

01-1614-C3  
RICHARD GATHAGAN -vs- AMERICAN HOMEPATIENT, INC.

FILED

SEP 27 2001  
013401  
William A. Shaw  
Prothonotary

att. Naddeo  
p2 88.00

see sheet

**William A. Shaw**  
Prothonotary

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

RICHARD GATHAGAN,  
Plaintiff,

v.

AMERICAN HOMEPATIENT,  
INC.,  
Defendant.

\*  
\*  
\*  
\* No. 01 - - CD  
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NOTICE

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

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

COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURT HOUSE  
Market and Second Streets  
Clearfield, PA 16830

(814) 765-2641

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

RICHARD GATHAGAN,	*	
Plaintiff,	*	
	*	
v.	*	No. 01 - - CD
	*	
AMERICAN HOMEPATIENT,	*	
INC.,	*	
Defendant.	*	

COMPLAINT

NOW COMES the Plaintiff, Richard Gathagan, and by his attorney, James A. Naddeo, Esquire, files the within Complaint to Quiet Title, averring as follows:

I. PARTIES AND PREMISES

1. That the Plaintiff, Richard Gathagan, is a sui juris, adult individual whose address is 29 South Second Street, Clearfield, Pennsylvania 16830.

2. That the Defendant, American HomePatient, Inc., is a Delaware corporation, whose principal place of business is believed to be 5200 Maryland Way, Suite 400, Brentwood, Tennessee 37027, which corporation regularly does business in the Commonwealth of Pennsylvania where it maintains a place of business at Route 53 North, Box 369, Houtzdale, Pennsylvania 16651.

3. Currently operating as American HomePatient, Inc., the premises which comprises the subject of this lawsuit is an improved parcel of land consisting of a combination warehouse

and office building located on Route 53 North, Box 369, Houtzdale, in the Township of Woodward, County of Clearfield and Commonwealth of Pennsylvania (hereinafter designated as the "subject premises").

4. On or about December 14, 1995, Richard Gathagan, an individual, entered into a Lease Agreement with American HomePatient, Inc., a Delaware corporation, relative to American's occupancy and operation of the subject premises as a warehouse and office. A copy of this December 14, 1995 Lease Agreement is attached hereto as Exhibit "A".

5. Currently Richard Gathagan owns the subject premises and acts as landlord pursuant to the Lease.

6. The Defendant currently possesses the subject premises as tenant, and operates same as a warehouse and office.

## II. FACTUAL BACKGROUND

7. The Averments set forth in Paragraphs 1 through 6 hereof are incorporated by reference as though set forth at length.

8. The rent commencement date under the Lease was the 1<sup>st</sup> day of November, 1995 for a primary term of three (3) years until October 31, 1998. See Exhibit "A" at p. 2 ¶3.

9. The Lease afforded the Defendant the option to extend the Lease term for a period of three (3) additional one-

year terms which the Defendant exercised. See Exhibit "A" at p. 2 ¶4.

10. On September 25, 2001 Plaintiff expressly informed the Defendant that the Defendant's final one-year option period expires on October 31, 2001 and that the premises is to be vacated by October 31, 2001. A copy of the correspondence in this regard is attached hereto as Exhibit "B".

11. That no holdover right exists pursuant to the Lease or otherwise.

12. Notwithstanding the rapidly-approaching October 31, 2001 Lease expiration date, and Plaintiff's request that it do so, the Defendant has yet to contact Plaintiff regarding its timely vacation of the subject premises, i.e. with respect to removal of signs, removal of inventory and trade fixtures, estimated move-out date, etc.

13. To the contrary evidence of the Defendant's intention to improperly hold over beyond the lease term exists by virtue of the Defendant having entered into an alternative leasing arrangement with another local landlord; occupancy to commence after the expiration of Defendant's current Lease with Plaintiff.

14. Should the Defendant hold over beyond the Lease expiration date, however, Plaintiff will suffer prejudice insofar as it has the opportunity to procure a replacement

tenant for the subject premises; said tenant having the ability to commence occupancy as early as November 1, 2001.

15. The Defendant's failure to apprise Plaintiff of the time and manner in which it will vacate the subject premises is further evidence that it intends to hold over beyond Lease expiration date, thereby prejudicing Plaintiff in its negotiations with prospective tenants.

### III. ACTION TO QUIET TITLE

16. The averments set forth in Paragraphs 1 through 15 hereof are incorporated by reference as though set forth in their entirety.

17. Pursuant to the Lease provisions as above-described, the Defendant will have no estate, title right or possessory interest in the subject premises after October 31, 2001.

18. However, by its failure to acknowledge that no holdover right exists in this regard, and its failure to apprise or cooperate with Plaintiff relative to a timely vacation of the subject premises, the Defendant has effectively asserted an unwarranted interest in - and has effectuated a cloud on the title to - the subject premises beyond October 31, 2001.

19. Notwithstanding the Defendant's current and unequivocal intention to hold over beyond the applicable Lease



term, an action for ejectment cannot be maintained by Plaintiff prior to its November 1, 2001 right of occupancy.

20. Adjudication of this matter must not await a November 1, 2001 action for ejectment, however, insofar as the Defendant's conduct and omissions have severely prejudiced Plaintiff in negotiating a lease of the subject premises with another tenant.

21. Upon information and belief, Plaintiff would lose the opportunity to lease the subject premises to said prospective tenant were the Defendant to breach the Lease and hold over beyond the October 31, 2001 expiration date.

22. By necessity, therefore, this Action to Quiet Title seeks immediate judicial determination and enforcement of the parties' respective rights and interests in the subject premises as of October 31, 2001.

#### IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court award the following relief:

(i) That Defendant be required to set forth the nature of any and alleged claims to the subject premises after October 31, 2001;

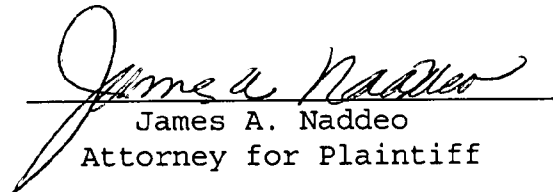
(ii) For a decree of this Court determining the merit of the Defendant's claims to the subject premises after October 31, 2001;

(iii) For said decree to declare that, based upon the express provisions of the applicable Lease, and the proximate conduct of the parties as above-described, Defendant has no right, title or possessory interest whatsoever in or to the subject premises, or any part thereof, after October 31, 2001;

(iv) For said decree to permanently enjoin Defendant, and any and all persons or entities claims under it, from asserting any estate, right, title or possessory interest in the subject premises after October 31, 2001 without the express consent of the Plaintiff;

(v) For costs of this action to Quiet Title; and

(vi) For such other and further relief as this Honorable Court may deem just and proper.

  
James A. Naddeo  
Attorney for Plaintiff

This instrument was prepared by:

Lauren W. Anderson, Esq.  
Harwell, Howard, Hyne,  
Gabbert & Manner, P.C.  
1800 First American Center  
315 Deaderick Street  
Nashville, Tennessee 37238

### LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease"), is entered into on December 14, 1995, to be effective as of November 1, 1995, by and between RICHARD GATHAGAN, an individual resident of the Commonwealth of Pennsylvania ("Landlord"), and AMERICAN HOMEPATIENT, INC., a Delaware corporation ("Tenant").

### RECITALS

A. Landlord and Tenant have entered into an Asset Purchase Agreement dated November 30, 1995 ("Asset Purchase Agreement") pursuant to which Tenant is acquiring substantially all of the assets of Landlord used in the operation of a sole proprietorship known as Life Support Products.

B. Landlord currently uses the "Premises" in connection with such operation.

C. Landlord and Tenant desire that Landlord lease the Premises to Tenant pursuant to the terms of this Lease.

### AGREEMENT

In consideration of the mutual promises and covenants set forth herein and in the Asset Purchase Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant, intending to be legally bound hereby, agree as follows:

1. Leased Premises. Landlord hereby grants, leases, lets and demises unto Tenant for the term ("Term") set forth in Section 3 below, the premises ("Premises") comprised of approximately 4,000 square feet of office space and 10,000 square feet of warehouse space, located at Route 53 North, Box 369, Houtzdale, Pennsylvania 16651 and all structures, improvements and fixtures forming a part thereof and all appurtenances, easements and rights-of-way related thereto (collectively, the "Premises"). Tenant will use the Premises in connection with the operation of a home healthcare business and for no other use except with the prior written consent of Landlord.

2. Rent. Tenant shall pay to Landlord the sum of Two Thousand Seven Hundred Fifty and No/100 Dollars (\$2,750.00) ("Rent") on or before the fifth (5th) day of

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HOTEL LEASE

each month during the Term. Rent payments shall be prorated for any partial month of occupancy based upon the number of days in that month.

3. Term. The term ("Term") of this Lease shall begin as of November 1, 1995 and shall be for a period of three (3) years until October 31, 1998. The Term shall include any renewal term as provided for in Section 4 hereof.

4. Option. The Term of this Lease may be extended by Tenant for three additional one year terms ("Option") upon the same terms and conditions as contained in this Lease. Tenant may exercise an Option by delivering written notice of its election thereof to Landlord not less than sixty (60) days before the expiration of the then current Term.

5. Quiet Enjoyment. Landlord covenants and warrants to Tenant that Landlord has good right and full power and authority to execute this Lease and to grant the term hereof demised, and that Tenant, upon paying the Rent and performing its covenants hereunder, shall peaceably and quietly have, hold and enjoy the Premises during the Term hereof free from disturbance by Landlord and persons claiming by, through or under Landlord.

6. Real Estate Taxes and Assessments. Tenant agrees to pay all real estate taxes assessed or levied against the Premises which are applicable to periods of Tenant's occupancy during the Term before same shall become delinquent unless the same are being reasonably contested by Tenant.

7. Utilities. Tenant shall pay the costs of all utilities and services provided for the benefit of the Premises during the Term, including, but not limited to, all gas, propane, electricity, water, telephone and sewer charges, directly to the applicable utility provider.

8. Insurance. (a) Tenant shall procure and pay the premiums for general liability insurance with minimum limits of \$1,000,000 for injury or death in each accident or occurrence, \$2,000,000 for injury or death in the annual aggregate, and \$500,000 for property damage in each accident or occurrence. Landlord shall be named as additional or named insured on such insurance. Tenant shall not terminate such insurance without providing thirty (30) days written notice to Landlord and shall replace any insurance so terminated without lapse in coverage. Tenant shall also maintain insurance for Tenant's benefit covering its property located at or in the Premises.

(b) Notwithstanding any other provision of this Lease, neither Landlord nor Tenant shall be liable to the other nor to any insurer of the other claiming by way of subrogation or otherwise through or under either one with respect to any loss or damage to any building, structure, contents or other property normally covered under a standard all-risk property form, even though such damage may have been occasioned by the negligence of such party, its agents, employees or invitees; and each party shall notify its insurance companies of this waiver.

9. Destruction of or Damage to Premises.

(a) In case of casualty to the Premises resulting in partial or total damage or destruction, whether insured or not insured, Landlord shall have fifteen (15) days to elect whether Landlord shall restore, replace or rebuild the same and in the event Landlord so elects, Landlord shall diligently pursue such restoration, replacement or rebuilding to completion. If Landlord does not notify Tenant of his election to rebuild within such fifteen (15) day period, Tenant may terminate this Lease upon notice to Landlord, which termination shall be deemed effective and shall abate rent as of the date of such casualty.

(b) Tenant shall promptly deliver to Landlord any insurance proceeds it receives pertaining to the Premises. The parties acknowledge and agree that Tenant may receive insurance proceeds pertaining to assets located on the Premises which are not the subject of this Lease, which proceeds are agreed to be the property of Tenant and, accordingly, shall not be delivered to Landlord.

(c) If Landlord elects to restore, replace or rebuild the Premises, or if Tenant does not elect to terminate the Lease, Tenant shall be entitled to a reasonable suspension or diminution of the Rent during the time required for restoration and repair according to the portion of the Premises rendered untenable, taking into consideration the time and extent of interference with the usual conduct of Tenant's business therein. Upon completion of the restoration work, the Rent shall resume in the full amount.

10. Eminent Domain.

(a) If the whole or any part of the Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then this Lease shall terminate only as to the taken portion and the Rent shall be reduced, effective as of the date on which the condemning authority takes possession, in the same proportion that the area of the Premises taken bears to the area of the entire Premises before the taking. Notwithstanding the foregoing, if twenty-five-percent (25%) or greater of the Premises are so taken, Tenant may, at its option, terminate this Lease in its entirety.

(b) In the event of any condemnation or taking as aforesaid, in whole or in part, except as provided below, Tenant shall not be entitled to any part of the award paid for such condemnation, and Landlord shall receive the full amount of such award. Tenant shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Tenant on account of any and all damages to Tenant's business by reason of the condemnation, and for or on account of any cost or loss to which Tenant might be put in removing its merchandise, furniture, fixtures, leasehold improvements and equipment.

11. Maintenance. During the Term, Tenant shall be responsible for general and ordinary maintenance and repair of the Premises, including glass, fixtures and equipment, heating and air conditioning, electrical and plumbing systems, and all other interior improvements, unless any such repairs or maintenance arise in relation to a breach by

Landlord of the representation set forth in the last sentence of Section 13(a). Tenant shall not commit waste upon the Premises. Upon the expiration of this Lease, Tenant shall surrender the Premises to Landlord broom clean, and in as good condition as delivered to Tenant, reasonable wear and tear, loss by fire, and other unavoidable casualty excepted. Landlord shall maintain and repair all structural aspects of the Premises including, but not limited to, the foundation, interior and exterior wall, and roof, unless any such repairs or maintenance are required as a result of the negligence of Tenant or its agents. Each party shall complete such maintenance and repairs within a reasonable time, in Landlord's case, following receipt of notice from Tenant regarding the need of such repair or maintenance.

12. Alterations and Additions. Upon the prior consent of Landlord, not to be unreasonably withheld or delayed, Tenant shall have the right, at its own expense, to make such non-structural alterations, additions or changes to the building during the Term as it deems necessary or desirable for the purpose of conducting its business. All such alterations, additions and changes shall be made at Tenant's expense, in a good and workmanlike manner, and in compliance with all applicable laws, ordinances, rules, regulations, permits and authorizations. Tenant shall promptly discharge all liens or charges for services rendered or materials furnished in connection with all alterations, additions and changes, and shall, upon request of Landlord, provide proof of same. Upon the expiration of this Lease, all alterations, additions and changes made by Tenant shall remain with the Premises; provided, however, that Tenant may remove (and will remove if so directed by Landlord) any of its equipment and trade fixtures, if, at its cost, Tenant restores the Premises to the condition as it existed prior to installation of the equipment and fixtures, ordinary wear and tear excepted.

13. Representations and Covenants of Landlord. As the material inducement to Tenant to enter into this Lease, Landlord hereby represents, warrants and covenants to Tenant as follows:

(a) The Premises are, and will be at all times during the Term (unless such noncompliance results from the acts or omissions of Tenant), in compliance with all zoning, public health, building code or other similar laws applicable thereto and to the ownership, occupancy and operation thereof, and there exist no waivers or exemptions with respect to any nonconforming use or other zoning or building code matters pertaining to the Premises. The Premises are in good and operable condition, and Landlord acknowledges that Tenant's obligations pursuant to Section 11 are undertaken in reliance on this representation.

(b) Landlord is the sole and exclusive record, legal and equitable owner of all right, title and interest in, has good, marketable and insurable title and fee simple to, and is in possession of, all of the Premises, free and clear of all mortgages (except that certain mortgage in favor of County National Bank, liens, leases, assessments, easements, covenants, options, rights of refusal, restrictions, reservations, defects in title, encroachments and other encumbrances. Landlord has all easements and rights necessary to allow Tenant to use the Premises in connection with its business.

(c) Landlord has kept, and will throughout the Term keep, the Premises free of any lien imposed pursuant to Environmental Law. With respect to the Premises, Landlord has complied with and will continue to comply with, and, to the best knowledge of Landlord, all prior owners, operators and occupants of the Premises have complied with, Environmental Law. Except as duly licensed or authorized by appropriate governmental authorities or otherwise permitted by Environmental Law, neither Landlord, its Affiliates or, to the best knowledge of Landlord, its Agents have allowed or will allow the use, generation, treatment, handling, release, emission, manufacture, discharge, voluntary transmission, storage or removal of any Hazardous Substances over, in or upon the Premises, nor, to the best knowledge of Landlord, have the Premises ever been used for any of the foregoing. Neither Landlord, its Affiliates, nor to the best of its knowledge, its Agents, have installed or permitted be installed in or on the Premises friable asbestos or any substance containing asbestos in condition or amount deemed hazardous by Environmental Law. Landlord has not in any time engaged in nor permitted, nor to the best knowledge of the Landlord, has any tenant or other occupant of the Premises engaged in or permitted, any dumping, discharge, disposal, spillage or leakage (whether legal or illegal, accidental or intentional) of Hazardous Substances at, on, in or about the Premises that would subject the Premises or Tenant to clean up obligations imposed by governmental authorities. Landlord has not received or been issued a notice, demand, request for information, citation, summons or complaint regarding an alleged failure to comply with Environmental Law; the Premises are not subject to any existing, pending or threatened investigation or inquiry by any governmental authority for failure to comply with Environmental Law; and there are no circumstances known to Landlord which serve as a basis therefor. Landlord will immediately notify Tenant in writing of any such notices, demands, requests, citations, summons, complaints, investigations or inquiries arising during the Term. There are no underground storage tanks on the Premises. To the best knowledge of Landlord, no portion of the Premises has ever been used as a landfill. For purposes of this clause (c), the terms "Environmental Law," "Affiliates," "Agents" and "Hazardous Substances" will have the respective meanings ascribed to each in the Asset Purchase Agreement.

(d) . To the best of Landlord's knowledge, there are no public improvements which may result in special assessments against or otherwise affect the Premises. There are no encroachments upon the Premises and no encroachments of any improvements to the Premises on to adjacent property which materially adversely effect Tenant's use and quiet enjoyment of the Premises. None of the improvements to the Premises violate set-back, building or side lines, nor do they encroach on any easements located on the Premises, in a manner which materially adversely effect Tenant's use and quiet enjoyment of the Premises. There are no facts known to Landlord that would adversely effect Tenant's possession, use or occupancy of the Premises.

14. Assignment and Subletting. Tenant may not assign this Lease or sublet any portion of the Premises without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Tenant may assign this Lease or sublet any portion of the Premises to any of its affiliates without the consent of Landlord. Neither this Lease, any interest therein, nor any estate hereby created shall pass

to any trustee or receiver in bankruptcy, any estate of Tenant, any assignee of Tenant for the benefit of creditors, or by operation of law (other than to Tenant's affiliates) without Landlord's prior written consent.

15. Default.

(a) This Lease is made on condition that if any one or more of the following events shall happen:

(i) Tenant shall fail to pay Rent as set forth in Section 2 hereof or if Tenant shall fail to make any payments required by Sections 6, 7 or 8 hereof;

(ii) Tenant shall neglect or fail to perform or observe any of its covenants other than those referenced in clause (i), (iii) or (iv) of this Section 15(a), and Tenant shall fail to begin to remedy the same within thirty (30) days after Landlord shall have given to Tenant written notice specifying such neglect or failure;

(iii) Tenant shall: (i) be adjudicated a bankrupt or insolvent; (ii) file a petition in bankruptcy or for reorganization, or for the adoption of an arrangement under the Bankruptcy Act (as now or in the future amended); or (iii) make an assignment of its property for the benefit of its creditors; or

(iv) Tenant shall abandon the Premises;

then Landlord shall have the right, at its election, after notice to Tenant and while such event of default shall continue, either:

(y) to give Tenant written notice of Landlord's intention to terminate this Lease on the date of such notice, or at any later date specified therein, and on such specified date Tenant's right to possession of the Premises shall cease, but Tenant will remain liable for damages as provided in this Lease, and this Lease shall thereupon be terminated; or

(z) To re-enter and take possession of the Premises, or any part thereof, and repossess the same as of Landlord's former estate, and to expel Tenant and those claiming through or under Tenant, and remove the property of either or both. In any event, Landlord shall use his reasonable efforts to relet the Premises and mitigate any damages.

(b) This Lease is made on condition that if any one or more of the following events shall happen:

(i) Landlord shall fail to maintain the Premises as set forth in Section 11 hereof;



(ii) Landlord shall neglect or fail to perform or observe any of its covenants other than those referenced in clause (i) or (iii) of the Section 15(b), and Landlord shall fail to remedy the same within thirty (30) days after Tenant shall have given to Landlord written notice specifying such neglect or failure; or

(iii) Landlord shall: (i) be adjudicated a bankrupt or insolvent; (ii) file a petition in bankruptcy or for reorganization, or for the adoption of an arrangement under the Bankruptcy Act (as now or in the future amended); or (iii) make an assignment of its property for the benefit of its creditors;

then Tenant shall have the right, at its election, after notice to Landlord and while such event of default shall continue, either:

(y) to give Landlord written notice of Tenant's intention to terminate this Lease on the date of such notice, or at any later date specified therein, and on such specified date Tenant's right to possession of the Premises shall cease, but Landlord will remain liable for damages as provided in this Lease, and this Lease shall thereupon be terminated; or

(z) to perform the maintenance or repairs required of Landlord pursuant to Section 11 hereof and recover any cost or expense incurred by Tenant in causing such repairs from Landlord, including, without limitation, by deducting any cost or expense from future Rent payments.

16. Notices. All notices to be given hereunder by either of the parties shall be in writing. Any notice shall be deemed duly served if mailed by registered or certified mail, return receipt requested, with proper postage prepaid, addressed as follows:

If to Tenant:

American HomePatient, Inc.  
105 Reynolds Drive  
Franklin, Tennessee 37064  
Attn: President

If to Landlord:

Richard Gathagan  
Route 53 North, Box 369  
Houtzdale, Pennsylvania 16651

Either party may change the address to which notices may be sent by delivering a copy thereof to the other party in the manner aforesaid. If service shall be made by registered or certified mail, such service shall be complete as of two (2) days following the mailing of such notice in the manner aforesaid.

17. Holding Over Not Construed as Renewal. If, upon the expiration of this Lease, Tenant shall hold over the Premises without any written agreement as to a new term, such holding over shall be a tenancy from month-to-month only, with all other terms and conditions of this lease remaining the same, excepting for those relating to the length of tenancy. Notwithstanding applicable law to the contrary, the parties agree that any

holdover term hereunder may be terminated upon thirty (30) days written notice from Landlord to Tenant.

18. Entry and Inspection. Landlord and/or its agents may, at reasonable times and upon reasonable notice to Tenant, enter upon the Premises to view and inspect the same, or exercise any right or power reserved to Landlord under the terms and provisions of this Lease. Notwithstanding the foregoing, Landlord may enter upon the Premises immediately and without notice in the event of an emergency.

19. Miscellaneous.

19.1. Relationship of Parties. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, partnership, or joint venture between the parties hereto other than the relationship of Landlord and Tenant.

19.2. Amendments or Modifications. No amendment or modification of this Lease shall be valid or binding unless reduced to writing and executed by the parties hereto in the same manner as the execution of this Lease.

19.3. Section Headings. Section headings are inserted herein only for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions of this Lease.

19.4. Binding Effect. Subject to the provisions hereof, the benefits of this Lease and the burdens hereunder shall respectively inure to and be binding upon the heirs, executors, successors, personal representatives and assigns of the parties.

19.5. Non-Waiver. No waiver of conditions or covenants of this Lease by either party hereto shall be deemed to imply or constitute a further waiver by such party of the same or any other condition or covenant.

19.6. Reimbursement of Costs. In the event either party shall, without fault on its part, be made a party to litigation commenced by or against the other arising by reason of failure to perform that party's obligations under the Lease, the other shall indemnify, save harmless and protect the first party against all costs and attorneys' fees incident to such litigation, and shall also pay all costs and reasonable attorneys' fees incurred in enforcing the covenants, agreements, terms and provisions of this Lease against the other.

19.7. Unenforceability. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effecting during the Term, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and date first above written.

"Landlord"

Karla C Roberts  
WITNESS

Richard Gathagan  
RICHARD GATHAGAN

"Tenant"

AMERICAN HOME PATIENT, INC.

Kimberly D. Love  
WITNESS

By: [Signature]

Title: Vice President

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

I, Louise E. McBride, a Notary Public of Said County do hereby certify that Richard Gathagan personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal, this the 14th day of December, 1995.

My Commission Expires:

My Commission Expires NOV 20, 1998

Louise E. McBride  
Notary Public

STATE OF TENNESSEE )  
COUNTY OF DAVIDSON )

This is to certify that on this day before me personally came Rita Hill with whom I am personally acquainted, who being by me first duly sworn, says that she is the Vice President of American.HomePatient, Inc., the corporation described in and which executed the foregoing lease agreement, and the name of the Corporation was subscribed thereto by said Vice President subscribed his/her name thereto all by order of the board of directors of said corporation and that the said instrument is the act and deed of said corporation.

Witness my hand and notarial seal, this the 14th day of December, 1995.

My Commission Expires:

My Commission Expires NOV 20, 1998

Louise E. McBride  
Notary Public

**JAMES A. NADDEO**

ATTORNEY AT LAW  
211½ EAST LOCUST STREET  
MARINO BUILDING  
P.O. BOX 552

CLEARFIELD, PENNSYLVANIA 16830

ASSOCIATE  
LINDA C. LEWIS

September 25, 2001

TELEPHONE  
(814) 765-1601  
TELECOPIER  
(814) 765-8142

American HomePatient, Inc.  
Attn: Peggy Gloger, Facilities  
Services Coordinator  
5200 Maryland Way, Suite 400  
Brentwood, TN 37027

RE: Lease Agreement  
Richard Gathagan/American Home Patient, Inc.  
Office and Warehouse, Route 53 North,  
Houtzdale, Pennsylvania

Dear Ms. Gloger:

I represent Mr. Richard Gathagan. Your firm entered into a Lease Agreement with my client dated December 14, 1995. Paragraph 3 of the Lease provides for a primary term of three years, commencing November 1, 1995, to October 31, 1998. Paragraph 4 of the Lease provides the tenant, (American Home Patient, Inc.) with three one-year options. All options were exercised by your company in accordance with the terms of the Lease.

The final one-year option period exercised by American Home Patient, Inc. expires on October 31, 2001. The purpose of this letter is to place you on notice that my client expects the premises to be vacated by October 31, 2001. No holdover period will be recognized after the expiration date of the current option term. Should you fail to vacate the premises as requested, immediate action will be taken to eject you from the property. A claim will also be made for loss of mense profits.

Sincerely,

James A. Naddeo

JAN:srw  
cc: Mr. Richard Gathagan

EXHIBIT "B".

**JAMES A. NADDEO**

ATTORNEY AT LAW  
211½ EAST LOCUST STREET  
MARINO BUILDING  
P.O. BOX 552

CLEARFIELD, PENNSYLVANIA 16830

September 25, 2001

TELEPHONE  
(814) 765-1601  
TELECOPIER  
(814) 765-8142

ASSOCIATE  
LINDA C. LEWIS

American HomePatient, Inc.  
Attn: Sandy Gonder  
Route 53 North, Box 369  
Houtzdale, PA 16651

RE: Lease Agreement  
Richard Gathagan/American Home Patient, Inc.  
Office and Warehouse, Route 53 North,  
Houtzdale, Pennsylvania

Dear Ms. Gonder:

I represent Mr. Richard Gathagan. Your firm entered into a Lease Agreement with my client dated December 14, 1995. Paragraph 3 of the Lease provides for a primary term of three years, commencing November 1, 1995, to October 31, 1998. Paragraph 4 of the Lease provides the tenant, (American Home Patient, Inc.) with three one-year options. All options were exercised by your company in accordance with the terms of the Lease.

The final one-year option period exercised by American Home Patient, Inc. expires on October 31, 2001. The purpose of this letter is to place you on notice that my client expects the premises to be vacated by October 31, 2001. No holdover period will be recognized after the expiration date of the current option term. Should you fail to vacate the premises as requested, immediate action will be taken to eject you from the property. A claim will also be made for loss of mense profits.

Sincerely,

James A. Naddeo

JAN:srw  
cc: Mr. Richard Gathagan

**JAMES A. NADDEO**

ATTORNEY AT LAW  
211½ EAST LOCUST STREET  
MARINO BUILDING  
P.O. BOX 552

CLEARFIELD, PENNSYLVANIA 16830

TELEPHONE  
(814) 765-1601

TELECOPIER  
(814) 765-8142

ASSOCIATE  
LINDA C. LEWIS

September 25, 2001

American HomePatient, Inc.  
Attn: President  
5200 Maryland Way, Suite 400  
Brentwood, TN 37027

RE: Lease Agreement  
Richard Gathagan/American Home Patient, Inc.  
Office and Warehouse, Route 53 North,  
Houtzdale, Pennsylvania

Dear Sir:

I represent Mr. Richard Gathagan. Your firm entered into a Lease Agreement with my client dated December 14, 1995. Paragraph 3 of the Lease provides for a primary term of three years, commencing November 1, 1995, to October 31, 1998. Paragraph 4 of the Lease provides the tenant, (American Home Patient, Inc.) with three one-year options. All options were exercised by your company in accordance with the terms of the Lease.

The final one-year option period exercised by American Home Patient, Inc. expires on October 31, 2001. The purpose of this letter is to place you on notice that my client expects the premises to be vacated by October 31, 2001. No holdover period will be recognized after the expiration date of the current option term. Should you fail to vacate the premises as requested, immediate action will be taken to eject you from the property. A claim will also be made for loss of mense profits.

Sincerely,

James A. Naddeo

JAN:srw

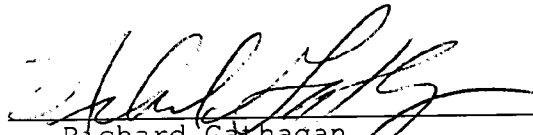
cc: Mr. Richard Gathagan

COMMONWEALTH OF PENNSYLVANIA)

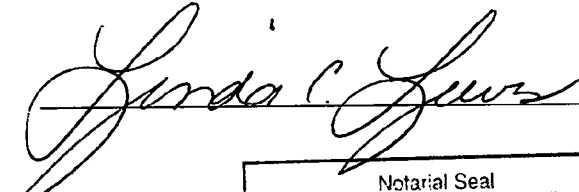
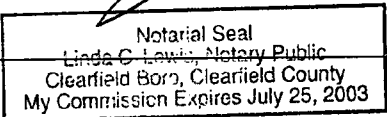
ss.

COUNTY OF CLEARFIELD )

Before me, the undersigned officer, personally appeared RICHARD GATHAGAN, who being duly sworn according to law, deposes and states that the facts set forth in the foregoing Complaint are true and correct to the best of his knowledge, information and belief.

  
Richard Gathagan

SWORN and SUBSCRIBED before me this 26<sup>th</sup> day of September, 2001.



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

Sheriff Docket # 11581

GATHAGAN, RICHARD

01-1614-CD

VS.

AMERICAN HOMEPATIENT INC.

**COMPLAINT**

**SHERIFF RETURNS**

NOW OCTOBER 3, 2001 AT 10:06 AM DST SERVED THE WITHIN COMPLAINT ON AMERICAN HOMEPATIENT INC., DEFENDANT AT EMPLOYMENT, RT. 53, BO 369, HOUTZDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DEBORAH SCHOENING, BILLING MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF. SERVED BY: NEVLING.

NOW OCTOBER 3, 2001 SERVED THE WITHIN COMPLAINT ON AMERICAN HOMEPATIENT, INC., DEFENDANT BY CERT. MAIL # 7000 0600 0022 9001 8324 AT 5200 MARYLAND WAY SUITE 400, BRENTWOOD, TN 37027 BEING THEIR LAST KNOWN ADDRESS. THE RETURN RECEIPT IS HERETO ATTACHED AND MADE A PART OF THIS RETURN ENDORSED BY AGENT OR DEFENDANT.

**Return Costs**

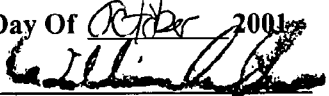
Cost	Description
40.90	SHFF. HAWKINS PAID BY: ATTY.
20.00	SURCHARGE PAID BY: ATTY

**FILED**

OCT 15 2001

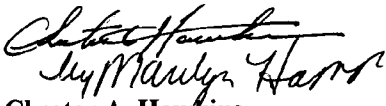
3:19 pm  
William A. Shaw  
Prothonotary

Sworn to Before Me This

15th Day Of October 2001  


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

So Answers,

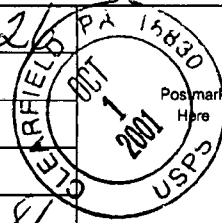
  
Chester A. Hawkins  
Sheriff

7000 0600 0022 9001 8324

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

Article Sent To:

Postage	\$ 1.26
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.86



Name (Please Print Clearly) (to be completed by mailer)  
AMERICAN HOMEPATIENT INC.

Street, Apt. No., or PO Box No.  
5200 Maryland Way Suite 400

City, State, ZIP+4  
Brentwood, TN 37027

### **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)

102595-99-M-2087

11581

**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:

AMERICAN HOMEPATIENT, INC.  
5200 Maryland Way Suite 400  
Brentwood TN 37027

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery

10.3.01

C. Signature

X

*R. J. D. H. M.*

☐ Agent

☐ Addressee

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

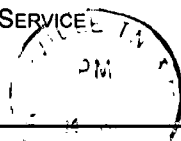
4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number (Copy from service label)

7000 0600 0022 9001 8324

UNITED STATES POSTAL SERVICE



A - W

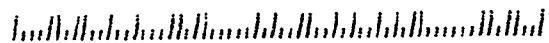
First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-19

• 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

11581

16830+2355



**JAMES A. NADDEO**  
ATTORNEY AT LAW  
211 1/2 EAST LOCUST STREET  
P.O. BOX 552  
CLEARFIELD, PENNSYLVANIA 16830

Lap over margin

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

RICHARD GATHAGAN,  
Plaintiff,

v.

AMERICAN HOMEPATIENT,  
INC.,  
Defendant.

No. 01 - 1614 - CD

Type of Pleading:

**PRAECIPE TO DISCONTINUE**

Filed on behalf of:  
Plaintiff

Counsel of Record for  
this party:

James A. Naddeo, Esq.  
Pa I.D. 06820

211 1/2 E. Locust Street  
P.O. Box 552  
Clearfield, PA 16830  
(814) 765-1601

**FILED**

JUL 30 2002

8/1/02/1cc atty

William A. Shaw  
Prothonotary

Cert. Rec. to  
Att'y

Copy to [Signature]

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

RICHARD GATHAGAN,  
Plaintiff,

v.

AMERICAN HOMEPATIENT,  
INC.,  
Defendant.


\*  
\*  
\*  
\*  
\*  
\*  
\*

No. 01 - 1614 - CD

PRAECIPE TO DISCONTINUE

TO THE PROTHONOTARY:

Please mark the above-captioned case discontinued.

  
James A. Naddeo, Esquire  
Attorney for Plaintiff



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

COPY

**CIVIL DIVISION**

**Richard Gathagan**

**Vs.**

**No. 2001-01614-CD**

**American Homepatient, Inc.**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 30, 2002 marked:

Discontinued

Record costs in the sum of \$80.00 have been paid in full by James A. Naddeo, Esquire.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 30th day of July A.D. 2002.

---

William A. Shaw, Prothonotary