responsible, and injury arising out of voluntary or mandated participation by such person in a formal process of credentialing, quality assurance, peer review or utilization review except that such insurance as is afforded for claims arising out of participation in a formal process of credentialing, quality assurance, peer review or utilization review shall be excess over any other valid and collectible insurance, including protection afforded by any self-insurance plan, and provided that such coverage is offered only to the extent permitted by law.

And the Company shall have the right and duty to defend any suit against the insured seeking such damages, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit for which coverage is expressly excluded by this policy, and the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements. The Company shall not be obligated to appeal any finding or decision of any arbitration panel or court of general jurisdiction except at its own sole and exclusive discretion.

The Company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the Company in any suit defended by the Company and all interest on the entire

- amount of an insured's proportionate share of any judgment therein which accrues after the entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- (b) prejudgment interest or delay damages awarded against the insured in any suit defended by the Company on that portion of the judgment that does not exceed the Company's limits of liability thereon; however, if the Company offers to pay its limit of liability, it will not pay such interest based on the time after the offer is made;
  - (c) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, but the Company shall have no obligation to apply for or furnish any such bonds;
  - (d) reasonable expenses incurred by an insured for attendance at hearings or trials at the Company's request, including actual loss of wages or salary (but not loss of other income) not to exceed \$250 a day.

## EXCLUSIONS

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.
- (d) to liability arising out of any claim which the insured has settled or attempted to settle without the written authorization of the Company.
- (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.
- (g) to liability arising out of the utterance of or publication of defamatory statements or allegedly defamatory statements by the insured except that when such statements were made by the insured as part of the insured's voluntary or mandated participation in a for-

mal process of credentialing, quality assurance, peer review or utilization review, coverage shall be available to the extent permitted under this contract and by law.

- (h) to liability growing out of 1) the insured's activities as a proprietor, superintendent or executive officer of any hospital, sanitarium or clinic with bed and board facilities or laboratory or business enterprise (but this exclusion does not apply with respect to an X-Ray or pathological laboratory utilized to provide medical professional services within a physician/patient relationship within the insured's practice) or 2) any activity or enterprise, whether or not related to patient care and/or treatment, if such activity or enterprise is not involved in the delivery of health care services to patients on an individual and within a direct professional provider-patient relationship. This exclusion pertains to but shall not be limited to publication of books or other written materials for general public consumption and participation in media broadcasts to the general public.
- (i) to any liability from products liability losses.
- (j) to any obligation for which the insured or any carrier acting as insurer is held liable under any workers' compensation, unemployment compensation, disability benefits law, or any similar law.
- (k) to any claim in which the insured attempts to defraud the Company or has misrepresented or concealed any material facts in the medical records.
- (l) to any claim arising from the actual, alleged or threatened discharge, dispersal, release or escape or any solid, liquid, gaseous or thermal irritant, pollutant or contaminant, radiation or other form of energy, or organism, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalies, chemicals or waste materials (including those to be recycled, reconditioned or reclaimed), into or upon land, the atmosphere or any water course or body of water, and any loss, cost or expense arising from any governmental direction or request for testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing of such irritants, pollutants or contaminants, radiation, energy or organisms.
- (m) bodily injury or property damage under any liability coverage:
  - (1) with respect to which an insured under this agreement is also an insured or insured under a Nuclear Energy Liability Policy issued by The Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured

under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) resulting from the hazardous properties of nuclear material and with respect to which:

- (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
- (b) the insured is or, had this Agreement not been issued, would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

(3) bodily injury or property damage resulting from the hazardous properties of nuclear material if:

- (a) the nuclear material
  - (i) is at any nuclear facility owned by, or operated by or on behalf of an insured, or
  - (ii) has been discharged or dispersed therefrom; or
- (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or
- (c) the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (3) applies only to property damage to such nuclear facility and any property threat.

(4) As used in this Exclusion (m):

**hazardous properties** include radioactive, toxic or explosive properties;

**nuclear material** means source material, special nuclear material or by-product material;

**source material, special nuclear material and by-product material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

**spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

**waste** means any waste material

(a) containing by-product material, and

(b) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

**nuclear facility** means

(a) any nuclear reactor,

(b) any equipment or device designed or used for

- (i) separating the isotopes of uranium or plutonium,

- (ii) processing or utilizing spent fuel, or

- (iii) handling, processing or packaging waste

(c) any equipment or device used for the processing, fabrication or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at any premises where such equipment or device is located consists of or contains more than twenty-five (25) grams of plutonium or uranium 233 or any combination thereof, or more than two-hundred-fifty (250) grams of uranium 2

(d) any structure, basin excavation, premises or place prepared or used for the storage or disposal of wastes, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

**nuclear reactor** means any apparatus designed to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

**property damage** includes all forms of radioactive contamination of property.

## PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

- (a) Under Individual Professional Liability, each individual named in the declarations and schedule page as insured.
- (b) Under Designated Employee Liability, any person named in the declarations and schedule page as a designated employee if a premium charge is shown therefor in the declarations and schedule page and while the employee is acting within the scope of his/her duties in the course of his/her employment by either the individual insured under Coverage A or the Association, Corporation or Partnership insured under Coverage C.
- (c) Under Association, Corporation or Partnership Liability, the association, corporation or partnership described in the declarations and schedule page and any member, stockholder or partner thereof with respect to acts or omissions of others, provided that no member, stockholder, or partner of an association, corporation or partnership shall be an insured under this subparagraph with respect to liability for his/her personal acts of a professional nature.

## DEFINITIONS

When used in this policy:

**insured** means any person or organization qualifying as an insured in the "persons insured" provision. The insurance afforded applies separately to each insured against whom claim is made or suit is brought.

**damages** means all damages which are not expressly excluded or limited by the terms of this policy, including: damages which are payable because of injury to which this insurance applies, and damages or interest imposed as statutory or common law penalties.

**bodily injury** means physical harm, sickness or disease sustained by any person, including death resulting therefrom.

**medical professional services** means health care services provided to patients in the ordinary course of the practice of medicine by a physician or services provided by a designated employee within the scope of his/her employment.

**designated employee** means any person named in the declarations and schedule page and employed by the named insured.

**named insured** means the person or organization first named in the declarations and schedule page of this policy.

claim means:

- (1) an express demand for damages to which this insurance applies, arising from an injury allegedly caused by the insured; and express demand for damages shall be deemed to include a civil action in which damages to which this insurance applies are alleged and an arbitration proceeding to which the insured is required to submit by statute or court rule; or
- (2) an act or omission which the insured reasonably believes will result in an express demand for damages to which this insurance applies.

A report of a claim to the Company must comply with the requirements of Condition 2, of this policy.

## CONDITIONS

### 1. Premium:

All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

### 2. Insured's Duties in the Event of Claim or Suit:

- (a) Upon the insured becoming aware of any alleged injury to which this insurance applies, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of available witnesses, shall be given by or for the insured to the Company as soon as practicable.
- (b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
- (c) The insured shall cooperate with the Company and, upon the Company's request, assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury for which insurance is afforded under this policy, and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- (d) The insured shall not, except at his/her own cost;
  - 1) voluntarily make any payment, assume any obligation or incur any expense at any time, or 2) make or attempt any settlement of a claim or suit hereunder without the written authorization of the Company.

- (e) The insured shall report to the Company any settlement of a claim or suit hereunder made by the insured without payment by the Company.
- (f) The insured shall not misrepresent or conceal any material facts.
- (g) Failure to comply with the above-noted conditions that compromise the claim or suit, may result in this contract being declared null and void.

### 3. Action Against Company:

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his/her legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

### 4. Limits of Liability:

- (a) Coverage A - Individual Professional Liability - The limit of the Company's liability for each claim for all damages due to each claim shall not exceed the limit of liability stated in the schedule as "each incident" for Coverage A. For the purpose of determining the Company's liability, the following shall be considered as arising from one claim: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the company's liability for all claims shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage A. Such limits of liability shall apply separately to each individual insured hereunder.

- (b) Coverage B - Designated Employee Liability - The limit of the Company's liability for each claim for all damages due to each claim shall not exceed the limit of

liability stated in the schedule as "each incident" for Coverage B. For the purpose of determining the Company's liability, the following shall be considered as arising from one claim: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the Company's liability for all claims shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage B. Such limits of liability shall apply separately to each individual insured hereunder.

- (c) Coverage C - Association, Corporation or Partnership Liability - Regardless of the number of individual or designated employee insureds under Coverages (A) & (B), the limit of the Company's liability for each claim for all damages due to each claim shall not exceed the limit of liability stated in the schedule as "each incident" for Coverage C. For the purpose of determining the Company's liability, the following shall be considered as arising from one claim: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the Company's liability for all claims shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage C. Such limits of liability shall apply separately to each individual insured hereunder.

### 5. Other insurance:

The insurance afforded by this policy is primary insurance except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance. When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

- (a) Contribution by Equal Shares: If all of such other valid and collectible insurance provides for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability.

der any one policy or the full amo. of the loss is paid, and with respect to any amount of loss not so paid, the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each insurer has paid its limit in full or the full amount of the loss is paid.

- (b) Contribution by Limits: If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss.
- (c) Designated Employees: The insurance afforded by this policy for designated employees shall be excess over any other insurance available to such designated employee for a loss covered hereunder.

#### **6. Subrogation:**

In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

#### **7. Changes:**

Neither the terms or conditions of this policy may be waived or changed, except by endorsement issued by the Company to form a part of this policy.

#### **8. Policy Territory:**

- (a) Medical professional services rendered in the practice and hospital locations designated on your application or approved in writing by the Company, or
- (b) Medical professional services and activities rendered anywhere in the United States of America (including its territories and possessions) on a non-routine and emergency basis if your liability is determined in a suit in the United States of America (including its territories and possessions).

#### **9. Assignment:**

The interest hereunder of any insured is not assignable. If the insured shall die or be adjudged incompetent, this insurance shall thereupon terminate, but shall cover the insured's legal representative as the insured with respect to liability previously incurred and covered by this insurance. Pro rata return premium will be computed from the date of termination.

#### **10. Cancellation and Nonrenewal:**

- (a) Cancellation by the named insured-His/her policy (or coverage afforded any insured by his/her policy) may

be canceled by the named insured by written notice to the Company, stating when such cancellation shall be effective.

- (b) Cancellation of policies in effect less than 60 days- His/her policy may be cancelled by the Company by mailing to the named insured at the address shown in the policy or last known address, written notice of cancellation stating the specific reason(s) for cancellation and the effective date and time thereof:
  - (1) at least 15 days prior to the effective date of cancellation if the named insured has:
    - (a) failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit; or
    - (b) made a material misrepresentation which affects the insurability of the risk;
  - (2) at least 30 days prior to the effective date of cancellation if the Company cancels for any other reason.

The mailing of notice by first class mail shall be sufficient proof of notice.

- (c) Cancellation of policies in effect for 60 days or more - If his/her policy has been in effect for 60 days or more, or if his/her policy is a renewal of a policy issued by the Company, it (or coverage afforded any insured by this policy) may be canceled by the Company only for one or more of the following reasons:
  - (1) the named insured has failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit;
  - (2) for reason of suspension or revocation of the named insured's (or an insured's) license or approval to provide professional health care service;
  - (3) the insured has requested cancellation;
- (d) If the Company cancels this policy based on reason:
  - (1) immediately above, the Company will mail to the named insured written notice of cancellation at least 15 days before the effective date of cancellation;
  - (2) immediately above, no written notice of cancellation is required and coverage shall be terminated on the effective date of such suspension or revocation;

- (3) immediately above, no written notice of cancellation is required and coverage shall be terminated on the date requested by the insured.

The mailing of notice by first class mail shall be sufficient proof of notice. Such notice shall state the specific reason(s) for cancellation and the effective date and time thereof.

- (e) Cancellation-General Provisions - The coverage afforded by this policy to any insured (other than the named insured) shall terminate upon the termination of the policy or upon the termination of that insured's employment, contract or association with the named insured which formed the basis for such coverage, if that occurs prior to the termination date of the policy.

If the named insured cancels, earned premium will be computed pro rata, but will not be less than the minimum premium; the unearned premium will be returned within 30 days after the effective date of cancellation. If the Company cancels, earned premium will be computed pro rata; the unearned premium will be returned to the named insured within 10 business days after the effective date of cancellation. However, in either event, payment or tender of unearned premium is not a condition of cancellation.

For purposes of this condition, cancellation shall not, unless otherwise provided for by the statutes of the jurisdiction in which the named insured is located, include nonrenewal.

- (f) Nonrenewal of policy - If the Company elects not to renew this policy, it shall mail to the named insured at the address shown in the policy or last known address, written notice of its intention not to renew stating the specific reasons for such nonrenewal at least 60 days prior to the effective date of termination. This provision shall not apply:

- (1) if the Company has manifested its willingness to renew to the named insured or his/her representative; or
- (2) if the named insured has failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit; or
- (3) if the named insured fails to pay any advance premium required by the Company for renewal; or
- (4) if the named insured has notified the Company in writing that renewal is not desired;

The mailing of notice by first class mail shall be sufficient proof of notice.

The above cancellation and nonrenewal provisions shall not apply to coverage obtained under policy provisions for an election of an extended reporting option.

#### 11. Appeal of Underwriting Actions:

The named insured may request a review of an underwriting action taken by the Company by requesting, in writing within thirty (30) days of notice of the final decision of the Underwriting Committee, an appeal to a committee appointed by or with the approval of the Pennsylvania Medical Society. Such review shall be in accordance with the written agreement between the Pennsylvania Medical Society and the Company, copy of which agreement shall be made available to the named insured. Such review shall not pertain to manual rates in Tier 1 and Tier 2 as approved by the Insurance Department or other underwriting actions as expressly excluded in the written agreement between the Pennsylvania Medical Society and the Company. The decision of such committee will be final and binding on the Company and the insured.

#### 12. Settlement of Claim or Suit:

The Company will not settle any claim or suit without the written consent of the insured except, however, that if the insured and the Company fail to agree that such claim or suit should be settled, either may request within thirty (30) days review and decision by a committee appointed by or with the approval of the Pennsylvania Medical Society. The decision of such committee will be final and binding on the Company and the insured. An exception to this policy condition shall apply with respect to a claim or suit arising out of an individual insured's voluntary or mandated participation in a formal process of credentialing, quality assurance, peer review or utilization review, wherein the Company shall decide whether the claim or suit should be settled or defended at the written consent of the insured shall not be required.

#### 13. Declarations:

By acceptance of this policy, the named insured agrees that the statements in the declarations are his/her agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies the agreements existing between himself and the Company or all of its agents relating to this insurance.

#### 14. Participating Provision:

The named insured shall be entitled to participate in the distribution of dividends to the extent and upon the conditions fixed and determined by the Board of Directors in accordance with law after expiration of the policy period to which the dividend is applicable.

**15. Loss Prevention:**

The Company has adopted a Loss Prevention Program, the purpose of which is to reduce the incidence of malpractice and improve the practice, attitude, conduct and loss experience of policyholders. The Company reserves the right to impose and implement loss prevention measures during the policy period; the Loss Prevention Program may change from time to time within a policy period. Under said program, the Company reserves the right to impose restrictions on a physician's coverage and to eliminate coverage for certain procedures and practices to the extent that those procedures and practices, in the opinion of the Company, present an unreasonable risk of loss or risk to patients of such insured. In the event the insured fails to comply with the Company's Loss Prevention Program, this policy may be non-renewed by the Company.

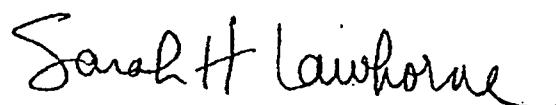


Theodore G. Otto, III, Esq.  
Secretary

**16. Rate Level Adjustments:**

The Company reserves the right to and shall adjust premium, effective the first day of the calendar quarter immediately following the day on which any adjustment in premium may be properly charged under applicable law, regulation, or any duly approved rating plan or amendment thereto filed by or adopted by the Company. Notice of an estimate of the renewal premium increase shall be given at least thirty (30) days before the effective date of such renewal.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary but this policy shall not be valid unless completed by the attachment hereto of a declarations and schedule page.



Sarah H. Lawhorne  
President



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>

BEB

Issue Date 11-01-1999  
Endorse Effective 09-22-1999 12:01 AM EST

Endorse Number 007  
Policy Number P07211465  
Account Number LIBE0020  
License Number MC542295C  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**ENDORSEMENT**  
**PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

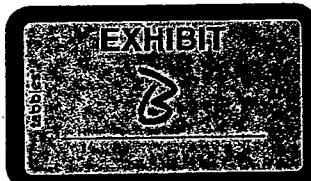
This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN, IT IS AGREED THAT THE CAT FUND SURCHARGE IS AMENDED TO DELETE:

JUA TER JUA CLASS

EMPLOYEE YOUS0011 BASHIR A YOUSUFZAI MD 2 010

RETURN CAT FUND SURCHARGE \$17.00 cr



All other conditions and provisions remain unchanged.

PA-050

THIS IS NOT AN INVOICE



PMSLIC

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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>

BEB

Issue Date 07-27-1999  
Endorse Effective 07-21-1999 12:01 AM EST

Endorse Number 006  
Policy Number PO7211465  
Account Number LIBE0020  
License Number MC542295C  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**ENDORSEMENT**  
**PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN, IT IS AGREED THAT THE CAT FUND SURCHARGE IS AMENDED TO CHANGE THE JUA RATING INFORMATION TO:

		JUA TER	JUA CLASS
EMPLOYEE	MATH0009	ANNE MATHEWS MD	2 007

ADDITIONAL CAT FUND SURCHARGE \$18.00

DELETE THE 50% SECOND YEAR DOCTOR DISCOUNT AND ADD THE 25% THIRD YEAR DOCTOR DISCOUNT

All other conditions and provisions remain unchanged.

PA-050



**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>

BEB

Issue Date 07-27-1999  
Endorse Effective 07-06-1999 12:01 AM EST

Endorse Number 005  
Policy Number P07211465  
Account Number LIBE0020  
License Number MC542295C  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**ENDORSEMENT**  
**PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN, IT IS AGREED THAT THE CAT FUND SURCHARGE IS AMENDED TO ADD:

		JUA TER	JUA CLASS
EMPLOYEE	YOUS0011	BASHIR A YOUSUFZAI MD	2 010

ADDITIONAL CAT FUND SURCHARGE \$29.00

All other conditions and provisions remain unchanged.

PA-050



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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>

BEB

Issue Date 07-13-1999  
Endorse Effective 07-03-1999 12:01 AM EST

Endorse Number 004  
Policy Number P07211465  
Account Number LIBE0020  
License Number MC542295C  
Territory 2-17(WEST)  
County CLEARFIELD  
Rating Basis TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**ENDORSEMENT**  
**PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN, IT IS AGREED THAT THE CAT FUND SURCHARGE IS AMENDED TO DELETE:

		JUA TER	JUA CLASS
EMPLOYEE	SHET0019	JAGADEESHA SHETTY MD	2 020

RETURN CAT FUND SURCHARGE	\$57.00 cr
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All other conditions and provisions remain unchanged.

PA-050



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>

BEB

Issue Date 07-13-1999  
Endorse Effective 06-12-1999 12:01 AM EST

Endorse Number	003
Policy Number	PO7211465
Account Number	LIBE0020
License Number	MC542295C
Territory	2-17(WEST)
County	CLEARFIELD
Rating Basis	TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**ENDORSEMENT**  
**PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN, IT IS AGREED THAT THE CAT FUND SURCHARGE IS AMENDED TO DELETE:

		JUA TER	JUA CLASS
EMPLOYEE	STEP0089	GORDANA P STEPCIC MD	2
EMPLOYEE	STEP0090	FRANKO STEPCIC MD	2

RETURN CAT FUND SURCHARGE \$52.00 cr

All other conditions and provisions remain unchanged.

PA-050

THIS IS NOT AN INVOICE



Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375 717.558.7500

CYP  
CHANGE ENDORSEMENT

PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY

DATE OF ENDORSEMENT	MONTH	DAY	YEAR	12:01 A.M. STANDARD TIME AT	ENDORSEMENT
ENDORSEMENT	01	11	99	THE ADDRESS OF INSURED	NUMBER

ENDORSEMENT	NUMBER	002
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POLICY NUMBER	PO7211465
ACCOUNT NUMBER	LIBE0020

ISSUE DATE	020899
LICENSE/TIRM NUMBER	MC542295C

NAME OF INSURED AND MAILING ADDRESS
LIBERTY MEDICAL ASSOCIATES PC 41 TENTH STREET DUBOIS PA 15801

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF THE CAT FUND SURCHARGE SHOWN IT IS AGREED TO CHANGE:

<u>EMPLOYEE</u>	<u>POLICY NUMBER</u>	<u>JUA CLASS</u>
JAGADEESHA SHETTY MD	PO7211044	020

All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-050

Sarah H. Lawhorne, JD  
President

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PMSLIC

Pennsylvania Medical Society  
Liability Insurance Company  
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

CYP

Policy Issue	12-22-1998	Policy Number	PO7211465
Policy Effective	01-01-1999	Account Number	LIBE0020
Policy Expiration	01-01-2000	License Number	MC542295C
		Territory	2-17(WEST)
		County	CLEARFIELD
		Rating Basis	TIER 1

Named Insured:  
LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

**OCCURRENCE  
DECLARATIONS & SCHEDULE  
PHYSICIANS & SURGEONS PROFESSIONAL LIABILITY INSURANCE**

**Policy Term  
Premium**

**COVERAGE C - CORPORATION/ASSOCIATION/PARTNERSHIP LIABILITY**  
LIMITS: \$400,000 / \$1,200,000

LIBERTY MEDICAL ASSOCIATES PC	80250/80999	\$0
41 TENTH STREET		
DUBOIS PA 15801		

TOTAL PREMIUM COVERAGE C	\$0
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**COVERAGE B - DESIGNATED EMPLOYEE PROFESSIONAL LIABILITY**  
LIMITS: \$400,000 / \$1,200,000 Per Employee

KELLY SCHAEFFER NPT	90008/80116	\$1,306
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TOTAL PREMIUM COVERAGE B	\$1,306
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TOTAL PMSLIC PREMIUM ALL COVERAGES	\$1,306
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**CAT FUND ANNUAL SURCHARGE**  
LIMITS: \$800,000 / \$2,400,000

CAT FUND SURCHARGE BASED ON JUA CLASSES & TERRITORIES	\$471
COVERAGE C	

NOT APPLICABLE	COVERAGE B	\$0
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**DECLARATIONS & SCHEDULE**

TOTAL CAT FUND SURCHARGE	\$471
TOTAL COST OF INSURANCE	\$1,777

THE CONSIDERATION FOR THE COVERAGE PROVIDED IN THIS POLICY IS INCLUDED IN THE PMSLIC PREMIUM(S) OF THE FOLLOWING SHAREHOLDER(S):

MARTIN A SCHAEFFER MD SCHA0037

THE ABOVE-NAMED ENTITY EMPLOYS THE FOLLOWING PHYSICIAN(S):

ANNE MATHEWS MD	MATH0009
JAGADEESHA SHETTY MD	SHET0019
GORDANA P STEPCIC MD	STEP0089
FRANKO STEPCIC MD	STEP0090



**PMSLIC**

777 East Park Drive  
P.O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

**OCCURRENCE FORM**

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**PHYSICIANS AND SURGEONS PROFESSIONAL LIABILITY INSURANCE POLICY**

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**PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY**  
(A stock insurance company, herein called the Company)

In consideration of the payment of the premium, in reliance upon the statements in the declarations and schedule page made a part hereof, subject to all of the terms of this policy, and subject to the provisions of the Heath Care Services Malpractice Act of 1975, P.L. 390, No. 111, Chapter 4, Article VI(k) of the Pennsylvania Insurance Law, agrees with the named insured as follows:

**INSURING AGREEMENTS**

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of:

**Coverage A - Individual Professional Liability**  
bodily injury arising out of alleged negligence in the rendering of or failure to render, during the policy period, medical professional services by the individual insured, or by any person for whose acts or omissions such insured is legally responsible, except as a member, stockholder or partner of an association, corporation or partnership, performed in the practice of the individual insured's profession as a physician and as described in the declarations and schedule page, and injury arising out of voluntary or mandated participation by the insured in a formal process of credentialling, quality assurance, peer review or utilization review except that such insurance as is afforded for claims arising out of participation in a formal process of credentialling, quality assurance, peer review or utilization review shall be excess over any other valid and collectible insurance including protection afforded by any self-insurance plan, and provided that such coverage is offered only to the extent permitted by law.

**Coverage B - Designated Employee Liability**  
bodily injury arising out of alleged negligence in the rendering of or failure to render, during the policy period, medical professional services by a designated employee, if a premium charge is shown for Designated Employee Liability in the declarations and schedule page, while the employee is acting within the scope of his/her duties in the course of his/her employment by either the individual insured under Coverage A or the Association, Corporation, or Partnership insured under Coverage C. Such coverage shall apply to each such designated employee shown in the declarations and schedule page.

**Coverage C - Association, Corporation or Partnership Liability**

bodily injury arising out of alleged negligence in the rendering of or failure to render, during the policy period, medical professional services in the practice of the profession described in the declarations and schedule page by any person for whose acts or omissions the association, corporation or partnership insured is legally responsible, and injury arising out of voluntary or mandated participation by such person in a formal process of credentialling, quality assurance, peer review or utilization review except that such insurance as is afforded for claims arising out of participation in a formal process of credentialling, quality assurance, peer review or utilization review shall be excess over any other valid and collectible insurance, including protection afforded by any self-insurance plan, and provided that such coverage is offered only to the extent permitted by law.

And the Company shall have the right and duty to defend any suit against the insured seeking such damages, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the Company shall not be obligated to pay any claim or judgment or to defend any suit for which coverage is expressly excluded by this policy, and the Company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements. The Company shall not be obligated to appeal any finding or decision of any arbitration panel or court of general jurisdiction except at its own sole and exclusive discretion.

The Company will pay, in addition to the applicable limit of liability:

- (a) all expenses incurred by the Company in any suit defended by the Company and all interest on the entire

- amount of an insured's proportionate share of any judgment therein which accrues after the entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
- (b) prejudgment interest or delay damages awarded against the insured in any suit defended by the Company on that portion of the judgment that does not exceed the Company's limits of liability thereon; however, if the Company offers to pay its limit of liability, it will not pay such interest based on the time after the offer is made;
- (c) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy, but the Company shall have no obligation to apply for or furnish any such bonds;
- (d) reasonable expenses incurred by an insured for attendance at hearings or trials at the Company's request, including actual loss of wages or salary (but not loss of other income) not to exceed \$250 a day.

## EXCLUSIONS

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.
- (d) to liability arising out of any claim which the insured has settled or attempted to settle without the written authorization of the Company.
- (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.
- (g) to liability arising out of the utterance of or publication of defamatory statements or allegedly defamatory statements by the insured except that when such statements were made by the insured as part of the insured's voluntary or mandated participation in a for-

mal process of credentialing, quality assurance, peer review or utilization review, coverage shall be available to the extent permitted under this contract and by law.

- (h) to liability growing out of 1) the insured's activities as a proprietor, superintendent or executive officer of any hospital, sanitarium or clinic with bed and board facilities or laboratory or business enterprise (but this exclusion does not apply with respect to an X-Ray or pathological laboratory utilized to provide medical professional services within a physician/patient relationship within the insured's practice) or 2) any activity or enterprise, whether or not related to patient care and/or treatment, if such activity or enterprise is not involved in the delivery of health care services to patients on an individual and within a direct professional provider-patient relationship. This exclusion pertains to but shall not be limited to publication of books or other written materials for general public consumption and participation in media broadcasts to the general public.
- (i) to any liability from products liability losses.
- (j) to any obligation for which the insured or any carrier acting as insurer is held liable under any workers' compensation, unemployment compensation, disability benefits law, or any similar law.
- (k) to any claim in which the insured attempts to defraud the Company or has misrepresented or concealed any material facts in the medical records.
- (l) to any claim arising from the actual, alleged or threatened discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant, pollutant or contaminant, radiation or other form of energy, or organism, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalies, chemicals or waste materials (including those to be recycled, reconditioned or reclaimed), into or upon land, the atmosphere or any water course or body of water, and any loss, cost or expense arising from any governmental direction or request for testing, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing of such irritants, pollutants or contaminants, radiation, energy or organisms.
- (m) bodily injury or property damage under any liability coverage:
- (1) with respect to which an insured under this agreement is also an insured or insured under a Nuclear Energy Liability Policy issued by The Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured

- under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) resulting from the hazardous properties of nuclear material and with respect to which:
- any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
  - the insured is or, had this Agreement not been issued, would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- (3) bodily injury or property damage resulting from the hazardous properties of nuclear material if:
- the nuclear material
    - is at any nuclear facility owned by, or operated by or on behalf of an insured, or
    - has been discharged or dispersed therefrom; or
  - the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or
  - the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (3) applies only to property damage to such nuclear facility and any property threat.
- (4) As used in this Exclusion (m):  
hazardous properties include radioactive, toxic or explosive properties;
- nuclear material means source material, special nuclear material or by-product material;
- source material, special nuclear material and by-product material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
- waste means any waste material
  - containing by-product material, and
  - resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;
- nuclear facility means
  - any nuclear reactor,
  - any equipment or device designed or used for
    - separating the isotopes of uranium or plutonium,
    - processing or utilizing spent fuel, or
    - handling, processing or packaging waste
  - any equipment or device used for the processing, fabrication or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at any premises where such equipment or device is located consists of or contains more than twenty-five (25) grams of plutonium or uranium 233 or any combination thereof, or more than two-hundred-fifty (250) grams of uranium 235;
  - any structure, basin excavation, premises or place prepared or used for the storage or disposal of wastes, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
- nuclear reactor means any apparatus designed to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissile material;
- property damage includes all forms of radioactive contamination of property.

## PERSONS INSURED

Each of the following is an insured under this insurance to the extent set forth below:

- (a) Under Individual Professional Liability, each individual named in the declarations and schedule page as insured.
- (b) Under Designated Employee Liability, any person named in the declarations and schedule page as a designated employee if a premium charge is shown therefor in the declarations and schedule page and while the employee is acting within the scope of his/her duties in the course of his/her employment by either the individual insured under Coverage A or the Association, Corporation or Partnership insured under Coverage C.
- (c) Under Association, Corporation or Partnership Liability, the association, corporation or partnership described in the declarations and schedule page and any member, stockholder or partner thereof with respect to acts or omissions of others, provided that no member, stockholder, or partner of an association, corporation or partnership shall be an insured under this subparagraph with respect to liability for his/her personal acts of a professional nature.

## DEFINITIONS

When used in this policy:

**insured** means any person or organization qualifying as an insured in the "persons insured" provision. The insurance afforded applies separately to each insured against whom claim is made or suit is brought.

**damages** means all damages which are not expressly excluded or limited by the terms of this policy, including: damages which are payable because of injury to which this insurance applies, and damages or interest imposed as statutory or common law penalties.

**bodily injury** means physical harm, sickness or disease sustained by any person, including death resulting therefrom.

**medical professional services** means health care services provided to patients in the ordinary course of the practice of medicine by a physician or services provided by a designated employee within the scope of his/her employment.

**designated employee** means any person named in the declarations and schedule page and employed by the named insured.

**named insured** means the person or organization first named in the declarations and schedule page of this policy.

claim means:

- (1) an express demand for damages to which this insurance applies, arising from an injury allegedly caused by the insured; and express demand for damages shall be deemed to include a civil action in which damages to which this insurance applies are alleged and an arbitration proceeding to which the insured is required to submit by statute or court rule; or
- (2) an act or omission which the insured reasonably believes will result in an express demand for damages to which this insurance applies.

A report of a claim to the Company must comply with the requirements of Condition 2, of this policy.

## CONDITIONS

### 1. Premium:

All premiums for this policy shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

### 2. Insured's Duties in the Event of Claim or Suit:

- (a) Upon the insured becoming aware of any alleged injury to which this insurance applies, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of available witnesses, shall be given by or for the insured to the Company as soon as practicable.
- (b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
- (c) The insured shall cooperate with the Company and, upon the Company's request, assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury for which insurance is afforded under this policy, and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- (d) The insured shall not, except at his/her own cost;  
1) voluntarily make any payment, assume any obligation or incur any expense at any time, or 2) make or attempt any settlement of a claim or suit hereunder without the written authorization of the Company.

- (e) The insured shall report to the Company any settlement of a claim or suit hereunder made by the insured without payment by the Company.
- (f) The insured shall not misrepresent or conceal any material facts.
- (g) Failure to comply with the above-noted conditions that compromise the claim or suit, may result in this contract being declared null and void.

### 3. Action Against Company:

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his/her legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

### 4. Limits of Liability:

- (a) Coverage A - Individual Professional Liability - The limit of the Company's liability for each claim for all damages due to each claim shall not exceed the limit of liability stated in the schedule as "each incident" for Coverage A. For the purpose of determining the Company's liability, the following shall be considered as arising from one claim: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the company's liability for all claims shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage A. Such limits of liability shall apply separately to each individual insured hereunder.
- (b) Coverage B - Designated Employee Liability - The limit of the Company's liability for each claim for all damages due to each claim shall not exceed the limit of

liability stated in the schedule as "each incident" for Coverage B. For the purpose of determining the Company's liability, the following shall be considered as arising from one claim: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the Company's liability for all claims shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage B. Such limits of liability shall apply separately to each individual insured hereunder.

- (c) Coverage C - Association, Corporation or Partners' Liability - Regardless of the number of individual or designated employee insureds under Coverages (A) and (B), the limit of the Company's liability for each claim for all damages due to each claim shall not exceed the limit of liability stated in the schedule as "each incident" for Coverage C. For the purpose of determining the Company's liability, the following shall be considered as arising from one claim: 1) all injury resulting from an act or omission or series of acts or omissions in rendering covered services to any one person regardless of the number of persons or entities claiming injuries arising therefrom and 2) all injury arising out of continuous or repeated exposure to substantially the same general conditions. The total limit of the Company's liability for all claims shall not exceed the limit of liability stated in the schedule as annual aggregate for Coverage C. Such limits of liability shall apply separately to each individual insured hereunder.

### 5. Other insurance:

The insurance afforded by this policy is primary insurance except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the insured has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance. When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable contribution provision below:

- (a) Contribution by Equal Shares: If all of such other valid and collectible insurance provides for contribution in equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability.

der any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid, the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each insurer has paid its limit in full or the full amount of the loss is paid.

- (b) **Contribution by Limits:** If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy bears to the total applicable limit of liability of all valid and collectible insurance against such loss.
- (c) **Designated Employees:** The insurance afforded by this policy for designated employees shall be excess over any other insurance available to such designated employee for a loss covered hereunder.

#### **6. Subrogation:**

In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

#### **7. Changes:**

Neither the terms or conditions of this policy may be waived or changed, except by endorsement issued by the Company to form a part of this policy.

#### **8. Policy Territory:**

- (a) **Medical professional services** rendered in the practice and hospital locations designated on your application or approved in writing by the Company, or
- (b) **Medical professional services** and activities rendered anywhere in the United States of America (including its territories and possessions) on a non-routine and emergency basis if your liability is determined in a suit in the United States of America (including its territories and possessions).

#### **9. Assignment:**

The interest hereunder of any insured is not assignable. If the insured shall die or be adjudged incompetent, this insurance shall thereupon terminate, but shall cover the insured's legal representative as the insured with respect to liability previously incurred and covered by this insurance. Pro rata return premium will be computed from the date of termination.

#### **10. Cancellation and Nonrenewal:**

- (a) **Cancellation by the named insured**-His/her policy (or coverage afforded any insured by his/her policy) may

be canceled by the named insured by written notice to the Company, stating when such cancellation shall be effective.

- (b) **Cancellation of policies in effect less than 60 days**- His/her policy may be cancelled by the Company by mailing to the named insured at the address shown in the policy or last known address, written notice of cancellation stating the specific reason(s) for cancellation and the effective date and time thereof:
  - (1) at least 15 days prior to the effective date of cancellation if the named insured has:
    - (a) failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit; or
    - (b) made a material misrepresentation which affects the insurability of the risk;
  - (2) at least 30 days prior to the effective date of cancellation if the Company cancels for any other reason.

The mailing of notice by first class mail shall be sufficient proof of notice.

- (c) **Cancellation of policies in effect for 60 days or more**- If his/her policy has been in effect for 60 days or more, or if his/her policy is a renewal of a policy issued by the Company, it (or coverage afforded any insured by this policy) may be canceled by the Company only for one or more of the following reasons:
  - (1) the named insured has failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit;
  - (2) for reason of suspension or revocation of the named insured's (or an insured's) license or approval to provide professional health care service;
  - (3) the insured has requested cancellation;
- (d) If the Company cancels this policy based on reason:
  - (1) immediately above, the Company will mail to the named insured written notice of cancellation at least 15 days before the effective date of cancellation;
  - (2) immediately above, no written notice of cancellation is required and coverage shall be terminated on the effective date of such suspension or revocation;

- (3) immediately above, no written notice of cancellation is required and coverage shall be terminated on the date requested by the insured.

The mailing of notice by first class mail shall be sufficient proof of notice. Such notice shall state the specific reason(s) for cancellation and the effective date and time thereof.

- (e) Cancellation-General Provisions - The coverage afforded by this policy to any insured (other than the named insured) shall terminate upon the termination of the policy or upon the termination of that insured's employment, contract or association with the named insured which formed the basis for such coverage, if that occurs prior to the termination date of the policy.

If the named insured cancels, earned premium will be computed pro rata, but will not be less than the minimum premium; the unearned premium will be returned within 30 days after the effective date of cancellation. If the Company cancels, earned premium will be computed pro rata; the unearned premium will be returned to the named insured within 10 business days after the effective date of cancellation. However, in either event, payment or tender of unearned premium is not a condition of cancellation.

For purposes of this condition, cancellation shall not, unless otherwise provided for by the statutes of the jurisdiction in which the named insured is located, include nonrenewal.

- (f) Nonrenewal of policy - If the Company elects not to renew this policy, it shall mail to the named insured at the address shown in the policy or last known address, written notice of its intention not to renew stating the specific reasons for such nonrenewal at least 60 days prior to the effective date of termination. This provision shall not apply:

- (1) if the Company has manifested its willingness to renew to the named insured or his/her representative; or
- (2) if the named insured has failed to pay a premium when due, whether the premium is payable directly to the Company or its agents or indirectly under a premium finance plan or extension of credit; or
- (3) if the named insured fails to pay any advance premium required by the Company for renewal; or
- (4) if the named insured has notified the Company in writing that renewal is not desired;

The mailing of notice by first class mail shall be sufficient proof of notice.

The above cancellation and nonrenewal provisions shall not apply to coverage obtained under policy provisions for an election of an extended reporting option.

#### 11. Appeal of Underwriting Actions:

The named insured may request a review of an underwriting action taken by the Company by requesting, in writing within thirty (30) days of notice of the final decision of the Underwriting Committee, an appeal to a committee appointed by the Company with the approval of the Pennsylvania Medical Society. Such review shall be in accordance with the written agreement between the Pennsylvania Medical Society and the Company, copy of which agreement shall be made available to the named insured. Such review shall not pertain to manual rates in Tier 1 and Tier 2 as approved by the Insurance Department or other underwriting actions as expressly excluded in the written agreement between the Pennsylvania Medical Society and the Company. The decision of such committee will be final and binding on the Company and the insured.

#### 12. Settlement of Claim or Suit:

The Company will not settle any claim or suit without the written consent of the insured except, however, that if the insured and the Company fail to agree that such claim or suit should be settled, either may request within thirty (30) days review and decision by a committee appointed by or with the approval of the Pennsylvania Medical Society. The decision of such committee will be final and binding on the Company and the insured. An exception to this policy condition shall apply with respect to a claim or suit arising out of an individual insured's voluntary or mandated participation in a formal process of credentialing, quality assurance, peer review or utilization review, wherein the Company shall decide whether the claim or suit should be settled or defended at the written consent of the insured shall not be required.

#### 13. Declarations:

By acceptance of this policy, the named insured agrees that the statements in the declarations are his/her agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies the agreements existing between himself and the Company or any of its agents relating to this insurance.

#### 14. Participating Provision:

The named insured shall be entitled to participate in the distribution of dividends to the extent and upon the conditions fixed and determined by the Board of Directors in accordance with law after expiration of the policy period to which the dividend is applicable.

**15. Loss Prevention:**

The Company has adopted a Loss Prevention Program, the purpose of which is to reduce the incidence of malpractice and improve the practice, attitude, conduct and loss experience of policyholders. The Company reserves the right to impose and implement loss prevention measures during the policy period; the Loss Prevention Program may change from time to time within a policy period. Under said program, the Company reserves the right to impose restrictions on a physician's coverage and to eliminate coverage for certain procedures and practices to the extent that those procedures and practices, in the opinion of the Company, present an unreasonable risk of loss or risk to patients of such insured. In the event the insured fails to comply with the Company's Loss Prevention Program, this policy may be non-renewed by the Company.

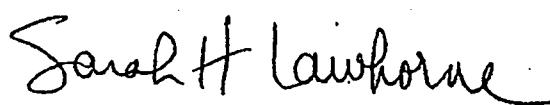


Theodore G. Otto, III, Esq.  
Secretary

**16. Rate Level Adjustments:**

The Company reserves the right to and shall adjust premium, effective the first day of the calendar quarter immediately following the day on which any adjustment in premium may be properly charged under applicable law, regulation, or any duly approved rating plan or amendment thereto filed by or adopted by the Company. Notice of an estimate of the renewal premium increase shall be given at least thirty (30) days before the effective date of such renewal.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary but this policy shall not be valid unless completed by the attachment hereto of a declarations and schedule page.



Sarah H. Lawhorne  
President



Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375 717.558.7500

CYP  
CHANGE ENDORSEMENT

EXCESS PROFESSIONAL LIABILITY

EFFECTIVE DATE OF ENDORSEMENT	Mo. 09	Day 22	Year 99	12:01 A.M. STANDARD TIME AT THE ADDRESS OF INSURED
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ENDORSEMENT NUMBER	005
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POLICY NUMBER	PO7211465e
ACCOUNT NUMBER	

ISSUE DATE	11-05-99
LICENSE/BIRM NUMBER	MC542295C

NAMED INSURED AND MAILING ADDRESS

LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF A RETURN PREMIUM OF \$53, IT IS AGREED THAT COVERAGE Z IS AMENDED TO  
REFLECT THE DELETION OF ONE (1) CLASS 015 PHYSICIAN:

BASHIR YOUSUFZAI MD

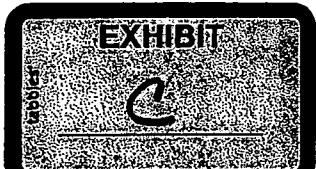
All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-END001

Sarah H. Lawhorne, JD  
President

THIS IS NOT AN INVOICE





PMSLIC

Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375 717.558.7500

cyp  
CHANGE ENDORSEMENT

EXCESS PROFESSIONAL LIABILITY

Effective Date of Endorsement	Mo.	Day	Year	12:01 AM STANDARD TIME AT	ENDORSEMENT NUMBER
	07	06	99	THE ADDRESS OF INSURED	004

Policy Number	PO7211465E
Account Number	

Issued Date	07-27-99
Licence Firm Number	MC542295C

NAME OF INSURED AND MAILING ADDRESS
LIBERTY MEDICAL ASSOCIATES PC 41 TENTH STREET DUBOIS PA 15801

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF AN ADDITIONAL PREMIUM OF \$94, IT IS AGREED THAT COVERAGE Z IS AMENDED TO  
REFLECT THE ADDITION OF ONE (1) CLASS 007 PHYSICIANS:

BASHIR YOUSUFZAI MD

All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-END001

Sarah H. Lawhorne, JD  
President

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Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375 717.558.7500

cyp  
CHANGE ENDORSEMENT

EXCESS PROFESSIONAL LIABILITY

DATE OF ENDORSEMENT	Month	Day	Year	12:01 A.M. STANDARD TIME AT THE ADDRESS OF INSURED
	07	03	99	

ENDORSEMENT NUMBER	003
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POLICY NUMBER	PO7211465E
ACCOUNT NUMBER	

ISSUED DATE	07-27-99
LICENSE/TITLE NUMBER	MC542295C

NAME OF INSURED AND MATCHING ADDRESS
LIBERTY MEDICAL ASSOCIATES PC 41 TENTH STREET DUBOIS PA 15801

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF A RETURN PREMIUM OF \$204, IT IS AGREED THAT COVERAGE Z IS AMENDED TO  
REFLECT THE DELETION OF ONE (1) CLASS 007 PHYSICIANS:

JAGADEESHA SHETTY MD

All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-END001

Sarah H. Lawhorne, JD  
President

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Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375 717.558.7500

cyp  
CHANGE ENDORSEMENT

EXCESS PROFESSIONAL LIABILITY

EFFECTIVE DATE OF ENDORSEMENT	MONTH	DAY	YEAR	12:01 A.M. STANDARD TIME AT
	06	12	99	THE ADDRESS OF INSURED

ENDORSEMENT NUMBER	002
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POLICY NUMBER	PO7211465E
ACCOUNT NUMBER	

ISSUE DATE	07-27-99
LICENSE/PERMIT NUMBER	MC542295C

NAME OF INSURED AND MAILING ADDRESS
LIBERTY MEDICAL ASSOCIATES PC 41 TENTH STREET DUBOIS PA 15801

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF A RETURN PREMIUM OF \$118, IT IS AGREED THAT COVERAGE Z IS AMENDED TO  
REFLECT THE DELETION OF TWO (2) CLASS 007 PHYSICIANS:

GORDANA STEPCIC MD  
FRANKO STEPCIC MD

All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-END001

Sarah H. Lawhorne, JD  
President

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Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

cyp  
CHANGE ENDORSEMENT

EXCESS PROFESSIONAL LIABILITY

EFFECTIVE DATE OF ENDORSEMENT	Mo. 01	Day 11	Year 99	12:01 A.M. STANDARD TIME AT THE ADDRESS OF INSURED
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ENDORSEMENT NUMBER	001
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POLICY NUMBER	PO7211465E
ACCOUNT NUMBER	

ISSUE DATE	03-09-99
LICENSE/FIRM NUMBER	MC542295C

NAMED INSURED AND MAILING ADDRESS

LIBERTY MEDICAL ASSOCIATES PC  
41 TENTH STREET  
DUBOIS PA 15801

This endorsement forms a part of the policy designated above, effective at 12:01 a.m. Standard Time on the effective date shown, and terminating with the policy.

IN CONSIDERATION OF AN ADDITIONAL PREMIUM OF \$295, IT IS AGREED THAT THE CLASSIFICATION OF JAGADEESHA SHETTY MD IS CHANGED FROM 007 TO 020.

All other conditions and provisions remain unchanged.

Theodore G. Otto, III, JD  
Secretary

PA-END001

Sarah H. Lawhorne, JD  
President

THIS IS NOT AN INVOICE



**PMSLIC**

Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

**EXCESS PROFESSIONAL  
LIABILITY INSURANCE  
POLICY DECLARATIONS  
AND SCHEDULE PAGE  
OCCURRENCE**

**POLICY NUMBER: PO7211465E**

**Named Insured and Address**

**Liberty Medical Associates, PC  
41 Tenth Street  
DuBois, PA 15801**

In consideration of the required premium, the policy is effective for the policy period from **January 1, 1999 to January 1, 2000** beginning and ending at 12:01 A.M. standard time at the address of the named insured stated above.

This declarations page together with the policy provisions and endorsement, if any, issued to form a part hereof, constitutes the above numbered Excess Professional Liability Insurance Policy. This is only an excess following form insurance policy.

**PART I - EXCESS PROFESSIONAL LIABILITY INSURANCE COVERAGE**

**AMOUNT OF INSURANCE**

- Coverage X - Individual Coverage  
 Coverage Y - Designated Employee Coverage  
 Coverage Z - Association/Corporate/  
Partnership Coverage

**\$ 5 million Each Medical Incident  
\$ 5 million Annual Aggregate**

The insured's principal practice is:

**Territory: 2-17  
County: Clearfield  
Rating Basis: Tier 1  
License/Firm No.: MC542295C**

**PART II - STATEMENT OF UNDERLYING COVERAGE  
PROFESSIONAL LIABILITY INSURANCE**

**AMOUNT OF INSURANCE**

Carrier: PA Medical Society Liability Insurance Company  
Policy Number: **PO7211465**  
Policy Period: **January 1, 1999 to January 1, 2000**

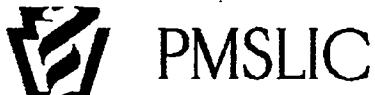
**\$400,000 Each Medical Incident  
\$1.2 Million Annual Aggregate**

Pennsylvania Medical Professional  
Liability Catastrophe Fund:

**\$800,000 Each Medical Incident  
\$2.4 Million Annual Aggregate**

**Total Policy Premium \$ Page 1 of 3**

Authorized Representative



Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

**EXCESS PROFESSIONAL  
LIABILITY INSURANCE  
POLICY DECLARATIONS  
AND SCHEDULE PAGE  
OCCURRENCE**

**POLICY NUMBER: PO7211465E**

**Named Insured and Address**

**Liberty Medical Associates, PC  
41 Tenth Street  
DuBois, PA 15801**

In consideration of the required premium, the policy is effective for the policy period from **January 1, 1999 to January 1, 2000** beginning and ending at 12:01 A.M. standard time at the address of the named insured stated above.

This declarations page together with the policy provisions and endorsement, if any, issued to form a part hereof, constitutes the above numbered Excess Professional Liability Insurance Policy. This is only an excess following form insurance policy.

**PART I - EXCESS PROFESSIONAL LIABILITY INSURANCE COVERAGE  
AMOUNT OF INSURANCE**

- Coverage X - Individual Coverage  
 Coverage Y - Designated Employee Coverage  
Kelly Schaeffer, NPT  
 Coverage Z - Association/Corporate/  
Partnership Coverage

**\$ 600,000 Each Medical Incident  
\$ 1.8 million Annual Aggregate**

The insured's principal practice is:

**Territory: 2-17  
County: Clearfield  
Rating Basis: Tier 1  
License/Firm No.: MC542295C**

**PART II - STATEMENT OF UNDERLYING COVERAGE  
PROFESSIONAL LIABILITY INSURANCE**

**AMOUNT OF INSURANCE**

Carrier: PA Medical Society Liability Insurance Company  
Policy Number: **PO7211465**  
Policy Period: **January 1, 1999 to January 1, 2000**

**\$400,000 Each Medical Incident  
\$1.2 Million Annual Aggregate**

Pennsylvania Medical Professional  
Liability Catastrophe Fund:

**N/A**

**Total Policy Premium \$ Page 2 of 3**

**Authorized Representative**



**PMSLIC**

Pennsylvania Medical Society Liability  
Insurance Company  
777 East Park Drive  
P. O. Box 8375  
Harrisburg, PA 17105-8375  
717.558.7500

**EXCESS PROFESSIONAL  
LIABILITY INSURANCE  
POLICY DECLARATIONS  
AND SCHEDULE PAGE  
OCCURRENCE**

**POLICY NUMBER: PO7211465E**

**Named Insured and Address**

**Liberty Medical Associates, PC  
41 Tenth Street  
DuBois, PA 15801**

In consideration of the required premium, the policy is effective for the policy period from **January 1, 1999 to January 1, 2000** beginning and ending at 12:01 A.M. standard time at the address of the named insured stated above.

This declarations page together with the policy provisions and endorsement, if any, issued to form a part hereof, constitutes the above numbered Excess Professional Liability Insurance Policy. This is only an excess following form insurance policy.

**PART I - EXCESS PROFESSIONAL LIABILITY INSURANCE COVERAGE**

**AMOUNT OF INSURANCE**

- Coverage X - Individual Coverage  
 Coverage Y - Designated Employee Coverage  
Kelly Schaeffer, NPT  
 Coverage Z - Association/Corporate/  
Partnership Coverage

**\$ 5 million Each Medical Incident  
\$ 5 million Annual Aggregate**

The insured's principal practice is:

**Territory: 2-17  
County: Clearfield  
Rating Basis: Tier 1  
License/Firm No.: MC542295C**

**PART II - STATEMENT OF UNDERLYING COVERAGE**

**PROFESSIONAL LIABILITY INSURANCE**

**AMOUNT OF INSURANCE**

Carrier: PA Medical Society Liability Insurance Company

Policy Number: **PO7211465**

Policy Period: **January 1, 1999 to January 1, 2000**

**\$400,000 Each Medical Incident**

**\$1.2 Million Annual Aggregate**

Pennsylvania Medical Professional  
Liability Catastrophe Fund:

**N/A**

**Total Policy Premium \$ 2,177**

**Authorized Representative**

**EXCESS PROFESSIONAL LIABILITY POLICY**  
(“following form basis”)  
**OCCURRENCE FORM**

**PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY**

In consideration of the payment of the premium, in reliance upon the statements in the application and declarations made a part hereof, subject to all the terms of this policy, agrees with the named insured as follows:

Throughout this policy the words “you” and “yours” refer to the Named Insured shown in the declarations. The words “The Company”, “our” and “we” refer to PMSLIC providing this insurance.

The words “this insurance” means the excess professional liability insurance provided under this Coverage Form.

The word “insured” means any person or organization qualifying as such under any underlying insurance.

Other words or phrases that appear in quotation marks have special meaning. Refer to Section V -Definitions of this Coverage Form.

#### **Section I - Insuring Agreement**

A. The Company will pay on your behalf those sums, in excess of the amount payable under the terms of any “underlying insurance,” that you become legally obligated to pay as damages because of:

#### **Coverage X - Individual Professional Liability**

bodily injury arising out of alleged negligence in the rendering of or failure to render, during the policy period, medical professional services by the named insured, or by any person for whose acts or omissions such insured is legally responsible, except as a member, stockholder or partner of an association, corporation or partnership, performed in the practice of the individual insured's profession as a physician or surgeon and as described in the declarations and schedule page.

#### **Coverage Y - Designated Employee Liability**

bodily injury arising out of alleged negligence in the rendering of or failure to render, during the policy period, medical professional services by a designated employee, if a premium charge is shown for Designated Employee in the declarations and schedule page, while the employee is acting within the scope of his duties arising from his employment. Such coverage shall apply to each such designated employee shown in the declarations and schedule page.

#### **Coverage Z - Association/Corporate/Partnership Liability**

bodily injury arising out of alleged negligence in the rendering of or failure to render, during the policy period, medical professional services in the practice of the profession described in the declarations and schedule page by any person for whose acts or omissions the association, corporation or partnership insured is legally responsible.

provided that the “underlying insurance” also applies or would apply but for the exhaustion of its applicable amount of insurance.

B. The Company will have the right to participate in the defense of claims or suits against you seeking damages because of injury to which this insurance may apply. The Company will have a duty to defend such claims or suits when the applicable amount of insurance of the underlying insurance has been used up by payment of judgments, settlements and any cost or expense subject to such limit.

This right or duty to defend is limited as set forth in paragraph C below.

C. The amount the Company will pay for damages is limited as described in Section IV - Amount of Insurance.

D. This insurance does not apply to bodily injury caused by a medical incident which occurred before or after the “policy period”.

E. This insurance is subject to the same terms, conditions, agreements and definitions as the “underlying insurance,” except:

(1) the Company will have no obligation under this insurance with respect to any claim or suit that is settled without our consent; and

(2) with respect to any provisions to the contrary contained in this insurance.

## Section II - Exclusions

The exclusions applicable to the "underlying insurance" also apply to this policy. Additionally, this policy does not apply to:

- (1) liability arising out of the performance by the insured of any intentional, deceitful or fraudulent act or willful tort.
- (2) 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.
- (3) liability arising out of the performance by the insured of an act of fornication, adultery, or any sexual act.
- (4) liability arising out of any claim which the insured has settled or attempted to settle without the written authorization of the Company.
- (5) liability of the insured for punitive, exemplary or treble damages, and any other damages assessed which are not compensatory in nature.
- (6) liability of others assumed by the insured under any written or oral contract or agreement.
- (7) liability arising out of the utterance of or publication of defamatory statements or allegedly defamatory statements by the insured.
- (8) liability growing out of a) the insured's activities as a proprietor, superintendent or executive officer of any hospital, sanitarium or clinic with bed and board facilities or laboratory or business enterprise (but this exclusion does not apply with respect to an X-ray or pathological laboratory if the insured is a radiologist or pathologist) or b) any activity or enterprise, whether or not related to patient care and/or treatment, if such activity or enterprise is not involved in the delivery of health care services to patients on an individual basis and within a direct professional provider-patient relationship. This exclusion pertains to but shall not be limited to publication of books or other written materials for general public consumption and participation in media broadcasts to the general public.
- (9) any liability from products liability losses not involving physician negligence.
- (10) any obligation for which the insured or any carrier acting as insurer is held liable under any worker's compensation, unemployment compensation, disability benefits law, or any similar law.
- (11) any loss, cost, or expense arising out of any governmental direction or request that the insured test for, monitor, clean

up, remove, contain, treat, detoxify or neutralize pollutants. As used in this Exclusion, pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- (12) bodily injury or property damage under any liability coverage:

- (a) with respect to which an insured under this agreement is also an insured or insured under a Nuclear Energy Liability Policy issued by The Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or

- (b) resulting from the hazardous properties of nuclear material and with respect to which: (i) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (ii) the insured is or, had this Agreement not been issued, would be entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

- (13) bodily injury or property damage resulting from the hazardous properties of nuclear material, if:

- (a) the nuclear material (i) is at any nuclear facility owned by, or operated by or on behalf of an insured, or (ii) has been discharged or dispersed therefrom; or

- (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an insured; or

- (c) the bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (c) applies only to property damage to such nuclear facility and any property threat.

- (14) As used in exclusions (12) and (13):

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or by-product material;

"source material," "special nuclear material," and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material

(a) containing by-product material, and

(b) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for: (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabrication or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than twenty-five (25) grams of plutonium or uranium 233 or any combination thereof, or more than two-hundred-fifty (250) grams of uranium 235,

(d) any structure, basin excavation, premises or place prepared or used for the storage or disposal of wastes, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"property damage" includes all forms of radioactive contamination of property.

### Section III - Defense of Claims or Suits

A. When the Company has the duty to defend, we will pay for all defense expense once our duty to defend begins.

B. If the Company exercises our right to defend when there is no duty, the Company will pay only that defense expense we incur.

C. If we provide a defense, we may investigate any claim or suit at our discretion. We have the right to select defense counsel and make settlement of any claim or suit as we deem expedient.

D. We are not obligated to:

- (1) pay any claim or judgment after the Amount of Insurance is exhausted by payment of judgments or settlements; or
- (2) take an appeal on any judgment.

E. Our right or duty to defend ends when we have used up the Amount of Insurance available in the payment of any combination of judgments or settlements as provided under Section IV - Amount of Insurance. This applies both to claims and suits pending at that time and filed thereafter.

F. When we control the defense of a claim or suit, we will pay for the defense expense. If by mutual agreement or court order, you assume control before the applicable Amount of Insurance available is used up, we will reimburse you for reasonable defense expense.

G. As soon as practicable after we become aware that an Amount of Insurance available is used up:

- (1) We will notify you of any outstanding claims and suits subject to that Amount; and
- (2) You will then arrange to assume control of the defense of all such claims and suits against you or any other insured when our right or duty to defend them ends.

H. We will assist you in the transfer of control of the defense of claims and suits under F or G above. Until such arrangements are completed, we will take on behalf of any insured those steps that we think appropriate:

- (1) to avoid a default in any claim or suit; or
- (2) to the continued defense of a claim or suit.  
You agree that if we take such steps:
- (3) We do not waive or give up any of our rights under this insurance; and
- (4) You will reimburse us for any defense expense that arises out of such steps if the applicable Amount of Insurance available has been used up.

## **Section IV - Amount of Insurance**

A. The Amount of Insurance shown in the declarations as "each medical incident" and the rules below fix the most we will pay under the terms of this policy regardless of the number of:

- (1) Insureds;
  - (2) Claims made or suits brought; or
  - (3) "Persons" or organizations making claims or bringing suits.
- B. The Amount of Insurance stated as the "annual aggregate" amount is the most we will pay for the sum of damages due to all "medical incidents" during any one "policy period".
- C. Each payment we make for such damages reduces by the amount of payment the annual aggregate amount of insurance available for further damages.
- D. The Amounts of Insurance of this policy apply separately to each annual period of this coverage.

- E. The applicable amount of insurance shall not be increased by:
- (1) an allegation that a "medical incident" took place in more than one "policy period";
  - (2) the number of claims or suits brought on account of a "medical incident";
  - (3) the inclusion of more than one insured; or
  - (4) the fact that a claim with respect to a "medical incident" is made in more than one "policy period".

F. Our liability for accrued prejudgment interest for each "medical incident" is limited to the amount which bears the same ratio to the total accrued prejudgment interest as our liability for damages other than accrued prejudgment interest bears to the total damages other than accrued prejudgment interest.

## **Section V - Definitions**

When used in reference to this insurance:

"Medical incident" means a single act or omission or a series of related acts or omissions in the rendering of or failure to render medical professional services to any one "person".

"Medical professional services" means health care services provided to patients in the ordinary course of the practice of

medicine by a physician or services provided by a designated employee within the scope of his employment.

"Person" means an individual, natural person.

"Policy period" means the period so designated in the declarations page, subject to the termination and cancellation provisions set forth in this policy, and the term "expiration" shall be deemed to include early termination or cancellation.

"Underlying Insurance" means the Amounts of Insurance stated in Part II of the declarations;

## **Section VI - Conditions**

If any of the following conditions are contrary to Conditions contained in the "underlying insurance" the provisions contained in this policy apply.

### **A. Appeals**

In the event the underlying insurer elects not to appeal a judgment in excess of the limits of the "underlying insurance," we may elect to make such appeal. If we so elect, we shall be liable, in addition to the applicable Amount of Insurance, for all defense expenses we incur.

### **B. Bankruptcy Of Underlying Insurer**

In the event of bankruptcy or insolvency of any underlying insurer, the insurance afforded by this policy shall not replace such "underlying insurance," but shall apply as if the "underlying insurance" was valid and collectible.

### **C. Insured's Duties In The Event Of Occurrence, Claim Or Suit:**

- (1) Upon the insured becoming aware of any alleged bodily injury to which this insurance applies, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured, available witnesses, and the name and address of the underlying insurer shall be given by or for the insured to the Company as soon as practicable.

- (2) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.

- (3) The insured shall cooperate with the Company (including using best efforts to secure the cooperation of the underlying insurer) and, upon the Company's request, assist in making settlements, in the conduct of suits and in enforcing any right

of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury for which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

(4) The insured shall not, except at his own cost: a) voluntarily make any payment, assume any obligation, or incur any expense at any time, or b) make or attempt any settlement of a claim or suit hereunder without the written consent of the Company.

(5) The insured shall report to the Company any settlement of a claim or suit hereunder made by the insured without payment by the Company.

#### **D. Maintenance Of Underlying Insurance**

(1) You agree to maintain the "underlying insurance" in full force and effect during the term of this policy, to furnish us copies of the primary insurance and all endorsements thereto which in any manner affect this policy and to inform us within thirty (30) days of any replacement of that "underlying insurance" by the same or another company. If the "underlying insurance" is not available for any reason, except for a reduction therein solely by amounts paid in settlement of claims or in satisfaction of awards or judgments, you agree to assume the obligation to pay damages up to the "underlying insurance"; to defend claims and suits and to pay expenses, costs and interest associated therewith, as would be required if the underlying insurance was insured rather than assumed by you.

(2) You must notify us immediately:

(a) of any changes to the "underlying insurance." We may adjust our premium accordingly from the effective date of the change to the "underlying insurance";

(b) if any "underlying insurance" is cancelled or not renewed and you do not replace it, except as provided in paragraph (3) below, this excess insurance shall continue in full force and effect, however this excess coverage shall only be liable for any loss or damages in excess of the limits of the Medical Professional Liability Catastrophe Loss Fund, if any, as if the underlying coverage was in full force and effect.

(3) Reduction or exhaustion of the aggregate limit of any "underlying insurance" by payments for judgments, settlements or defense expense will not be a failure to maintain underlying insurance in full force and effect.

(4) If at any time, you fail to meet the requirements of the Health Care Services Malpractice Act to secure coverage from the Medical Professional Liability Catastrophe Fund, the

policy will not provide coverage for any claim, suit or defense expense which arises after the date you failed to meet the requirements cited above.

(5) If pursuant to Section 605 of the Health Care Services Malpractice Act P.L. 390, No. 111 the Medical Professional Liability Catastrophe Loss Fund drops down and covers the primary limits, coverage under this policy will drop down and attach over the Catastrophe Loss Fund with no gap in coverage.

(6) No statement contained in this Condition limits our right to cancel or not renew this policy.

#### **E. Other Insurance**

This insurance is excess over any other valid and collectible insurance whether primary, excess, contingent or any other basis, except other insurance written specifically to be excess over this insurance.

#### **F. Policy Period**

This policy will respond to injury or damage that occurs, or arises from a "medical incident" committed during the "policy period".

#### **G. Declarations And Application**

By accepting the policy, you agree that the statements in the policy declarations and the application are your agreements and representations, that this policy is issued relying on your application and that the policy is the total agreement between you and us or any of our agents relating to this policy.

#### **H. Changes**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by an endorsement issued to form a part of this policy.

#### **I. Subrogation**

In the event of any payment under this policy, the Company shall be subrogated to all of the insured's rights of recovery therefore against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

Because this policy provides excess coverage, the insured's right of recovery cannot always be exclusively subrogated to the Company. It is, therefore, agreed that the Company shall act in concert with all other interests concerned, including the insured, in the enforcement of any subrogation rights or in the recovery of amounts by any other means. The apportioning of any amounts so recovered shall follow the principle that any interest, including the insured, that shall have paid an amount over and above any payment under this policy shall first be reimbursed up to the amount paid by such interest. The company shall then be reimbursed out of any balance then remaining, up to the amounts paid as the result of loss covered under this policy. Finally, the interests (including that of the insured), over which this coverage is in excess, are then entitled to claim any residue remaining. Expenses and costs necessary to the recovery of any such amounts shall be apportioned between the interests concerned and including the insured, in the ratio of their respective recoveries or, in the event of a totally unsuccessful attempt to recover, in the ratio of the respective amounts sought to be recovered.

#### **J. Policy Territory**

This policy applies with respect to medical incidents taking place anywhere in the world, provided that claim is first made and suit first brought in the United States of America, its territories or possessions, Puerto Rico or Canada.

#### **K. Cancellation And Nonrenewal**

##### **How you can cancel.**

To cancel this policy or any part of it, you must deliver the policy, or the part you want cancelled, to us or any of our authorized agents. If this isn't possible, notify us by mail and include the future date you want coverage to end. You'll get a refund for the unused premium, calculated according to tables or formulas in our rating plan filed with the Commissioner of Insurance.

##### **How we can cancel.**

###### **(1) Policies in Effect Less Than 60 Days.**

We may cancel this policy by mailing or delivering to the first named insured written notice of cancellation not less than 30 days prior to the effective date of cancellation.

###### **(2) Policies in Effect 60 Days or More.**

If this policy has been in effect for 60 days or more or is a renewal of a policy with us, we may cancel only for one or more of the following reasons by mailing or delivering to the first named insured written notice of cancellation:

- a. You have made a material misrepresentation which affects the insurability of the risk.

- b. You fail to pay a premium when due—whether the premium is payable directly to us or our agents or indirectly under a premium finance plan or extension of credit.
- c. A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become known during the policy period.
- d. Loss of reinsurance or a substantial decrease in reinsurance has occurred. Such loss or decrease must be certified to the Insurance Commissioner as directly affecting in-force policies at such time of cancellation.
- e. You materially fail to comply with policy terms, conditions or contractual duties.
- f. Any other reason approved by the Insurance Commissioner.
- g. This policy may also be cancelled by us effective from inception upon discovery that the policy was obtained through fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by us.

Notice of cancellation/termination must be mailed or delivered by us:

- Not less than 15 days prior to the cancellation effective date as to a and b;
- Not less than 60 days prior to the cancellation effective date as to c, d, e, and f.

If the Company elects not to renew this policy, we will mail or deliver written notice of nonrenewal, stating the specific reasons for nonrenewal, to the first named insured at least sixty (60) days prior to the expiration date of the policy.

We mail or deliver our notice to the first named insured's last mailing address known to us. If notice is mailed, it will be by registered or first class mail. Proof of mailing or delivery will be sufficient proof of notice.

Our notice must state:

- a. The specific reasons for cancellation; and
- b. The effective date of cancellation; the policy period will end on this date.

###### **(3) Return of Premium**

If the Company cancels, the pro-rata unearned premium will be returned to the named insured within ten (10) business days after the effective date of cancellation. If the named insured cancels, the pro-rata unearned premium will be returned within thirty (30) days after the effective date of cancellation.

- (4) If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof or notice.

## L. Increase Of Premium

If we increase your renewal premium, we must mail or deliver to the first named insured not less than 30 days prior to the effective date of the increase, an estimate of the increased premium.

Any notice of renewal premium increase will be mailed or delivered to the named insured's last known address. If notice is mailed, it will be registered or first class mail. Proof of mailing will be sufficient proof of notice.

## M. Other Physical Policy Condition

It is a condition of this policy that you will not perform any procedure in conjunction with any doctor:

- a. That is not fully licensed, or
- b. For whom valid and collectible professional liability insurance, affording limits of liability of at least \$200,000 each medical incident and \$600,000 aggregate, is not provided.

It is agreed that for the purpose of this policy condition, "procedure" includes, but is not limited to, all diagnosis and treatments of injury, deformity, and disease.

## N. Risk Management

The Company has adopted a Loss Prevention Program, the purpose of which is to reduce the incidence of malpractice and improve the practice, attitude, conduct and loss experience of policyholders. The Company reserves the right to impose and implement loss prevention measures during the policy period; the Loss Prevention Program may change from time to time within a policy period. Under said program, the Company reserves the right to impose restrictions on a

physician's coverage and to eliminate coverage for certain procedures and practices, in the opinion of the Company, present an unreasonable risk of loss or risk to patients of such insured. In the event the insured fails to comply with the Company's Loss Prevention Program, this policy may be non-renewed by the Company.

## O. Actions Against the Company

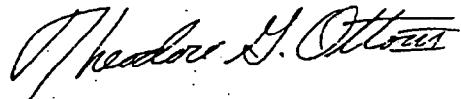
No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent to the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability, nor shall the Company be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of any of its obligations hereunder.

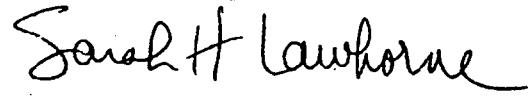
## P. Assignment

The interest hereunder of any insured is not assignable. If the insured shall die or be adjudged incompetent, this insurance shall thereupon terminate, but shall cover the insured's legal representative as the insured with respect to liability previously incurred and covered by this insurance. Pro rata return of premium will be computed from the date of termination.

In Witness whereof, the Company, has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless completed by the attachment hereto of a declaration and schedule page.



Theodore G. Otto, III, Esq.  
Secretary and General Counsel  
PMSLIC



Sarah H. Lawhorne  
President  
PMSLIC

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

01-361-CD

Civil Action No. 01-361-CD

## COMPLAINT IN CIVIL ACTION

Filed on behalf of Plaintiff:  
Cindy Weber & Ricky Weber

Counsel of Record for this Party:

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

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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:

William E.  
Pittoneray

JURY TRIAL DEMANDED

EXHIBIT

D

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIACINDY E. WEBER, and  
RICKY L. WEBER,

Plaintiff,

v.

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

Defendants.

CIVIL DIVISION

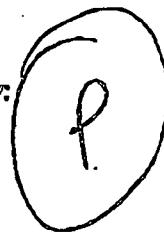
01-361-CD

Civil Action No. 01-361-CD

## 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. # 59030WOOMER & FRIDAY, LLP  
1701 McFarland Road  
Pittsburgh, PA 15216

(412) 563-7980

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

MAR 12 2001

ANNE



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

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.,

Defendant.

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 LD. 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

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.,

)  
)  
AMENDED COMPLAINT

Defendants.

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**



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

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,

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 relied 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. Woomer, Esquire  
PA I.D. 59030

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

(412) 563-7980

ORIG P.O'S

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

CINDY E. WEBER and  
RICKY L. WEBER

RECEIVED  
MAY 22 2001

-vs-

No. 01-361-CD

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

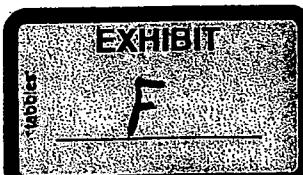
ORDER

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

Am St. *W. C. Reilly*  
Prothonotary

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

CINDY E. WEBER and  
RICKY L. WEBER

RECEIVED  
MAY 22 2001

-vs-

No. 01-361-CD

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

O R D E R

NOW, this 18<sup>th</sup> day of May, 2001, following argument and briefs into Preliminary Objections filed on behalf of Defendant Liberty Physical Medicine & Rehabilitation Associates, P.C., it is the ORDER of this Court that Plaintiffs shall be and are hereby granted 20 days within which to file an Amended Complaint to specifically plead the factual bases alleging that said Defendant may or should have known of Bashir Yousufzai's conduct as contained in said Complaint; and to specifically allege this as a basis for punitive damages in Counts 1 and 4. Said Amended Complaint to be filed within 20 days from date hereof and Plaintiffs supplemental brief within 20 days of filing said Amended Complaint. Said Defendant shall have 10 days to respond to Plaintiffs' supplemental brief.

It is the further ORDER of this court that Defendant's demurrer to Paragraph 16 (a,b,c) of said Complaint shall be and are hereby dismissed and Plaintiffs directed to more specifically plead Paragraph 16 (d,e,f) to provide a factual basis for said allegations.

Preliminary Objections to Count 3 alleging lack of informed consent shall be and are hereby granted and said Count dismissed.

With regards to Preliminary Objections to Plaintiffs' allegations of intentional and negligent conduct in Counts 4 and 5, it is the ORDER of this Court that ruling thereon

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,

/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

st.

*John K. Reilly*  
President Judge

ORIG Pos  
RECEIVED  
MAY 8 2001IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAWCINDY 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. :  
DefendantsAMENDED 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. 16

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

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

EXHIBIT

6

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,

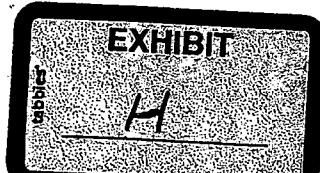
/s/ JOHN K. REILLY, JR.

President Judge

JOHN K. REILLY, JR.  
President Judge  
Clearfield County, Pennsylvania  
RECEIVED IN CLEARFIELD COUNTY CLERK'S OFFICE  
JULY 13 2001

JUL 1 2001

6/13/01  
RECEIVED  
CLERK'S OFFICE  
CLEARFIELD COUNTY



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

CINDY E. WEBER and  
RICKY L. WEBER

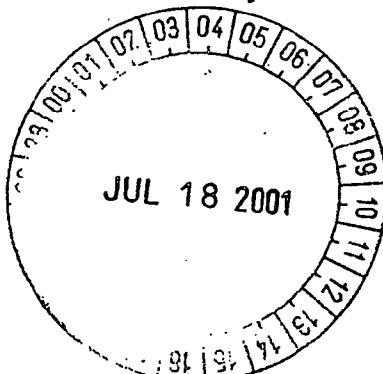
-vs-

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 Civil Case

JUL 16 2001

Attest:

*W.L. R.*  
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,

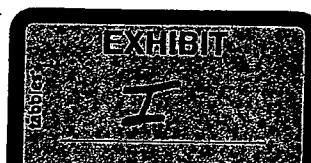
/s/ JOHN K. REILLY, JR.

President Judge

I hereby certify this to be a true and attested copy of the original statement of John K. Reilly, Jr.

JUL 20 2001

Attest:



RECEIVED  
JUL 24 2001

PMS 017 OH

**VERIFICATION**

I, DONNA TURNER, of Pennsylvania Medical Society Liability Insurance Company, do hereby verify that I have read the foregoing Complaint for Declaratory Judgment. The statements therein are correct to the best of my personal knowledge or information and belief.

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

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY

By Donna Turner

Date: 9/5/01

Date: 03/20/2001

Time: 09:03 AM

Page 1 of 2

Cleaveland County Court of Common Pleas

User: ABENNITT

ROA Report

Case: 1999-0000748-CR Current judge: Fredric J. Ammerman

Defendant: Yousufzai, Bashir A MD

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 Fredric J. Ammerman 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
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
12/06/2000	Post Sentence Motion, filed by J. DuBois, taken to CA
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
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
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
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
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

Date: 03/20/2001

Time: 09:03 AM

Page 2 of 2

Cle...eld County Court of Common Pleas

User: ABENNETT

ROA Report

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

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: CLEARFIELD

Magisterial District Number: 46-3-01

District Justice Name: Hon. **PATRICK N. FORD**  
Address: **109 NORTH BRADY STREET**  
**P.O. BOX 452**  
**DUBOIS, PA** **15801**  
Telephone: **(814) 371-5321**

Docket No.: **CR-310-99**  
Date Filed: **9/27/99**  
OTN: **H 048236-6**

Defendant's Race/Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input checked="" type="checkbox"/> Unknown	Defendant's Sex <input type="checkbox"/> Female <input checked="" type="checkbox"/> Male	Defendant's D.O.B. <b>2/25/56</b>	Defendant's Social Security Number <b>130-76-56</b>	Defendant's SID (State Identification Number)
Defendant's A.K.A. (also known as)		Defendant's Vehicle Information Plate Number		Defendant's Driver's License Number State
Complaint/Incident Number <b>DP-3973-09-99</b>		Complaint/Incident Number of other Participants		UCR/NIBRS Code

District Attorney's Office  Approved  Disapproved because: \_\_\_\_\_  
(The district attorney may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing.  
Ps.R.Cr.P. 107.)

(Name of Attorney for Commonwealth - Please Print or Type)

(Signature of Attorney for Commonwealth)

(Date)

I, Darrell E. Clark

(Name of Affiant - Please Print or Type)

(Officer Badge Number/L.D.)

of DuBois City Police Dept.

(Identify Department or Agency Represented and Political Subdivision)

**PA0170200**

(Police Agency ORI Number)

(Originating Agency Case Number (OCA))

do hereby state: (check appropriate box)

1.  I accuse the above named defendant, who lives at the address set forth above  
 I accuse the defendant whose name is unknown to me but who is described as \_\_\_\_\_  
  
 I accuse the defendant whose name and popular designation or nickname is unknown to me and whom I have therefore designated as John Doe  
with violating the penal laws of the Commonwealth of Pennsylvania at DuBois (Place-Political Subdivision)  
145 Hospital Ave, Suite 300, DuBois, Clearfield County, Pa. 15801  
in Clearfield County on or about Aug 16 to Sept 3, 1999

2. The acts committed by the accused were:

(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. A citation to the statute allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section and subsection of the statute or ordinance allegedly violated.)



**POLICE**  
**CRIMINAL COMPLAINT**

COMMONWEALTH OF PENNSYLVANIA

DEFENDANT: **VS.**

NAME and ADDRESS

**YOUSEFZAI, BASHIR A.**  
**2023 GREEN GLEN DRIVE**  
**DUBOIS, PA. 15801**

Continuation of No. 2)

Defendant's Name: Bashir Yousufzai

POLICE  
CRIMINAL COMPLAINT

Docket Number:

Between August 16, 1999 and September 3, 1999 Cindy E Weber of R D #1 Box 38-1A Dubois was a patient of Dr Yousufzai who has an office in the Medical Arts building in DuBois.

On all four occasions that she saw the Doctor she was subject to inappropriate touching of her private areas and he would try to get her hands and or feet into his crotch area. On the last two of four visits he actually ejaculated on her buttocks area. She was afraid to come forward as she was afraid of this Dr. He also rubbed and felt breasts and legs. At no time was he given permission by the patient to do this, and it was not conducive to what she was being treated for.

Indecent Assault The defendant unlawfully, intentionally and knowingly did have indecent contact with the complainant or caused complainant to have indecent contact with the defendant and did so without the complainant's consent. Violation of Section 3126 (a) (1) of the Pa Crimes Code, Title 18, C.S.A. M-2

Harrassment & Stalking That the defendant intentionally, and knowingly did with the intent to harass, annoy or alarm another person did strike, shove, kick or otherwise subject them to physical contact, or attempt or threaten to do the same. Violation of section 2709 (a) (1) of Pa Crimes Code, Title 18, C.S.A. (Summary).

Harrassment and Stalking That the defendant, Intentionally and knowingly did with the intent to harass, annoy or alarm another person did engage in a course of conduct or repeatedly commit acts which alarm or seriously annoy another person and which serves no legitimate purpose. Violation of 2709 (a) (3) of the Pa. Crimes Code, Title 18, C.S.A.

all of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act of Assembly, or in violation of

1. <u>3126</u> (Section)	<u>(a) (1)</u> (Subsection)	of the <u>Title 18</u> (PA Statute)	<u>4</u> (counts)
2. <u>2709</u> (Section)	<u>(a) (1)</u> (Subsection)	of the <u>Title 18</u> (PA Statute)	<u>4</u> (counts)
3. <u>2709</u> (Section)	<u>(a) (3)</u> (Subsection)	of the <u>Title 18</u> (PA Statute)	<u>4</u> (counts)
4. _____ (Section)	_____ (Subsection)	of the _____ (PA Statute)	_____ (counts)

I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made. (In order for a warrant of arrest to issue, the attached affidavit of probable cause must be completed and sworn to before the issuing authority.)

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. §4904) relating to unsworn falsification to authorities.

, 19

Darrell E Clark  
(Signature of Affiant)

I, on this date September 27, 1999, I certify that the complaint has been fully completed and verified. An affidavit of probable cause must be completed in order for warrant to issue.

SRAL

46-3-01  
(Magisterial District)

Patrick M. Ford  
(Issuing Authority)

## VOLUNTARY STATEMENT

DATE 9/24/99 19 19 TIME 11:00 A.M. M. PLACE DeBois PD  
 1. Cindy E. Weber, am 37 years old and I live at R#1 Box 38-1A  
Pentfield 15847 375-7424

I am giving this statement to Darrell E. Clark I.D. Police Officer, who has identified

himself as a Police Officer. and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

My 1<sup>st</sup> appointment was Aug 16, 1995 A.M. Asked me regular questions. He asked my age I rubbed my face. Asked to go sit on the Bed. He did some tests. Pick up my hat & put them in my Catch Areas. While doing Eye test he kept moving closer. my legs changing over Bed. I felt he was trying to kiss me. On August 20<sup>th</sup> I had another appointment with Dr. Yusufogi. He tried to kiss me on that day he also tried to kiss me in the room.

My 3<sup>rd</sup> appointment 2ndc 4:00 Aug 24<sup>th</sup> with a woman by the name of Ann Methuen, first he said he would do the test. I take him & had to go to the Bathroom he showed me the Bathroom. I was in a gown. After the testing. He me lay flat on my back on the Bed. He run some needle tests. I sit on the bed went toward my clothes to get dressed. He come up behind me. He bent me over and come up close behind me. He was close if he had taken a 1/2 step closer he would be right up against me. I felt him up against me and

L.W. C.W.

3

I have read this statement consisting of 3 page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

Cindy E. Weber  
Signature of person making voluntary statement

The above warnings were given by and  
this voluntary statement was taken by



## VOLUNTARY STATEMENT

DATE \_\_\_\_\_, 19 \_\_\_\_\_. TIME \_\_\_\_\_ M. PLACE \_\_\_\_\_

I, \_\_\_\_\_, am \_\_\_\_\_ years old and I live at \_\_\_\_\_

I am giving this statement to \_\_\_\_\_ I.D. \_\_\_\_\_, who has identified

himself as a \_\_\_\_\_ and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whatsoever:

I felt you at the bottom and I heard a zipper. I could feel skin, like the very end of his penis. He come in the crack area of my Buttocks. I was afraid because no one else was in the building. I close my legs fast as hard as I can. After he come he ~~left~~ himself off and stand up a while. He then walks away and I got my clothes on and left. He tries to hug me before I left.

I had a UTI appointment on Sept 3, 1999 at 2:00pm. I was pretty emotional when I got there due to the pain I was in from the infection. I was having. All I wanted was a prescription. He told him I did not like what you are doing. He states he but do you mean. He put his hand on his like in a threatening manner which made me feel scared. He felt my legs and ask for a couple minutes insulating ~~get~~ in my opinion my ~~husband~~ is sick and he ~~would~~ get ~~like~~ this. I think he knew this would be the last time  
R.W.

I have read this statement consisting of \_\_\_\_\_ page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

\_\_\_\_\_  
Signature of person making voluntary statement

The above warnings were given by and  
this voluntary statement was taken by

## VOLUNTARY STATEMENT

DATE \_\_\_\_\_, 19 \_\_\_\_\_. TIME \_\_\_\_\_ M. PLACE \_\_\_\_\_

I, \_\_\_\_\_, am \_\_\_\_\_ years old and I live at \_\_\_\_\_

I am giving this statement to \_\_\_\_\_ I.D. \_\_\_\_\_, who has identified

himself as a \_\_\_\_\_ and he has duly warned me that I have the following rights: that I have the right to remain silent and not make any statement at all; that any statement I make may be used against me at my trial; that any statement I make may be used as evidence against me in court; that I have the right to have a lawyer present to advise me prior to and during any questioning; that if I am unable to employ a lawyer, I have the right to have a lawyer appointed to advise me prior to and during any questioning and that I have the right to terminate the interview at any time.

Prior to and during the making of the statement, I have and do hereby knowingly, intelligently, and voluntarily waive the above explained rights and I do make the following voluntary statement to the aforementioned person of my own free will and without any promises or offers of leniency or favors, and without compulsion or persuasion by any person or persons whomsoever:

I would be there - I told him I feel pretty  
 afraid to a person B peak down with my Problem  
 I was afraid to tell him the biggest Problem was  
 with him. He said Bend over - I refused to take  
 my pants off. He reached down & grabbed my pants  
 and got them down off the knees - held only the  
 front part of my underwear he tried to move it to  
 the side but I tighted my legs up. He ejaculated on  
 me again as he did before. He went off and  
 wiped himself again and this time I sores  
 my underwear again. The stain are on the back

One pair of pants is from Aug 24, 1989 2 NC pair  
 from Sept 3<sup>rd</sup> Purple

This statement was written by Clay Del Clark  
 as the Victim was to distract to write it.  
 She has ~~not~~ read this and agrees with it

R. W.

I have read this statement consisting of \_\_\_\_\_ page(s), each page of which bears my signature, and I do affirm that all facts and statements contained herein are true and correct.

X  
 Signature of person making voluntary statement

The above warnings were given by and  
 this voluntary statement was taken by

\* \* \* \* \* \* \*  
COMMONWEALTH OF

PENNSYLVANIA,

\* CR 310-99

VS.

BASHIR A. YOUSUFZAI,

Defendant

\* \* \* \* \* \* \*  
TRANSCRIPT OF

PRELIMINARY HEARING

\* \* \* \* \* \* \*

BEFORE: PATRICK FORD,

District Magistrate

46-3-01

LOCATION: 109 North Brady Street

P.O. Box 452

DuBois, Pennsylvania 15801

HEARING: Friday, October 8, 1999

TIME: 11:10 a.m.

WITNESSES: Cindy E. Weber

\* \* \* \* \* \* \*

Reporter: JACQUELINE L. HAZLETT

\* \* \* \* \* \* \*

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is prohibited without authorization  
by the certifying agency.

# A P P E A R A N C E S

2

3 PAUL E. CHERRY, ESQUIRE

4 | Clearfield County Courthouse

5 | District Attorney

6 | 1 North Second Street

7 Clearfield, PA 16830

8 PRESENT FOR THE COMMONWEALTH

9

1.0 MATTHEW B. TALADAY, ESQUIRE

11 Hanak, Guido & Taladay

12 498 Jeffers Street

13 P. O. Box 487

14 | DuBois, PA 15801

15 PRESENT FOR DEFENDANT

16

17

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19

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1                   I N D E X  
23                   WITNESS:    CINDY E. WEBER

4                   DIRECT EXAMINATION

5                   By Attorney Cherry                   5 - 21

6                   CROSS EXAMINATION

7                   By Attorney Taladay                22 - 37

8                   REDIRECT EXAMINATION

9                   By Attorney Cherry                37 - 38

10                  DISCUSSION AMONG PARTIES           38 - 42

11                  CERTIFICATE                         43

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1                   EXHIBIT PAGE

2

3                   PAGE4                   NUMBER    IDENTIFICATION           IDENTIFIED

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6                   NONE OFFERED

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## 1 P R O C E E D I N G S

2 -----

3 CINDY E. WEBER, PREVIOUSLY SWORN,

4 CALLED TO TESTIFY

5 DIRECT EXAMINATION

6 BY ATTORNEY CHERRY:7 Q. Would you state your name for  
8 the record?

9 A. Cindy E. Weber.

10 Q. And where do you live?

11 A. RD 1 Box 38-1A, Penfield,  
12 Pennsylvania, 15849.

13 Q. And how old are you?

14 A. Thirty-seven (37).

15 Q. Now, I'll direct your  
16 attention to the dates of August  
17 16th through September 3rd, 1999, it  
18 was approximately a three week ---  
19 two and a half to three week period  
20 of time. During that period of  
21 time, did you have occasion to come  
22 in contact with a Doctor Yousufzai?

23 A. Yes, I did.

24 Q. Were you there for purposes  
25 of being a patient?

1 A. Yes, I was.

2 Q. Were you referred there by  
3 anyone?

4 A. Yes, I was.

5 Q. By whom were you referred?

6 A. Karen Kozlowski (phonetic)  
7 from Brockway.

8 Q. And for what particular  
9 reason were you referred to him?

10 A. Numbness in the arms, ---

11 Q. Is that the only ---?

12 A. --- hand, and fingers.

13 Q. In the arms and fingers; is  
14 that correct?

15 A. Because I was having extreme  
16 pain and swelling.

17 Q. Now, do you recall when you  
18 first went to see the Doctor?

19 A. Yes.

20 Q. What date was that?

21 A. The 16th.

22 Q. Of?

23 A. August.

24 Q. Okay. And the doctor's  
25 office is located where?

1           A.           DuBois Medical Arts Building,  
2           Hospital Avenue, DuBois.

3           Q.           Okay. And when you went to  
4           the Doctor's office and you were  
5           taken back to the examining room, I  
6           assume?

7           A.           Yes.

8           Q.           All right. What did they  
9           have you do?

10          A.           A nurse lead me to the door,  
11           she said, put a gown on, leave your  
12           panties and underwear on and have a  
13           seat and wait.

14          Q.           Did you do that?

15          A.           Yes, I did.

16          Q.           All right. At some point in  
17           time, did a doctor come into the  
18           office?

19          A.           Yes, he did.

20          Q.           Or into the examining room?

21          A.           Yes.

22          Q.           All right. And did anything  
23           unusual happen when he came in?

24          A.           No, not at first, he just  
25           asked me normal questions, history

1       questions ---.

2       Q.       About your medical history?

3       A.       Yes.

4       Q.       After that was done, did  
5       anything happen?

6       A.       Well, at that point he  
7       reached over and he touched my face  
8       and told me how young I was. After  
9       he had asked me the ages of my  
10      children.

11      Q.       Okay. What happened next?

12      A.       He proceed to do the  
13      neurological exam after he did his  
14      questions.

15      Q.       And during that exam did  
16      anything occur?

17      A.       Yes.

18      Q.       What occurred?

19      A.       He had me on the table, he  
20      picked my feet up and he placed them  
21      close to his crotch, one on each  
22      side, way too close.

23      Q.       What do you mean by that,  
24      ma'am?

25      A.       Well, I've had neurological

1 exams before and my feet have never  
2 been put there. And I have no idea  
3 why they were put there.

4 Q. Okay. Did you notice  
5 anything about his crotch area when  
6 you ---?

7 A. Well, I tried not to look,  
8 but I knew how close my feet were.  
9 I mean I could have kicked him good.

10 Q. And what happened next?

11 A. He did the regular testing of  
12 my reflexes in my legs, he proceeded  
13 to do an eye exam, which at that  
14 point, I wasn't looking at him, but  
15 I felt like he was too close, and  
16 I've had eye exams before where they  
17 hold the light in your eye.

18 Q. All right. And you said that  
19 he was ---?

20 A. And I felt that he was too  
21 close, and I thought that he was  
22 going to try to kiss me and I turned  
23 my head.

24 Q. All right. What happened  
25 next?

1       A.       At that point he got up and  
2 basically was finished with whatever  
3 he was doing neurologically. I mean  
4 it was like an on and off thing. I  
5 mean, he would do testing and then  
6 he'd try to, I don't know, just try  
7 to get behind you and ---.

8       Q.       Okay. But I need you to tell  
9 me if he did anything to you? Did  
10 he touch you anywhere on your body?

11      A.       Not other than the neurologic  
12 exam at that first appointment.

13      Q.       That was the first  
14 appointment?

15      A.       Yes.

16      Q.       Okay. Did he touch any of  
17 your private parts at that  
18 particular first meeting, first  
19 appointment?

20      A.       No. Not that I can remember.  
21 He might have touched my breast  
22 area.

23      Q.       If you recall, if you don't,  
24 that's fine.

25      A.       Well, there was four

1       appointments.

2       Q.       All right.    But I'm talking  
3               about the first one.

4       A.       Right.

5       Q.       Did you go back for a second  
6               appointment?

7       A.       Yes, I did.

8       Q.       And do you recall when that  
9               was?    How long after the August 16th  
10               appointment?

11      A.       Well, he had asked me to get  
12               him a biopsy paper from Clearfield  
13               Hospital for a diagnosis that I was  
14               given, because I had him have his  
15               office FAX the paperwork from my  
16               doctor's office in Brockway.   And he  
17               said that the only paper that he  
18               needed was was there, could I get  
19               it.

20      Q.       All right.

21      A.       And I said, well, I imagine I  
22               guess I can.

23      Q.       Did you go back to the second  
24               appointment?

25      A.       What I did, is went over

1 after my MRI, I went and got the  
2 paper.

3 Q. Okay.

4 A. And then I figure that I  
5 would just take it over and drop it  
6 off at the office, so he would have  
7 it when all the other testings come  
8 in, because he had ordered two MRIs.

9 Q. All right.

10 A. And then ---.

11 Q. What happened when you  
12 brought it over?

13 A. Well, he wanted to see me. I  
14 had asked if any other tests had  
15 come in, she went and asked and  
16 apparently they did and they wanted  
17 to see me.

18 Q. And did he see you?

19 A. Yes, he did.

20 Q. What happened when he saw  
21 you?

22 A. I asked him about the  
23 testing, I said, here's the paper  
24 that you requested or that he had  
25 had it probably already. I don't

1 remember if I handed it to him or  
2 the receptionist took it at that  
3 time.

4 Q. Did he touch you on that  
5 particular occasion?

6 A. Yes, there was a little more  
7 friendlier than the next --- the  
8 first was.

9 Q. Describe what he did, please?

10 A. Well, I was fully clothed  
11 that day, I didn't have to change.  
12 I basically went in there, I wanted  
13 to know what the results of the  
14 testing were, he just proceeded in  
15 his regular manner to try to get  
16 behind you and from that point, you  
17 know, ---.

18 Q. I need you to tell me what he  
19 did?

20 A. He started touching my breast  
21 and he says --- yeah, he said to me,  
22 I'm married, you know, I'm married,  
23 and I said, yeah, so am I. And it  
24 didn't seem to matter.

25 Q. Did you consent to the

1 touching of the breast?

2 A. No, I just kept moving away  
3 from him, because it was just too  
4 weird. I didn't know what to make  
5 of any of it.

6 Q. All right. But did you  
7 consent?

8 A. No.

9 Q. All right. Did he touch you  
10 any place else other than your  
11 breast at that particular --- that  
12 would be the second appointment?

13 A. No, because that was a very  
14 short appointment.

15 Q. Okay. Were you annoyed by  
16 that?

17 A. Yeah. Somewhat, yes.

18 Q. Now, did you meet with him  
19 again?

20 A. I was to meet with an Ann  
21 Matthews on the third appointment  
22 for an EMG.

23 Q. All right. And did you meet  
24 with the doctor?

25 A. Well, I was running late and

1 when I got there, he was there and I  
2 said, I'm sorry, I'm running late,  
3 but you know, if you want to  
4 reschedule that will be fine. This  
5 was in the afternoon, I was all  
6 late, at four o'clock I was  
7 scheduled. He said, well, I'll be  
8 doing the exam if that's okay. And  
9 I said, I guess, it's okay.

10 Q. Did he conduct an  
11 examination?

12 A. Yes, he did an EMG, which was  
13 for carpal tunnel.

14 Q. All right. Did anything  
15 unusual occur during that  
16 examination?

17 A. Not until after, he  
18 constantly --- at every appointment  
19 he would ask me, if I had neck and  
20 back pain. And I don't have neck  
21 and back until the winter. Mostly  
22 the lower back, which I did not go  
23 there for neck and back pain. But  
24 after this EMG where he did the  
25 needles in my neck, and most of the

1 testing, he done all the EMG testing  
2 and none of it bothered me really.  
3 I mean, the needles being injected  
4 wherever, except in the left side of  
5 my neck, which I have come to find  
6 out that there is disc problem  
7 there, which he told me, but I  
8 didn't quite understand what he  
9 said.

10 Q. All right. Did anything  
11 unusual happen during that, the  
12 third appointment?

13 A. Very much so.

14 Q. What occurred?

15 A. Okay. After I proceeded to  
16 get up off that table, he asked me  
17 three times in a row, are you sure  
18 that you don't have any neck and  
19 back, constantly, three times in a  
20 row.

21 Q. All right.

22 A. I said, how many times do I  
23 have to tell you, I don't get back  
24 pain until the winter.

25 Q. Okay.

1 A. And from there, he proceeded  
2 to lead me to the bed again, he  
3 asked me --- well, no, he first he  
4 asked me, he said, can I call you at  
5 home, and I said absolutely not. He  
6 said, could we met outside of the  
7 office, I said no way.

8 Q. What happened next?

9 A. He proceeded to lead me to  
10 the bed and I thought well, he was  
11 just going to do something else  
12 neurological.

13 Q. What did he do?

14 A. He bent me over the bed and  
15 the next think I knew I heard a  
16 zipper --- I felt my gown go up and  
17 I heard a zipper and then it  
18 couldn't have been more than three  
19 to five seconds then you basically  
20 know what he did.

21 Q. What did he do?

22 A. He ejaculated on my --- on  
23 the back of my underwear and at the  
24 top of my crack.

25 Q. Okay. Did you consent to

1           that particular contact?

2           A.       No, I probably much didn't  
3           have a choice, there was no one else  
4           in the building. I didn't know what  
5           to take it as, I even told him that,  
6           I said, I don't know what to make of  
7           you. You know, I don't understand  
8           ---.

9           Q.       Did there come a time that  
10          you met with him a fourth time?

11          A.       Yes, I did.

12          Q.       And when did that occur and  
13          what happened?

14          A.       I believe that date would be  
15          on the 3rd of September.

16          Q.       Okay.

17          A.       And that was for two o'clock  
18          and I had called in for a  
19          prescription for headaches, for  
20          migraine headaches, because I had  
21          started getting migraine headaches  
22          again. Because I pretty much kept  
23          all this in, I couldn't tell anybody  
24          and I didn't know what to do and I  
25          couldn't take it no more.

1 Q. Why didn't you come forward  
2 at the time?

3 A. I had a lot of mental stress,  
4 a lot of psychiatric medicine that  
5 I'm on. A lot of problems, it's  
6 around me at home, and I was very  
7 close to fighting off a nervous  
8 breakdown to begin with. And then  
9 after that third appointment with  
10 him, you know, I didn't know --- I  
11 knew at that point that I was in  
12 that office, the whole building  
13 alone. And I just wanted to get out  
14 of there.

15 Q. But you went back a fourth  
16 time?

17 A. I went back, I called in for  
18 a prescription and I figured like  
19 any other normal doctor's office,  
20 they call it into the pharmacy. No,  
21 you'll have to come in and pick it  
22 up.

23 Q. Did you met with a doctor on  
24 that fourth occasion?

25 A. Yes.

1 Q. What happened?

2 A. He took me in the office and  
3 I asked him what was going on. I  
4 said I was starting to have migraine  
5 headaches again, and then basically  
6 he proceeded to get behind me and I  
7 was in my street clothes, not in a  
8 gown and basically forced himself on  
9 me again.

10 Q. Did he rub up against you?

11 A. Yes.

12 Q. And what happened?

13 A. Well, he got my clothes down  
14 to my knees and back to the bed and  
15 the same thing.

16 Q. The same thing as what, he  
17 ejaculated upon you?

18 A. (Indicates yes).

19 Q. Is that a yes?

20 A. Yes.

21 Q. Okay.

22 A. And that was when I knew for  
23 sure, you know, he did it a third  
24 time again, because he handed me a  
25 napkin, he took care of himself, so

1 ----. I mean, it was like I went  
2 into another type of shock. I've  
3 never been in ----. I told him, I  
4 said, you know, I've got a lot of  
5 problems, I said, I don't want to go  
6 back to the hospital.

7 Q. Now, let me ask you this,  
8 ma'am. The gentleman that you've  
9 indicated that you had contact with,  
10 is he in the Courtroom today?

11 A. Do you mean the Doctor?

12 Q. Yes.

13 A. Yes.

14 Q. And could you point him out  
15 to me, please?

16 A. He's right there.

ATTORNEY CHERRY:

18 Let the record reflect  
19 that she's identified the  
20 Defendant. Cross? Nothing  
21 further.

22 MAGISTRATE FORD:

23 Mr. Taladay?

24 ATTORNEY TALADAY:

25 Thank you.

## 1           CROSS EXAMINATION

2           BY ATTORNEY TALADAY:

3           Q.        Ma'am, I'm Matt Taladay, I  
4           represent the Doctor here today and  
5           I need to ask you some questions  
6           about the testimony that you've  
7           given. As I understand it, your  
8           first visit with the Doctor was  
9           because you were suffering from  
10           neurofibromatosis?

11           A.        Right. That was during this,  
12           I was getting ---.

13           Q.        And you had had some lesions  
14           that were biopsied, I believe on  
15           your eye and on your lip area?

16           A.        Right. And that's what it  
17           came back as.

18           Q.        And the Doctor performed a  
19           neurological examination as a  
20           follow-up to that diagnosis; right?

21           A.        Yes, but he said that he  
22           didn't have the biopsy paper for  
23           that, could I please get it for him.

24           Q.        Now, during the first visit,  
25           really all the Doctor did, you said

1 he took your feet and he put them up  
2 in his lap area?

3 A. He also touched my face.

4 Q. He touched your face?

5 A. Yes.

6 Q. Didn't touch any other  
7 personal part of your body?

8 A. Not at that point, no.

9 Q. Now, you came back again on  
10 August 20th?

11 A. Yes.

12 Q. And you didn't have an  
13 appointment on that day; did you?

14 A. No, I took my paper --- the  
15 paper that he asked me to get for  
16 him, over, because the building was  
17 right there across the street. I  
18 figured well, you know, he'll have  
19 it. There's more --- he asked me  
20 for that paper, there was a  
21 diagnosis that said  
22 neurofibromatosis on it and that's  
23 what he wanted.

24 Q. And on the second visit,  
25 didn't you ask the receptionist if

1       you could see the Doctor?

2       A.       I asked if there was other  
3       testings had come in. And if he had  
4       time, if there was, could he go over  
5       them with me.

6       Q.       And he did meet with you on  
7       that date?

8       A.       Yes, he did.

9       Q.       Now, you talked to Chief  
10      Clark at the DuBois Police about  
11      this indecent?

12      A.       Yes, I did.

13      Q.       And do you remember telling  
14      Chief Clark that on the second visit  
15      that he tried to kiss you?

16      A.       Yes.

17      Q.       And as I read Chief Clark's  
18      report, you told the Chief, nothing  
19      about him trying to touch your  
20      breasts on the second visit?

21      A.       Well, I was pretty shook up,  
22      like some weeks, because I didn't  
23      tell nobody nothing.

24      Q.       Well, my question, ma'am, is,  
25      are you certain as you sit here

1 today that the touching of the  
2 breast occurred on the second visit  
3 or could it have been on the third  
4 visit?

5 A. They could have occurred the  
6 second, too, I can't remember. Most  
7 of this occurred the third and  
8 fourth appointment.

9 Q. And that's what I'm trying to  
10 clear up. Can you state with  
11 certainty that the touching of the  
12 breasts occurred on the second visit  
13 or could that not have occurred  
14 until the third visit?

15 A. I'm pretty sure it happened  
16 on the second.

17 Q. Absolutely sure, you're under  
18 oath, ma'am.

19 A. Yes.

20 ATTORNEY CHERRY:

21 I think she's answered  
22 the question, Your Honor.

23 ATTORNEY TALADAY:

24 Okay.

25 MAGISTRATE FORD:

Mr. Taladay, move on.

ATTORNEY TALADAY:

I will.

BY ATTORNEY TALADAY:

5 Q. You went back to see the  
6 Doctor again on the 24th?

7 A. Right.

8 Q. Even after these other  
9 instances occurred, which you said,  
10 you felt --- made you uncomfortable?

11 | A. (No response).

12 Q. Please answer my question,  
13 ma'am?

14 A. Just one second, please.

15 Q. If you can answer my question  
16 from memory, that's fine.

17 A. What was your question again?

18 Q. You went to see the Doctor  
19 again, for the third visit on the  
20 24th, even after the other things  
21 had taken place?

22 A. That visit was scheduled to  
23 be with an Ann Matthews.

24 Q. And as I understand it,  
25 Doctor Yousufzai told you that

1       could rescheduled that visit with  
2       --- or you could see him on that  
3       day?

4       A.       I asked him, I was running  
5       late. And when I got taken to the  
6       exam room, he was standing there. I  
7       said, I'm sorry, I'm running late,  
8       if you want to reschedule this, we  
9       can do that, because it was supposed  
10      to be the other woman. He says, no,  
11      that's okay, he said, if you don't  
12      mind, he says, I'll do the testing  
13      myself. Well, I needed the testing  
14      done, I need to know what is wrong.

15      Q.       So apparently you consented  
16      to have that test go forward?

17      A.       Well, yeah.

18      Q.       Now, your testimony is that  
19      nothing inappropriate occurred  
20      during the course of the EMG  
21      testing?

22      A.       That's right.

23      Q.       And you're stating that after  
24      the EMG testing that you believe the  
25      Doctor ejaculated on your buttocks

1 area?

2 A. I don't believe it, I know  
3 it.

4 Q. And this may seem like a  
5 silly question, but did you actually  
6 see that occur?

7 A. How can you see that occur,  
8 when he's behind you?

9 MAGISTRATE FORD:

10 A. Okay. Ma'am, just  
11 answer the question.

12 A. I did not see it occur.

13 BY ATTORNEY TALADAY:

14 Q. Your position was that you  
15 were standing by the table, leaning  
16 over the table?

17 A. Bed, table, whatever.

18 Q. It was in the examination  
19 room?

20 A. Yeah, it's an examination  
21 bed.

22 Q. Okay.

23 A. Which you would normally  
24 would lay on.

25 Q. And you were leaning over

1 that table?

2 A. I was bent over that table.

3 Q. Did you ask the Doctor what  
4 he was doing or why he positioned  
5 you in that way?

6 A. No, because I thought it was  
7 another part of the test. I didn't  
8 even know there was anything to do  
9 with a needle as part of this test  
10 to begin with.

11 Q. Did you ever see the Doctor's  
12 genitalia?

13 A. No, I did not.

14 Q. Did you ever feel the  
15 Doctor's genitalia?

16 A. Yes, I did.

17 Q. At what point?

18 A. When he was behind me with my  
19 gown up and I heard his zipper and  
20 then he's a very fast person, I  
21 would estimate three to five seconds  
22 and he was all done. Doing whatever  
23 he wanted to do.

24 MAGISTRATE FORD:

25 Hold on a second.

1 OFF RECORD DISCUSSION

2 MAGISTRATE FORD:

3 You may continue, Mr.  
4 Taladay.

5 BY ATTORNEY TALADAY:

6 Q. What part of your body do you  
7 felt that the Doctor's genitalia  
8 made contact with?

9 A. The upper part of my ---  
10 right above my anus.

11 Q. In your buttocks area?

12 A. Right.

13 Q. Did you make any objection at  
14 that time?

15 A. It was so quick, it was over.

16 Q. Did you make any complaint  
17 afterward?

18 A. I didn't know what to say, I  
19 just wanted to get out. I don't  
20 know what kind of person he is at  
21 this point or what he is capable of.  
22 I knew I was there alone.

23 Q. Now, that was on the 24th;  
24 right?

25 A. Yes, for the EMG.

1 Q. Did you complain to anyone in  
2 the Doctor's office after that  
3 incident?

4 A. There was no one there.

5 Q. Did you complain to the  
6 police after that incident?

7 A. No, I did not.

8 Q. Did you tell your husband  
9 about it?

10 A. No, I did not.

11 Q. Now, you went back to the  
12 Doctor's office, now, I believe it  
13 was the 30th of September also?

14 A. No.

15 Q. I'm sorry, what was the date?

16 A. The 3rd.

17 Q. October 3rd?

18 A. Yes. Which I had called in  
19 for a prescription.

20 Q. And you wanted something for  
21 a headache?

22 A. Migraine headaches, which I  
23 started continuing to have after all  
24 this.

25 Q. Now, Doctor Kozlowski was

1       your family doctor; wasn't it?

2       A.       Yes.

3       Q.       Why didn't you go there for  
4       the headaches?

5       A.       Because he treats migraine  
6       headaches.

7       Q.       Doctor Yousufzai ---

8       A.       Yes.

9       Q.       --- treats migraine  
10      headaches?

11      A.       Yes.

12      Q.       So you went back to him for  
13      your migraine headaches?

14      A.       Well, actually I went back in  
15      to confront him, because of my  
16      mental state and of what he did to  
17      me. A lot of it was caused by that  
18      now, worse than it was before.

19      Q.       Well, I need to know, is your  
20      testimony that you went to his  
21      office because of migraine headache  
22      or you went to his office to ---?

23      A.       I went to his office to get a  
24      prescription for a migraine  
25      headache, that was all.

1 Q. And you went in for an  
2 examination on that date?

3 A. No, I did not.

4 Q. Well, you ended up in an  
5 examination room?

6 A. Yes, I did.

7 Q. And I believe that it was  
8 your Direct testimony that there was  
9 contact between you and the Doctor  
10 similar to ---?

11 A. Yes, there was.

12 Q. Let me finish my question,  
13 please.

14 A. I'm sorry.

15 Q. Similarly to what had  
16 occurred during the third visit?

17 A. I don't know if it was  
18 similar.

19 Q. Did you see the Doctor's  
20 genitalia on that visit?

21 A. No, I did not.

22 Q. Did he have any contact with  
23 your breast area on that visit?

24 A. Yes, he did.

25 Q. And we're talking about the

1     fourth visit.   What type of contact  
2     was that?

3     A.     I feel basically that it was  
4     more or less an attempted rape,  
5     different than it was on the third.

6     Q.     No, I'm sorry, ma'am, my  
7     question is, just whether he had any  
8     contact with your breast area?

9     A.     Yes.

10    Q.     And what type of contact was  
11    that with your breast area?

12    A.     Touching.

13    Q.     He touched you in the breast  
14    area?

15    A.     Yes.

16    Q.     Was that with your clothing  
17    on or off?

18    A.     I had all my street clothing  
19    on.

20    Q.     Did he touch you in the  
21    genital area?

22    A.     No.

23    Q.     Did you have any contact with  
24    his genital area?

25    A.     No, other than where he put

1 himself ---.

2 Q. And if I'm understanding what  
3 your saying, you're saying that the  
4 Doctor made contact with his genital  
5 area against your buttocks?

6 A. Again, yes.

7 Q. And were you clothed at that  
8 time?

9 A. No.

10 Q. What part of your clothing  
11 had been removed?

12 A. My pants, to my knees and  
13 bent over a table again.

14 Q. How did your pants come to be  
15 around your knees?

16 A. Because he basically forced  
17 them down.

18 Q. Did you ---?

19 A. He asked me, he says, did you  
20 have any more neck and back pain  
21 again, I said, well, yeah, I  
22 actually I have pains, slight pains  
23 going this way and I did that on top  
24 of my pants.

25 Q. Okay. And did he ask you to

1 remove your trousers?

2 A. Yes, he did, but he basically  
3 helped remove them.

4 Q. Okay. But I take it from  
5 that, that you also assisted in  
6 taking down your trousers?

7 A. Well, I may have unbuttoned  
8 them, but he was the one that  
9 basically removed them.

10 Q. And your testimony is that  
11 you felt the Doctor had ejaculated  
12 in your buttocks area again?

13 A. Yes, he did.

14 Q. Did you confront him at that  
15 time as to whether or not that was  
16 legitimate medical ---?

17 A. I was so emotionally upset.  
18 All I wanted to do was get out. I  
19 didn't even want to look at him.

20 Q. Ma'am, when is the first time  
21 that you talked to anyone about this  
22 incident?

23 A. It was after --- it was  
24 before he was arrested or whatever,  
25 before any charges were brought

1 against him.

2 Q. And who did you speak with?

3 A. I spoke to my Doctor  
4 Kozlowski.

5 Q. When is the first time that  
6 you spoke with any law enforcement  
7 official about this incident?

8 A. I don't know. I don't know  
9 what the date was. I don't know  
10 that.

11 Q. Was it before or after the  
12 news story came out about the other  
13 charges that the Doctor ---?

14 A. It was after.

15 OFF RECORD DISCUSSION

16 ATTORNEY TALADAY:

17 Thank you, ma'am.

18 That's all the questions I  
19 have.

20 MAGISTRATE FORD:

21 Anything on Redirect?

22 ATTORNEY CHERRY:

23 Just a couple of  
24 questions.

25 REDIRECT EXAMINATION

1        BY ATTORNEY CHERRY:

2        Q.        On your first visit when you  
3        testified, I believe you were asked  
4        a question about putting your feet  
5        on the crotch area? Did you notice  
6        any erection that the Doctor may  
7        have had?

8        A.        I can't say that I did,  
9        because I didn't try to look.

10       Q.        Okay.

11       A.        You didn't feel an erection  
12       of any of that, because my feet were  
13       not on his crotch, basically right  
14       ----.

15       Q.        On the thighs?

16       A.        Yeah, as close as you could  
17       get to the crotch area, without  
18       actually touching any part. Whether  
19       it be a male or female.

20       ATTORNEY CHERRY:

21       That's all I have.

22       ATTORNEY TALADAY:

23       Nothing further.

24       MAGISTRATE FORD:

25       You can step down.

1 A. Thank you.

2 MAGISTRATE FORD:

3 Any reason to think  
4 that she's going to be  
5 recalled?

6 ATTORNEY CHERRY:

7 No, not from us.

8 MAGISTRATE FORD:

9 Mr. Taladay?

10 ATTORNEY TALADAY:

11 No, Your Honor.

12 ATTORNEY CHERRY:

13 Is she going to be  
14 excused then?

15 MAGISTRATE FORD:

16 If you wish to leave,  
17 you may leave, if you wish to  
18 stay, you may do that also.

19 Does the Commonwealth have  
20 anything further?

21 ATTORNEY CHERRY:

22 Once again, Chief  
23 Clark filed information  
24 received --. If you'll  
25 stipulate to that --?

1 MAGISTRATE FORD:

2 Mr. Taladay?

3 ATTORNEY TALADAY:

4 Yes, Your Honor.

M A G I S T R A T E   F O R D :

ATTORNEY CHERRY

That's all we have.

11 ATTORNEY TALADAY:

12 Your Honor, move to  
13 dismiss one of the four  
14 counts of indecent assault

15 I believe dealing with the  
16 first visit, in that I don't  
17 think there was established  
18 any indecent contact during  
19 that particular ---.

ATTORNEY CHERRY:

21 I concur.

22 MAGISTRATE FORD:

1                   three counts of indecent  
2                   assault. There are  
3                   accompanied summaries, Mr.  
4                   Cherry, that are not heard  
5                   here today, would you be ---  
6                   is it your intention to deal  
7                   with them at trial on that  
8                   first visit or would you be  
9                   withdrawing?

10                   ATTORNEY CHERRY:

11                   I believe that we did  
12                   address that.

13                   MAGISTRATE FORD:

14                   Well, I don't consider  
15                   that, that's not the --- I  
16                   don't have ---.

17                   ATTORNEY CHERRY:

18                   We'll build that at  
19                   trial.

20                   MAGISTRATE FORD:

21                   At trial, so okay.  
22                   And then there will be the  
23                   four summary harassments  
24                   accompanying the three  
25                   indecent assaults. And that

1                   will be held to Court, it  
2                   will be placed on the trial  
3                   list. We will continue bail  
4                   where it is set and we need  
5                   to schedule a formal  
6                   arraignment, and we'll do  
7                   that at the completion of all  
8                   of the preliminary hearing.

9                   \* \* \* \* \*

10                  HEARING CONCLUDED AT 11:40 A.M.

11                  \* \* \* \* \*

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CERTIFICATE

I HEREBY CERTIFY, AS THE  
STENOGRAPHIC REPORTER, THAT THE  
FOREGOING PROCEEDINGS WERE REPORTED  
STENOGRAPHICALLY BY ME, AND  
THEREAFTER REDUCED TO TYPEWRITING BY  
ME OR UNDER MY DIRECTION; AND THAT  
THIS TRANSCRIPT IS A TRUE AND  
ACCURATE RECORD TO THE BEST OF MY  
ABILITY.

SARGENT'S COURT REPORTING  
SERVICE, INC.

*Jackie Haffett*  
COURT REPORTER

• PITTSBURGH, PA  
• CLEARFIELD, PA  
• BELLEFONTE, PA

• ERIE, PA  
• OIL CITY, PA

• WADDINGTON, PA

SARGENT'S  
COURT REPORTING  
SERVICE, INC.

210 Main Street  
Johnstown, PA 15901

• INDIANA, PA  
• GREENSBURG, PA

• PHILADELPHIA, PA  
• SOMERSET, PA  
• WILKES-BARRE, PA  
• CHARLESTON, WV



11/21/00

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

COMMONWEALTH OF PENNSYLVANIA :

-vs- : No. 99-748-CRA  
BASHIR A. YOUSUFZAI :

S E N T E N C E

NOW, this 21st day of November, 2000, Defendant having been convicted following trial by jury of Indecent Assault, two (2) counts, Misdemeanors of the Second Degree, and Harassment, four (4) counts, Summary Offenses, it is the SENTENCE of this Court on each count of Indecent Assault that he pay for the benefit of Clearfield County One Hundred (\$100.00) Dollars, plus costs of prosecution; that he serve a period of Probation of two (2) years under the supervision of the Clearfield County Department of Probation Services, Adult Division. Said periods of Probation to be served concurrent to each other and concurrent to that sentence entered this date to Indictment No. 99-744-CRA and be under the same terms and conditions as set forth therein. The Defendant shall have no contact with the victim, Cindy Weber, or any member of her immediate family. He shall make restitution in an amount to be determined by the Court.

Reed  
11/21/00

On each count of Harassment, that he pay a Fifty  
(\$50.00) Dollar fine, plus costs.

BY THE COURT,

/s/Fredric J. Ammerman

Judge

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

DEC 19 2000

Attest:

*[Signature]*



POLICE  
CRIMINAL COMPLAINT



Defendant's Name: BASHIR YOUSUFZAI

Docket Number:

AFFIDAVIT of PROBABLE CAUSE

Cindy E. Weber age 37 of R D #1 Box 38-1A DuBois Phone 375-7424 was referred to Doctor Yousufzai by her family Doctor. She had a total of four visits. Her first appointment was on August 16, 1999 and the last appointment was on September 3, 1999. The first visit he touched her face and put her feet into his crotch. On the 2nd visit he tried to kiss her. On the third and fourth visit he felt her breasts when testing of that area was not needed. He made her feel very uncomfortable. On the third and fourth visit he ejaculated on the rear portion of her panties as he had her bent over a table. She at all of her visits was afraid and was highly medicated at the time. He inappropriately touched her on all of her visits.

I, Darrell E. Clark, BEING DULY SWEORN ACCORDING TO  
LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE  
TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Darrell E. Clark

(Signature of Affiant)

Sworn to me and subscribed before me this 27 day of September, 1999.

9-27-99 Date Patrick N. G., District Justice

My commissi

8

Monday of January, 2000

SEAL

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

**46-3-01**

DJ Name: Hon.

**PATRICK N. FORD**  
Address: **109 NORTH BRADY STREET**  
**P.O. BOX 452**  
**DUBOIS, PA**  
Telephone: **(814) 371-5321**      **15801**

**BASHIR A. YOUSUFZAI**  
**2023 GREEN GLEN DR**  
**DUBOIS, PA 15801**

## **BAIL RELEASE CONDITIONS**

**COMMONWEALTH OF  
PENNSYLVANIA**

**VS.**

**DEFENDANT: YOUSUFZAI, BASHIR A.**  
NAME and ADDRESS  
**2023 GREEN GLEN DR**  
**DUBOIS, PA 15801**

**Docket No.: CR-0000310-99**  
**Date Filed: 9/27/99**  
**OTN: H 048236-6**



### **Release Conditions:**

**YOU SHALL NOT PERFORM ANY MEDICAL PROCEDURES,  
EXAMS, ETC. ON ANY FEMALE PATIENT OF ANY AGE,  
UNLESS IN THE PRESENCE OF ANOTHER PHYSICIAN,  
PHYSICIANS ASSISTANT OR FEMALE STAFF PERSON  
EMPLOYED BY ANY PHYSICIAN, HOSPITAL, MEDICAL  
CORPORATION OR OTHER ENTITY EMPLOYING THE  
DEFENDANT**

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Date \_\_\_\_\_, District Justice \_\_\_\_\_

**SEAL**

My commission expires first Monday of January, 2000.



9/27/99  
46-3-01

DISTRICT JUSTICE SYSTEM  
COMMONWEALTH OF PENNSYLVANIA

PAGE 1  
ADDITIONAL CHARGES

WARRANT OF ARREST

CR-0000310-99

COMMONWEALTH OF PENNSYLVANIA

VS

YOUSUFZAI, BASHIR A

CHARGE

DESCRIPTION

18 §2709 §§A1 (4 COUNTS) HARASSMENT



**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 Clerafield 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 retain 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



**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

**Liberty Medical Associates**  
41 Tenth Street  
DuBois, PA 15801  
ATTN.: Martin Shaffer, MD

**PERSONAL & CONFIDENTIAL**

**RE: PATIENT: Cindy Weber**  
**FILE NUMBER: 336954 02**

Dear Dr. Shaffer,

This letter confirms our telephone conversation in response to 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 # PO7211465 that was issued to you for the policy period from 1/1/99 to 1/1/00.

PMSLIC has retain the law firm of Meyer Darragh 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.

Liberty Medical Associates  
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: Walt Wall, Esq.

Sent by Certified and Regular Mail

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION

CINDY E. WEBER and  
RICKY L. WEBER

RECEIVED  
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 J. Ober*  
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 hereby certify that a true and correct copy of the foregoing **RECORD FOR MOTION FOR SUMMARY JUDGMENT** has been served upon the following on this 21<sup>st</sup> day of February, 2002, by the United States Postal Service, first class mail, postage prepaid:

Bashir Yousufzai, M.D.  
500 First Street  
DuBois, PA 15801

John W. Heslop, Esquire  
Goldstein, Heslop, Steele, Clapper,  
Oswalt & Stoehr  
414 N. Logan Boulevard  
Altoona, PA 16602

Brian D. Cox, Esquire  
Woomer & Friday, LLP  
3220 West Liberty Avenue, Suite 200  
Pittsburgh, PA 15216

THOMSON, RHODES & COWIE, P.C.

By \_\_\_\_\_  
Robert J. Pfaff, Esquire  
Attorneys for plaintiff

**FILED**

FEB 22 2002

11:16 p.m.  
William A. Shaw  
Prothonotary

no cc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff,

vs.

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

Defendants.

CIVIL DIVISION

No. 01-1488-CD

ACTION FOR DECLARATORY  
JUDGMENT

PRAECIPE FOR ENTRY OF JUDGMENT  
ON BEHALF OF PLAINTIFF

Filed on behalf of plaintiff

Counsel of Record for this Party:

Robert J. Pfaff, Esquire  
PA I.D. #17371

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

(412) 232-3400

**FILED**

**MAY 13 2002**

William A. Shaw  
Prothonotary

**PRAECIPE FOR ENTRY OF JUDGMENT ON BEHALF OF PLAINTIFF**

TO: WILLIAM A. SHAW, PROTHONOTARY

Please enter judgment on behalf of plaintiff in the action No. 01-1488-CD based upon the attached Order of Court dated May 17, 2002.

THOMSON, RHODES & COWIE, P.C.

By   
Robert J. Pfaff, Esquire  
Attorneys for plaintiff

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.

*John K. Reilly*  
Prothonotary/  
Clerk of Courts



CERTIFICATE OF SERVICE

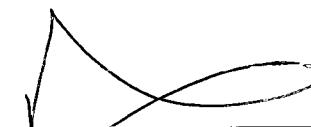
I hereby certify that a true and correct copy of the foregoing PRAECIPE FOR ENTRY  
OF JUDGMENT ON BEHALF OF PLAINTIFF has been served upon the following on this  
9<sup>th</sup> day of May, 2002, by the United States Postal Service, first class mail, postage prepaid:

John W. Heslop, Esquire  
Goldstein, Heslop, Steele, Clapper,  
Oswalt & Stoehr  
414 N. Logan Boulevard  
Altoona, PA 16602

Brian D. Cox, Esquire  
Woomer & Friday, LLP  
3220 West Liberty Avenue, Suite 200  
Pittsburgh, PA 15216

Bashir Yousufzai, M.D.  
54 Arbor Hill Road, Apt. B  
Richmond, VA 23233-3137

THOMSON, RHODES & COWIE, P.C.

By   
Robert J. Pfaff, Esquire  
Attorneys for plaintiff

**FILED**

AM 4 P.M.  
JUN 10 2002

MAY 13 2002

20.00

*Ques*

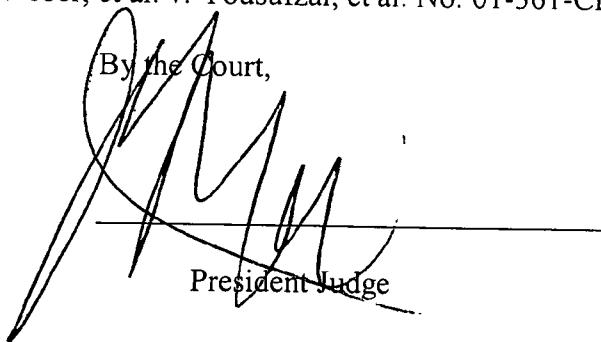
William A. Shaw  
Prothonotary

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,  
  
President Judge

**FILED**

MAY 07 2002  
05/07/02 Cnty. Clk's Office  
William A. Shaw Prothonotary  
cc: Atty Cox  
cc: Atty Rayb

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff,

vs.

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

Defendants.

CIVIL DIVISION

No. 01-1488-CD

ACTION FOR DECLARATORY  
JUDGMENT

NOTICE OF ENTRY OF JUDGMENT ON  
BEHALF OF PLAINTIFF

Filed on behalf of plaintiff

Counsel of Record for this Party:

Robert J. Pfaff, Esquire  
PA I.D. #17371

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

(412) 232-3400

**FILED**

**MAY 13 2002**

William A. Shaw  
Prothonotary

**NOTICE OF ENTRY OF JUDGMENT ON BEHALF OF PLAINTIFF**

TO: ALL DEFENDANTS

Please be advised that judgment has been entered on behalf of plaintiff in the action No. 01-1488-CD.

THOMSON, RHODES & COWIE, P.C.

By   
Robert J. Pfaff, Esquire  
Attorneys for plaintiff

CERTIFICATE OF SERVICE

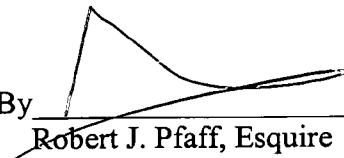
I hereby certify that a true and correct copy of the foregoing NOTICE OF ENTRY OF  
JUDGMENT ON BEHALF OF PLAINTIFF has been served upon the following on this 9 <sup>th</sup>  
day of May, 2002, by the United States Postal Service, first class mail, postage prepaid:

John W. Heslop, Esquire  
Goldstein, Heslop, Steele, Clapper,  
Oswalt & Stoehr  
414 N. Logan Boulevard  
Altoona, PA 16602

Brian D. Cox, Esquire  
Woomer & Friday, LLP  
3220 West Liberty Avenue, Suite 200  
Pittsburgh, PA 15216

Bashir Yousufzai, M.D.  
54 Arbor Hill Road, Apt. B  
Richmond, VA 23233-3137

THOMSON, RHODES & COWIE, P.C.

By   
Robert J. Pfaff, Esquire  
Attorneys for plaintiff

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff

vs.

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

Defendants

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 01-1488-CD

**MOTION FOR SUMMARY JUDGMENT  
BY DEFENDANT, LIBERTY PHYSICAL  
MEDICINE & REHABILITATION  
ASSOCIATES, P.C.**

Filed on behalf of Defendant, Liberty Physical  
Medicine & Rehabilitation Associates, P.C.

Counsel of record for this party:

John W. Heslop, Jr., Esquire  
Attorney I.D. #32299

GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR  
414 N. Logan Boulevard  
Altoona, PA 16602

(814) 946-4391

ACTION FOR DECLARATORY JUDGMENT

JURY TRIAL DEMANDED

**FILED**

MAR 25 2002

mls/kc at  
William A. Shaw  
Prothonotary  
*[Signature]*

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff

vs.

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

Defendants

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

: CIVIL ACTION - LAW

: NO. 01-1488-CD

: ACTION FOR DECLARATORY JUDGMENT

: JURY TRIAL DEMANDED

**ORDER**

**AND NOW**, this \_\_\_\_\_ day of \_\_\_\_\_, 2002, the Motion for Summary Judgment of  
Liberty Physical Medicine & Rehabilitation Associates, P.C. is hereby granted. Liberty Physical  
Medicine & Rehabilitation Associates, P.C. is dismissed with prejudice as a Defendant in this action.

BY THE COURT:

---

J.

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY, : IN THE COURT OF COMMON PLEAS OF  
Plaintiff : CLEARFIELD COUNTY, PENNSYLVANIA  
vs. : CIVIL ACTION - LAW  
BASHIR YOUSUFZAI, M.D., LIBERTY :  
PHYSICAL MEDICINE & :  
REHABILITATION ASSOCIATES, P.C., : ACTION FOR DECLARATORY JUDGMENT  
CINDY E. WEBER, and RICKY L. WEBER, :  
Defendants : JURY TRIAL DEMANDED

**MOTION FOR SUMMARY JUDGMENT BY DEFENDANT  
LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.**

**AND NOW**, comes Defendant, **LIBERTY PHYSICAL MEDICINE & REHABILITATION  
ASSOCIATES, P.C.**, (hereinafter "Liberty") by its counsel, Goldstein, Heslop, Steele, Clapper, Oswalt & Stoehr and files this Motion for Summary Judgment for the reasons set forth as follows:

1. Defendants, Cindy E. Weber and Ricky L. Weber, had commenced an action in the Court of Common Pleas of Clearfield County, Pennsylvania, at Civil Action No. 01-361-CD against Bashir Yousufzai, M.D. and Liberty. The basis for the Webers' action was alleged sexual assaults by Dr. Yousufzai in August and September of 1999 when Dr. Yousufzai worked for Liberty.
2. The Plaintiff in this declaratory judgment action, Pennsylvania Medical Society Liability Insurance Company (hereinafter "PMSLIC") began defending both Defendants in the underlying action pursuant to a reservation of rights.
3. PMSLIC then instituted this Action for Declaratory Judgment asking the Court to declare that it did not have to provide coverage nor did it have a duty to defend the Defendants under various policies of insurance issued to the Defendants.
4. During the pendency of the declaratory judgment action, the Court of Common Pleas of Clearfield County dismissed Liberty as a Defendant in the underlying action.
5. By Order dated March 1, 2002, the Honorable John K. Reilly, P.J., entered an Order dismissing

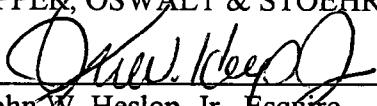
Liberty, its officers, directors, shareholders, agents, servants and employees (except Dr. Yousufzai) as parties in the underlying action. A copy of the March 1, 2002, Order of Court in the underlying action (No. 01-361-CD) is attached hereto, incorporated herein by reference as if fully set forth at length and marked as Exhibit "A".

6. Since Liberty has now been dismissed as a party in the underlying lawsuit, it is Liberty's position that the current declaratory judgment action filed by PMSLIC is moot as to Liberty.

7. Since the declaratory judgment action is now moot as to Defendant Liberty, Defendant Liberty requests that it be dismissed from the declaratory judgment action as a party.

WHEREFORE, Liberty requests that the Court grant this Motion for Summary Judgment and dismiss it as a Defendant in this declaratory judgment action.

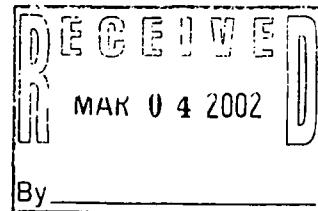
GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR

By 

John W. Heslop, Jr., Esquire  
Attorney for Defendant, Liberty Physical  
Medicine & Rehabilitation Associates, P.C.  
Attorney I.D. #32299

414 N. Logan Boulevard  
Altoona, PA 16602  
(814) 946-4391

Date: 3/21/02



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

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:

/s/ JOHN K. REILLY, JR.

John K. Reilly, P.J.

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

EXHIBIT

tabbed

A

MAR 01 2002

Attest: *William L. Reilly*  
Prothonotary

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff

vs.

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

Defendants

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

NO. 01-1488-CD

**ANSWER TO MOTION FOR SUMMARY  
JUDGMENT**

Filed on behalf of Defendant, Liberty Medical  
Associates, P.C.

Counsel of record for this party:

John W. Heslop, Jr., Esquire  
Attorney I.D. #32299

GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR  
414 N. Logan Boulevard  
Altoona, PA 16602

(814) 946-4391

ACTION FOR DECLARATORY JUDGMENT

JURY TRIAL DEMANDED

**FILED**

MAR 25 2002

WILLIAM A. SHAW  
Prothonotary  
EKL

PENNSYLVANIA MEDICAL SOCIETY LIABILITY INSURANCE COMPANY,	:	IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiff	:	CIVIL ACTION - LAW
vs.	:	NO. 01-1488-CD
BASHIR YOUSUFZAI, M.D., LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C., CINDY E. WEBER, and RICKY L. WEBER,	:	ACTION FOR DECLARATORY JUDGMENT
Defendants	:	JURY TRIAL DEMANDED

**ANSWER TO MOTION FOR SUMMARY JUDGMENT**

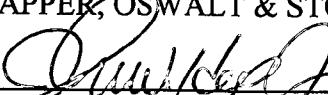
**AND NOW**, comes Defendant, **LIBERTY MEDICAL ASSOCIATES, P.C.**, named in the caption of this action as **LIBERTY PHYSICAL MEDICINE & REHABILITATION ASSOCIATES, P.C.**, by its counsel, Goldstein, Heslop, Steele, Clapper, Oswalt & Stoehr and files this Answer to the Motion of the Plaintiff for Summary Judgment.

1. Admitted.
2. Admitted.
3. Admitted.
4. The averments of Paragraph 4 are specifically denied in that the Plaintiff is not entitled to any judgment as a matter of law against Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C. On the contrary, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., has been dismissed as a party in the underlying action (No. 01-361-CD - Clearfield County). A copy of an Order of Court dated March 1, 2002, which dismisses Liberty Physical Medicine & Rehabilitation Associates, P.C. as a party in the underlying action is attached hereto, incorporated by reference as if set forth herein, and marked as Exhibit "A". Accordingly, the current declaratory judgment action is moot as to Liberty Physical Medical & Rehabilitation Associates, P.C. since that entity is no longer a party in the underlying action. Accordingly, the Court should make no order which declares the rights of the Plaintiff as against

Liberty Physical Medicine & Rehabilitation Associates, P.C. On the contrary, Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., should be dismissed as a Defendant in the declaratory judgment action since that action is now moot as to it.

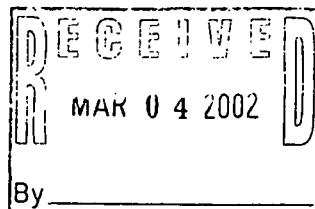
GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR

By

  
John W. Heslop, Jr. Esquire  
Attorney for Defendant,  
Liberty Medical Associates, P.C.  
Attorney I.D. #32299

414 N. Logan Boulevard  
Altoona, PA 16602  
(814) 946-4391

Date: 3/21/02



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

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:

/s/ JOHN K. REILLY, JR.

John K. Reilly, P.J.

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

EXHIBIT

tabbles\*

A

MAR 01 2002

Attest: William A. Reilly  
Prothonotary

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

Plaintiff

vs.

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

Defendants

: IN THE COURT OF COMMON PLEAS OF  
: CLEARFIELD COUNTY, PENNSYLVANIA  
:  
: CIVIL ACTION - LAW  
:  
: NO. 01-1488-CD  
:  
:  
: ACTION FOR DECLARATORY JUDGMENT  
:  
:  
: JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

This is to certify that I, John W. Heslop, served a copy of the Answer to Motion for Summary  
Judgment on the 21<sup>st</sup> day of March, 2002, via First Class United States Mail, postage prepaid  
and addressed to the following:

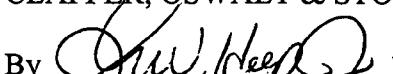
Robert J. Pfaff, Esquire  
THOMSON, RHODES & COWIE  
1010 Two Chatham Center  
Pittsburgh, PA 15219

Bashir Yousufzai, M.D.  
540B Arborhill Road  
Richmond, VA 23233

Brian D. Cox, Esquire  
WOOMER & FRIDAY  
3220 West Liberty Avenue  
Suite 200  
Pittsburgh, PA 15216

GOLDSTEIN, HESLOP, STEELE,  
CLAPPER, OSWALT & STOEHR

By

  
John W. Heslop, Jr., Esquire  
Attorney for Defendant,  
Liberty Medical Associates, P.C.  
Attorney I.D. #32299

414 N. Logan Boulevard  
Altoona, PA 16602  
(814) 946-4391

PENNSYLVANIA MEDICAL SOCIETY  
LIABILITY INSURANCE COMPANY,

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

Plaintiff

: CIVIL ACTION - LAW

vs.

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

: NO. 01-1488-CD

: ACTION FOR DECLARATORY JUDGMENT

Defendants

: JURY TRIAL DEMANDED

**CERTIFICATE OF SERVICE**

This is to certify that I, John W. Heslop, served a copy of the Motion for Summary Judgment by Defendant, Liberty Physical Medicine & Rehabilitation Associates, P.C., on the 21<sup>st</sup> day of March, 2002, via First Class United States Mail, postage prepaid and addressed to the following:

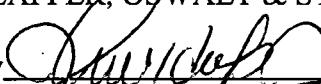
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Attorney for Defendant, Liberty Physical  
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