

02-1415-CD
ANITA SCHMIDT vs. KEYSTONE REHABILITATION SYSTEMS

Date: 5/16/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 10:39 AM

ROA Report

Page 1 of 2

Case: 2002-01415-CD

Current Judge: Paul E. Cherry

Anita Schmidt vs. Keystone Rehabilitation Systems

Civil Other

Date		Judge
9/12/2002	✓ Filing: Civil Complaint Paid by: Evans, Portnoy & Quinn Receipt number: 1848350 Dated: 09/12/2002 Amount: \$80.00 (Check) One CC to Sheriff	No Judge
10/28/2002	✓ Praecipe For Appearance on Behalf of Defendant, KEYSTONE REHABILITATION SYSTEMS. filed by s/Tyler J. Smith, Esq. Certificate of Service no cc	No Judge
11/13/2002	✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
12/2/2002	✓ Filed: Notice of Service of Defendant' First Set of Interrogatories and request for production of documents to Plaintiff. No cc.	No Judge
	✓ Answer and New Matter to Plaintiff's Complaint. filed by s/Stuart H. Sostmann, Esq. Verification s/ Richard Binstein Certificate of Service no cc	No Judge
12/6/2002	✓ Plaintiff's Reply To Defendant's New Matter. filed by s/Irving M. Portnoy, Esquire Verification s/ Anita L. Schmidt no cc	No Judge
2/12/2003	✓ Notice of Service, Responses to Discovery to Plaintiff upon IRVING M. PORTNOY, ESQUIRE s/Tyler J. Smith, Esquire Certificate of Service no cc	No Judge
1/31/2005	✓ Motion for Sanctions, filed by s/David M. Chmiel, Esq. No CC	No Judge
2/1/2005	✓ Scheduling Order, AND NOW, this 1st day of February, 2005, Ordered that Defendant's Motion for Sanctions shall be presented on the 23 day of February, 2005, in Courtroom No. 1 before the Honorable Judge Ammerman at 2:30 p.m. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Chmiel	Fredric Joseph Ammerman
2/16/2005	✓ Motion to Compel Answer to Plaintiff's Second Request for Production of Documents Directed to Defendant, filed by s/Irving M. Portnoy, Esq. No CC	Fredric Joseph Ammerman
2/17/2005	✓ Scheduling Order, AND NOW, to-wit, this 17th day of Feb., 2005, it is hereby ORDERED that Motion to Compel Answer to Plaintiff's Second Request for Production of Documents Directed to Defendant shall be presented on the 23rd day of Feb., 2005, in Courtroom No. 1 before the Honorable Judge ammerman at 2:30 p.m. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 3CC to Atty Portnoy	Fredric Joseph Ammerman
2/24/2005	✓ Order, NOW, this 23rd day of Feb., 2005, following argument on the Defendant's Motion for Sanctions and Plaintiff's Motion to Compel, it is the ORDER of this Court as follows; (see original). By the court, /s/ Fredric J. Ammerman, President Judge. 2CC Atty T. Smith, Atty Portnoy	Fredric Joseph Ammerman
8/18/2005	✓ Motion to Compel Production of Personnel File, filed by s/David M. Chmiel, Esq. Two CC Atty Chmiel	Fredric Joseph Ammerman
8/19/2005	✓ Order, this 19th day of August, 2005, Ordered that Plaintiff shall provide the employment and/or personnel file within 30 days or be subject to further sanctions of court, including the possible preclusion of any wage loss or loss of earning capacity claims. By The Court, /s/ Fredric Ammerman, Pres. Judge. 2CC Atty Chmiel	Fredric Joseph Ammerman
8/31/2005	✓ Plaintiff's Motion For Reconsideration of or to Vacate Order entered August 19, 2005. filed by s/ Irving M. Portnoy, Esquire. No CC	Fredric Joseph Ammerman

Date: 5/16/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 10:39 AM

ROA Report

Page 2 of 2

Case: 2002-01415-CD

Current Judge: Paul E. Cherry

Anita Schmidt vs. Keystone Rehabilitation Systems

Civil Other

Date		Judge
9/1/2005	✓ Order Of Court, NOW, this 1st day of Sept. 2005, it is Ordered that argument on the Defendant's Motion to Compel Production of Personnel File hereby is or shall be scheduled for the 15th day of September, 2005 at 2:00 p.m. in Courtroom No 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Portnoy	Fredric Joseph Ammerman
9/26/2005	✓ Stipulation of Counsel, filed by s/ Melissa B. Catello, Esquire. 1CC to Atty	Fredric Joseph Ammerman
11/28/2005	✓ Motion to Extend Time for Filing Experts' Reports, filed by s/ Melissa B. Catello Esq. No CC.	Fredric Joseph Ammerman
11/30/2005	✓ Response to Plaintiff's Motion to Extend Time for Filing Expert Reports and Motion to Compel, filed by s/David M. Chmiel, Esq. One CC Attorney Chmiel	Fredric Joseph Ammerman
12/6/2005	✓ Order, NOW, this 5th day of Dec., 2005, it is Ordered that argument on the Motion to Extend Time for Filing Experts' Reports hereby is or shall be scheduled for the 4th day of Jan., 2006 at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Catello	Fredric Joseph Ammerman
1/4/2006	✓ Order, NOW, this 4th day of Jan., 2006, Motion to Extend Time for Filing Experts' Reports is granted. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Portnoy, T. Smith, Sostmann, Chmiel	Fredric Joseph Ammerman
4/26/2006	✓ Plaintiff's Response to Defendant's Request for Production of Expert Report, filed by s/ Melissa B. Catello Esq. No CC.	Fredric Joseph Ammerman
8/28/2006	✓ Praecipe for Trial, filed by Atty. Catello no cert. copies.	Fredric Joseph Ammerman
1/24/2007	✓ Order, NOW, this 24th day of Jan., 2007, following Pre-Trial Conference, Ordered: Jury Selection is scheduled for Feb. 1, 2007, beginning at 9:00 a.m. in Courtroom No. 2. Trial is scheduled for May 29, 30 31 and June 1, 2007, beginning at 9:00 a.m. in Courtroom No. 2. (see original). By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: Portnoy, T. Smith, S. Sastmann, D. Chmiel	Paul E. Cherry
4/12/2007	✓ Defendant's Motion in Limine to Limit The Testimony of Dawn L. Schusler, M.S.P.T., filed by s/ David M. Chmiel, Esquire. 3CC Atty. Chmiel	Paul E. Cherry
4/17/2007	✓ Order, NOW, this 16th day of April, 2007, argument on Defendant's two Motions in Limine shall be on the 24th day of May at 10:00 a.m. in Courtroom 2. Any opposition shall be filed on or before May 7, 2007. By The Court, /s/ Paul E. Cherry, Judge. 1CC Atty. Chmiel	Paul E. Cherry
4/19/2007	✓ Defendant's Motion in Limine to Limit Plaintiff's Recovery of Medical Expenses, filed by s/ David M. Chmiel, Esquire. 1CC Atty. Chmiel	Paul E. Cherry
5/10/2007	✓ Order, this 10th day of May, 2007, it is Ordered that the oral argument scheduled for May 24, 2007 on Defendant's Motions in Limine is rescheduled for May 21, 2007 at 11:30 a.m. By The Court, /s/ Paul E. Cherry, Judge. 3CC Atty. Chmiel	Paul E. Cherry

5-22-07 ✓ Order, dated May 21, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

CIVIL DIVISION

No. *02-1415-CD*

COMPLAINT IN CIVIL ACTION

Filed on behalf of PLAINTIFF

Counsel of Record for this
Party:

IRVING M. PORTNOY, ESQUIRE
PA I.D. #00919

EVANS, PORTNOY & QUINN
Firm #724
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

JURY TRIAL DEMANDED

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

EVANS, PORTNOY & QUINN
BY *Irving M. Portnoy*
Attorneys for *Plaintiff*

FILED

SEP 12 2002

William A. Shaw
Prothonotary

N O T I C E

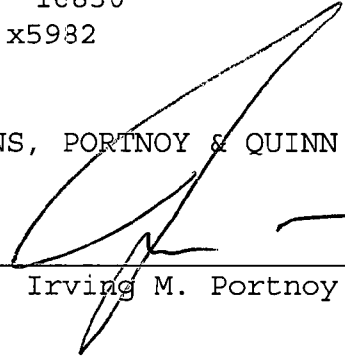
You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by the attorney and filing in writing with the Court your defenses 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 SHOULD 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 Courthouse
Clearfield, PA 16830
814-765-2641 x5982

EVANS, PORTNOY & QUINN

BY


Irving M. Portnoy

COMPLAINT IN CIVIL ACTION

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

2. Defendant is and was at all times hereinafter mentioned a corporation organized under and existing by virtue of the laws of the Commonwealth of Pennsylvania and, as such, owned, operated, supervised, controlled, and maintained facilities for providing rehabilitation services, including the provision of physical therapy treatments, for patients.

3. When used hereinafter the term patient shall refer to Plaintiff Anita Schmidt.

4. On December 14, 2000, the Plaintiff underwent an operation to remove a painful lump on the bottom of her left foot.

5. Subsequent to the performance of the aforesaid surgical procedure, the Plaintiff was referred by her physician to the Defendant for post-operative rehabilitation, including the provision of physical therapy.

6. The patient came under the care of the Defendant as a paying patient for the purpose of treatment by the Defendant's staff and other agents, servants and employees.

7. The Defendant, for a compensation which the patient agreed to pay, undertook to care for the said patient and to perform all reasonable and necessary procedures, and to use due, reasonable and proper skills in rendering such care.

8. On January 11, 2001 and thereafter, the Defendant, through its servants, agents, and employees, provided treatment for the Plaintiff, which treatment included overly aggressive deep massage, as the result of which the patient was caused to suffer those injuries and damages which are hereinafter set forth.

9. At all times relevant hereto, the Defendant acted by and through its agents, servants, and employees who, at all times relevant hereto, were acting in and about their respective duties as servants, agents and employees of the Defendant, on its behalf, and within the scope of their authority.

10. The injuries to the patient and damages which are hereinafter set forth were caused solely by and were the direct and proximate result of the carelessness, recklessness, negligence and malpractice of the Defendant in any or all of the following respects:

- a. In failing to properly render the care the patient's condition demanded;

- b. In engaging in and subjecting the patient to an overly aggressive course of physical therapy;
- c. In engaging in and subjecting the patient to overly aggressive deep massage;
- d. In engaging in and subjecting the patient to a course of physical therapy not prescribed by the patient's referring physician;
- e. In deviating from the instructions provided by the patient's referring physician relative to the nature of the care to be provided to the patient;
- f. In engaging in the unauthorized practice of medicine;
- g. In failing to take proper precautions and apply the proper remedies to avoid or diminish the effect of the patient's post-operative condition, so as to relieve said patient of the effects of the said condition or the results thereof;
- h. In failing and neglecting to take proper and sufficient precautions to leave the patient at all times in the care of competent, skilled and qualified attendants;
- i. In so negligently treating this patient as to cause aggravation of the patient's condition;
- j. In disregarding, ignoring or not sufficiently acting upon the patient's complaints;
- k. In disregarding, ignoring or not sufficiently acting upon the patient's symptoms;
- l. In neglecting to properly treat the patient's post-operative condition;
- m. In failing and omitting to take proper precautions and to use proper measures to avoid or to minimize the injuries sustained by the patient;

- n. In subjecting the patient to an unauthorized and unprescribed course of treatment which was calculated to cause harm;
- o. In failing to recognize that the patient was at increased risk of harm if subjected to an unauthorized and unprescribed course of treatment, namely overly aggressive deep massage;
- p. In deviating from the instructions and prescription of the patient's referring physician;
- q. In failing to recognize that overly aggressive deep massage could or would result in a worsening of the patient's condition;
- r. In initiating a self-directed course of treatment, neither authorized nor prescribed by the patient's referring physician, which the Defendant knew or, in the exercise of reasonable care, should have known placed the patient at an increased risk of further harm;
- s. In failing to enact or promulgate or, if enacted or promulgated, in failing to enforce sufficient rules and regulations relating to the treatment and care of patients in the condition of this patient;
- t. In failing to provide adequate supervision of its staff and employees to insure that proper practices and procedures were followed;
- u. In failing and neglecting to employ or hire staff and employees with adequate experience, qualifications and skills to properly treat persons in the condition of this patient;
- v. In entrusting the care of this patient to such persons who were not sufficiently qualified by experience, research or educational background to adequately treat and attend to this patient for the condition then affecting said patient;

- w. In entrusting the care of this patient to such persons who neglected to properly care for and treat the said patient, and did commit carelessly, recklessly and negligently acts of omission and commission and did depart from good, standard practice and procedure in vogue in the medical community of which they were a part at the times and places as aforesaid;
- x. In failing to exercise reasonable judgment in the care and treatment of this patient's condition.

11. By reason of the said wrongful acts of the Defendant, the patient has sustained the following severe and serious injuries, all of which are or may be of a permanent nature: injury to the left lower extremity; internal injuries; shock and injury to the nerves and nervous system; and other severe and serious injuries.

12. As a result of the injuries as aforesaid, the patient has sustained the following damages:

- a. The patient has suffered and will continue to suffer great pain, suffering, inconvenience, embarrassment and mental anguish;
- b. The patient has expended and will be required to expend large sums of money for medical and surgical attention, hospitalization, medical supplies, surgical appliances, medicines and attendant services;
- c. The patient's earning capacity has been or may be reduced and permanently impaired;
- d. The patient's general health, strength and vitality have been impaired;

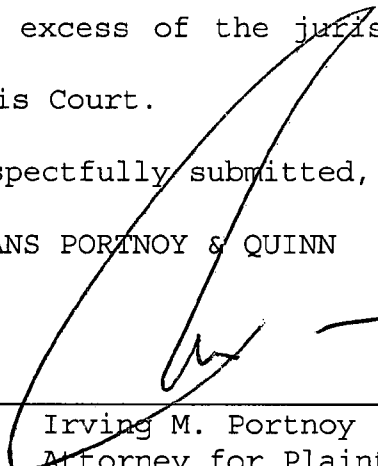
- e. The patient has been and will be deprived of earnings;
- f. The patient has been disfigured;
- g. The patient has suffered loss of the enjoyment of life.

WHEREFORE, Plaintiff brings this action against Defendant and demands damages in excess of the jurisdiction of the Board of Arbitrators of this Court.

Respectfully submitted,

EVANS PORTNOY & QUINN

BY


Irving M. Portnoy
Attorney for Plaintiff

V E R I F I C A T I O N

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

9-9-02
Date

Anita L. Schmidt

FILED

ICC

SEP 12 2002

M1104-81

Shff

Atty pd.

80.00

William A. Shaw
Prothonotary

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

ANITA SCHMIDT,

Plaintiff,

vs.

KEYSTONE REHABILITATION SYSTEMS, **PRAECIPE FOR APPEARANCE**
Defendant.

CIVIL DIVISION

NO. 02-1415-CD

Filed on behalf of Defendant Keystone
Rehabilitation Systems

Counsel of record for this party:

Tyler J. Smith, Esquire
Pa. I.D. No. 70492

Stuart H. Sostmann, Esquire
Pa. I.D. No. 84065

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

412-803-1140

FILED

OCT 28 2002

William A. Shaw
Prothonotary

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

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

NO. 02-1415-CD

v.

KEYSTONE REHABILITATION SYSTEMS,

Defendant.

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

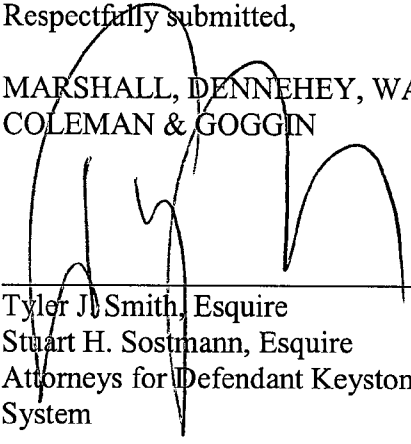
Please enter the appearance of TYLER J. SMITH, ESQUIRE and STUART H.

SOSTMANN, ESQUIRE on behalf of the Defendant, Keystone Rehabilitation Systems, in the
above-captioned action.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY:



Tyler J. Smith, Esquire
Stuart H. Sostmann, Esquire
Attorneys for Defendant Keystone Rehabilitation
System

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **PRAECIPE FOR APPEARANCE** was served by U. S. Mail, First Class, postage pre-paid, this 14th day of OCTOBER, 2002, on the below listed:

Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiff)

By: 

Tyler J. Smith, Esquire
Stuart H. Sostmann, Esquire
Attorneys for Defendant Keystone
Rehabilitation Systems

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket #

13039

SCHMIDT, ANITA

02-1415-CD

VS.

KEYSTONE REHABILITATION SYSTEMS

COMPLAINT

SHERIFF RETURNS

NOW SEPTEMBER 26, 2002 AT 10:30 AM DST SERVE THE WITHIN COMPLAINT
ON KEYSTONE REHABILITATION SYSTEMS, DEFENDANT AT EMPLOYMENT,
470 JEFFERS ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY
HANDING TO JOHN ANGELENI, AREA V.P. A TRUE AND ATTESTED COPY OF
THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.
SERVED BY: COUDRIET/RYEN

Return Costs

Cost Description

35.72 SHFF. HAWKINS PAID BY: ATTY.

10.00 SURCHARGE PAID BY: ATTY.

FILED

NOV 13 2002

William A. Shaw
Prothonotary

Sworn to Before Me This

13th Day Of November 2002

William A. Shaw

WAS

So Answers,

Chester A. Hawkins

Chester A. Hawkins

Sheriff

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

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

NO. 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

**NOTICE OF SERVICE OF
DEFENDANT'S FIRST SET OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
TO PLAINTIFF**

Filed on behalf of Defendant Keystone
Rehabilitation Systems, a corporation

Counsel of record for this party:

Tyler J. Smith, Esquire
Pa. I.D. No. 70492

Stuart H. Sostmann, Esquire
Pa. I.D. No. 84065

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

412-803-1140

FILED

DEC 02 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

No.: 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a coporation,

Defendant.

**NOTICE OF SERVICE OF DEFENDANT'S FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF**

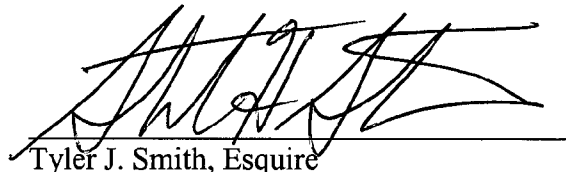
I hereby certify that true and correct copies of Defendant's First Set of Interrogatories and Request for Production of Documents were served by first class, U.S. Mail, postage pre-paid, this 26th day of November, 2002, on the parties listed below:

Irving M. Portnoy, Esquire
EVANS, PORTNOY & QUINN
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY:



Tyler J. Smith, Esquire

Stuart H. Sostmann, Esquire

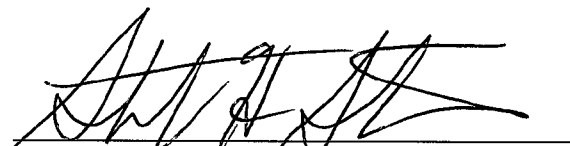
Attorneys for Defendant Keystone Rehabilitation
Systems

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **NOTICE OF SERVICE OF DEFENDANT'S FIRST SET OF INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF** was served by U. S. Mail, First Class, postage pre-paid, this 26th day of November, 2002, on the below listed:

Irving M. Portnoy, Esquire
EVANS, PORTNOY & QUINN
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiff)

By:


Tyler J. Smith, Esquire
Stuart H. Sostmann, Esquire
Attorney for Defendant Keystone
Rehabilitation Systems

FILED
M18:53841
CC
DEC 02 2002

William A. Shaw
Prothonotary

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

ANITA SCHMIDT,

Plaintiff,

vs.

KEYSTONE REHABILITATION SYSTEMS,

Defendant.

CIVIL DIVISION

NO. 02-1415-CD

**ANSWER AND NEW MATTER TO
PLAINTIFF'S COMPLAINT**

TO PLAINTIFFS

**YOU ARE HEREBY NOTIFIED TO PLEAD TO
THE ENCLOSED NEW MATTER WITHIN
TWENTY (20) DAYS FROM THE SERVICE
HEREOF OR A DEFAULT JUDGMENT MAY BE
ENTERED AGAINST YOU**



**Stuart H. Sostmann, Esquire
Attorney for Defendant Keystone Rehabilitation
Systems**

Filed on behalf of Defendant:
Keystone Rehabilitation Systems

Counsel of record for this party:

Tyler J. Smith, Esquire
Pa. I.D. No. 70492

Stuart H. Sostmann, Esquire
Pa. I.D. No. 84065

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**
2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

412-803-1140

FILED

DEC 02 2002

**William A. Shaw
Prothonotary**

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

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

NO. 02-1415-CD

v.

KEYSTONE REHABILITATION SYSTEMS,

Defendant.

ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT

AND NOW, comes the Defendant, Keystone Rehabilitation Systems, by and through its counsel, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, P.C., TYLER J. SMITH, ESQUIRE, and STUART H. SOSTMANN, ESQUIRE, and files the following Answer and New Matter to Plaintiff's Complaint in Civil Action, and in support thereof avers as follows:

1. After reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth of these averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

2. Admitted.

3. The Complaint speaks for itself.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. It is admitted that Plaintiff began physical therapy treatments with this Defendant on January 11, 2001. As to the remaining averments, after reasonable investigation, this Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

9. Admitted.

10(a-x). These averments, including subparagraph (a) through (x), constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments are denied and strict proof thereof is demanded at the time of trial.

11. As to the averments regarding this Defendant's acts, these averments constitute conclusions of law to which no responsive pleading is required. To the extent that a responsive pleading is required, the averments are denied and strict proof thereof is demanded at the time of trial. As to the remaining averments regarding Plaintiff's injuries, after reasonable investigation, these Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

12(a-g). As to the averments, including subparagraphs (a) through (g), after reasonable investigation, these Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the averments, and the same are therefore denied. Strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendant Keystone Rehabilitation Systems respectfully request that this Honorable Court dismiss Plaintiff's Complaint with prejudice and award costs in its favor.

NEW MATTER

For a further and more specific response, this Defendant asserts the following New Matter.

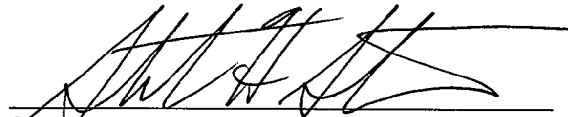
13. Plaintiff's Complaint fails to state a proper cause of action against this Defendant upon which relief can be granted and, therefore, Plaintiff's Complaint should be dismissed.

14. Inasmuch as Pennsylvania Rules of Civil Procedure 1032 provides that the party waives all defenses not presented by way of answer, answering Defendant, upon the advice of counsel, hereby asserts all affirmative defenses not otherwise enumerated herein as set forth in Pennsylvania Rules of Civil Procedure 1030, as said affirmative defenses include, *inter alia*, estoppel, immunity from suit, release, statute of limitations, *et al.* The said affirmative defenses are subject to demonstration during the discovery process and proof at time of trial.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN


BY:

A handwritten signature in black ink, appearing to read 'Stuart H. Sostmann', is written over a horizontal line.

Stuart H. Sostmann, Esquire
Attorneys for Defendant Keystone Rehabilitation
System

VERIFICATION

I, Richard Binstein, verify that the averments of fact made in the foregoing ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT are true and correct to the best of my knowledge, understanding and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsifications to authorities.


Richard Binstein


DATE: 11-15-02

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **ANSWER AND NEW
MATTER TO PLAINTIFF'S COMPLAINT** was served by U. S. Mail, First Class, postage
pre-paid, this 22nd day of November, 2002, on the below listed:

Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiff)

By: _____


Stuart H. Sostmann, Esquire
Attorneys for Defendant Keystone
Rehabilitation Systems

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

CIVIL DIVISION

No. 02-1415-CD

PLAINTIFF'S REPLY TO
DEFENDANT'S NEW MATTER

Filed on behalf of
PLAINTIFF

Counsel of Record for this
Party:

IRVING M. PORTNOY, ESQUIRE
PA I.D. #00919

EVANS, PORTNOY & QUINN
Firm #724
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

JURY TRIAL DEMANDED

This is to certify, that a true and
correct copy of the within pleading
was mailed, postage prepaid, this
4th day of December, 2002
to counsel of record for all parties

EVANS, PORTNOY & QUINN

BY Irving M. Portnoy
Attorneys for Plaintiff

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

EVANS, PORTNOY & QUINN

BY Irving M. Portnoy
Attorneys for Plaintiff

FILED

DEC 06 2002

William A. Shaw
Prothonotary

PLAINTIFF'S REPLY TO DEFENDANT'S NEW MATTER

AND NOW comes the Plaintiff, above-named, by her attorneys Evans, Portnoy & Quinn, with the following Reply to New Matter filed by the Defendant, wherein the following is a statement:

1. With regard to the averments contained in paragraph 13 of the Defendant's Answer and New Matter, the Plaintiff is advised that some or all of said averments constitute conclusions of law or other conclusions to which no responsive reply is required. To the extent that the averments contained in the said paragraph aver or imply factually that the Complaint filed in this matter fails to state a proper cause of action, each and every said averment is specifically denied for the reasons set forth in the said Complaint, all of which are incorporated herein by reference as if set forth in their entirety.

2. With regard to the averments contained in paragraph 14 of the Defendant's Answer and New Matter, the Plaintiff is advised that some or all of said averments constitute conclusions of law or other conclusions to which no responsive reply is required.

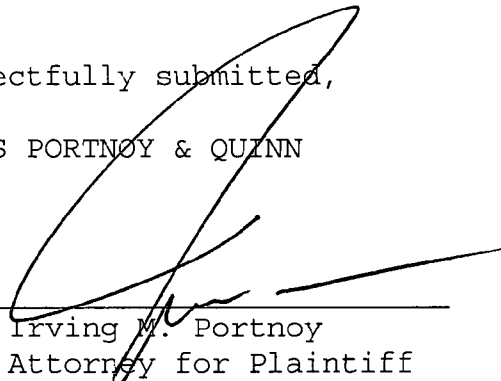
WHEREFORE, the Plaintiff respectfully requests that the New Matter filed by the Defendant be dismissed and that

she be awarded such relief as is prayed for in her
Complaint.

Respectfully submitted,

EVANS PORTNOY & QUINN

BY



Irving M. Portnoy
Attorney for Plaintiff

V E R I F I C A T I O N

I verify that the statements made herein are true and correct to the best of my knowledge, information and belief, and are made subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

12-2-02

Date

Anita L Schmidt

FILED

NO
DEC 08 2007

NO
dc

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

v.

KEYSTONE REHABILITATION SYSTEMS,
a corporation,

Defendants.

CIVIL DIVISION

NO. 02-1415-CD

**NOTICE OF SERVICE DEFENDANT,
KEYSTONE REHABILITATION
SYSTEMS'S RESPONSES TO
PLAINTIFF'S DISCOVERY**

Filed on Behalf of Defendants

Counsel of Record

Tyler J. Smith, Esquire
Pa. I.D. No. 70492

Stuart H. Sostmann, Esquire
Pa. I.D. No. 84065

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN, P.C.

600 Grant Street – Suite 2900
Pittsburgh, PA 15219

412/803-1140
412/803-1188 – Fax

FILED

FEB 12 2003

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

NO. 02-1415-CD

v.

KEYSTONE REHABILITATION SYSTEMS,
a corporation,

Defendants.

TO THE PROTHONOTARY:

TAKE NOTICE that the Defendant, KEYSTONE REHABILITATION SYSTEMS, by
and through their counsel TYLER J. SMITH, ESQUIRE, STUART H. SOSTMANN, ESQUIRE,
and MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, P.C., served its
Responses to Discovery to Plaintiff in the above-captioned action on the 7th day of
February, 2003, via U.S. First Class Mail, postage prepaid as follows:

Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre - 36th Floor
Pittsburgh, PA 15219

Respectfully submitted,

MARSHALL DENNEHEY WARNER
COLEMAN AND GOGGIN, P.C.

By: 

Tyler J. Smith, Esquire
Stuart H. Sostmann, Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to all
counsel of record by:

_____ Hand Delivery

☒ U.S. First Class Mail, Postage Prepaid

_____ Certified Mail, Return Receipt Requested

_____ Facsimile Transmittal

at the following address:

Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre – 36th Floor
Pittsburgh, PA 15219
(Counsel for Plaintiff)

**MARSHALL, DENNEHEY, WARNER
COLEMAN AND GOGGIN, P.C.**

By: 

Tyler J. Smith, Esquire

Stuart H. Sostmann, Esquire

Date: 

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

v.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendants.

) CIVIL DIVISION

)

) NO. 02-1415-CD

)

) **MOTION FOR SANCTIONS**

)

)

)

) Filed on Behalf of Defendants

)

) Counsel of Record

)

) Tyler J. Smith, Esquire

) Pa. I.D. No. 70492

)

) David M. Chmiel, Esquire

) Pa. I.D. No. 76464

)

) **MARSHALL, DENNEHEY, WARNER,**

) **COLEMAN & GOGGIN**

) US Steel Tower, Suite 2900

600 Grant Street

Pittsburgh, PA 15219

412-803-1140

FILED

JAN 31 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

ANITA SCHMIDT,	)	CIVIL DIVISION
)	
Plaintiff,	)	NO. 02-1415-CD
)	
v.)	
)	
KEYSTONE REHABILITATION)	
SYSTEMS, a corporation,)	
)	
Defendants.)	

MOTION FOR SANCTIONS

AND NOW, come the Defendants, Keystone Rehabilitation Systems, by and through their attorneys David M. Chmiel, Esquire and Marshall, Dennehey, Warner, Coleman & Goggin and file their Motion for Sanctions and aver as follows:

1. Plaintiff has filed a Complaint alleging negligence against the Defendant in the administration of physical therapy.
2. More specifically, Plaintiff alleges that the Defendant was negligent on January 11, 2001 in providing an overly aggressive deep massage.
3. Plaintiff noticed the deposition of Aileen Amy, an employee of the Defendant, for December 10, 2003 at 1:00 p.m.
4. Plaintiff's deposition was noticed for the same date at 2:00 p.m. A true and correct copy of the Notice of Deposition of Anita Schmidt is attached hereto and marked as Exhibit "A".

5. During the deposition of Ms. Amy, the original treatment file for Ms. Schmidt was produced, whereupon it was discovered that the Defendant's procedure was to have a therapist, or therapist assistant, take written notes during a treatment session which would be dictated afterwards. The typed notes would then be glued on top of the written notes. Due to this procedure, Plaintiff was provided with only a copy of the type written notes. Pertinent portions of Ms. Amy's testimony are attached hereto and marked as Exhibit "B".

6. Upon learning of the foregoing, Plaintiff's counsel immediately ended Ms. Amy's deposition and refused to allow defense counsel to depose his client. Defense counsel advised that this was merely an oversight and not discovered until the day of the deposition. Defense counsel further stated that the more prudent procedure would be to continue with the deposition and reserve the right to take a second deposition if necessary at a later time. Plaintiff's counsel refused to follow this suggestion and canceled the depositions outright.

7. The handwritten notes were provided to Plaintiff's counsel by correspondence dated April 29, 2004. A true and correct copy of the correspondence is attached hereto and marked as Exhibit "C".

8. On August 16, 2004, defense counsel attempted to reschedule the Plaintiff's deposition and suggested several dates in September. A true and correct copy of this correspondence is attached hereto and marked as Exhibit "D".

9. Plaintiff's counsel responded by correspondence dated August 18, 2004 advising that he was not available for the deposition on any of the dates proposed and requested that defense counsel call to reschedule. A true and correct copy of Plaintiff's counsel's correspondence is attached hereto and marked as Exhibit "E".

10. Defense counsel responded by correspondence dated August 19, 2004 advising that he had attempted telephone contact with Plaintiff's counsel on other occasions to schedule depositions on other cases without success. Defense counsel provided a calendar for October, 2004 crossing out only five (5) days which he was not available for depositions. A true and correct copy of this correspondence is attached hereto and marked as Exhibit "F".

11. Receiving no response, correspondence was directed to Plaintiff's counsel on September 22, 2004 arbitrarily selecting Tuesday, October 24, 2004 for the Plaintiff's deposition. A true and correct copy of this correspondence is attached hereto and marked as exhibit "G".

12. Once again, defense counsel enclosed the October, 2004 calendar in the event that the October 24 date was not convenient for Plaintiff or her counsel.

13. Plaintiff's counsel once again advised by way of correspondence that he was not available for the deposition in October. A true and correct copy of this correspondence is attached hereto and marked as Exhibit "H".

14. Plaintiff's counsel has never provided alternative dates for taking depositions in this matter.

15. Plaintiff's counsel has never attempted telephone contact with defense counsel to select a mutually convenient date for the depositions in this case.

16. Defendant is unable to defend the averments of Plaintiff's Complaint without Plaintiff's deposition.

17. Plaintiff's conduct is severely prejudicial to the preparation of the defense of the instant litigation.

18. Defendant respectfully requests the Honorable Court enter an Order directing Plaintiff to appear for a deposition within thirty (30) days or be precluded from offering evidence or testimony at trial.

19. Defendant further requests reasonable counsel fees for the preparation and presentation of the instant motion.

WHEREFORE, Keystone Rehabilitation Systems respectfully requests this Honorable Court enter an Order directing Plaintiff to present for a deposition within thirty (30) days or be subject to further sanctions, including, but not limited to, being precluded from offering evidence or testimony at trial.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By: 
David M. Chmiel, Esquire

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

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

NO. 02-1415-CD

VS.

**KEYSTONE REHABILITATION
SYSTEMS, a corporation,**

**NOTICE OF DEPOSITION OF ANITA
SCHMIDT**

Defendant.

Filed on behalf of Defendant Keystone
Rehabilitation Systems, a corporation

Counsel of record for this party:

Tyler J. Smith, Esquire
Pa. I.D. No. 70492

Stuart H. Sostmann, Esquire
Pa. I.D. No. 84065

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

412-803-1140

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

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

No.: 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a coporation,

Defendant.

NOTICE OF DEPOSITION OF ANITA SCHMIDT

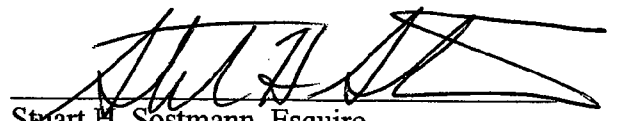
TO: Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219

Please take notice that on **December 10, 2003 at 2:00 p.m.** the oral deposition of **ANITA SCHMIDT** will be taken in *Room 103 of the Holiday Inn, US 219 and I-80, Dubois, Pennsylvania, 15801*, upon oral examination pursuant to the rules of Civil Procedure before a Notary Public or some other officer authorized by law to administer oaths. The oral examination will continue from day to day until completed.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY:

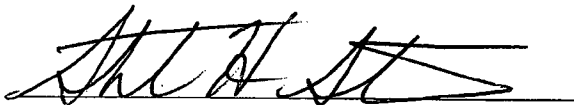

Stuart H. Sostmann, Esquire
Attorneys for Defendant Keystone Rehabilitation
Systems

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **NOTICE OF DEPOSITION**
OF ANITA SCHMIDT was served by U. S. Mail, First Class, postage pre-paid, this 14th day
of October, 2003, on the below listed:

Irving M. Portnoy, Esquire
EVANS, PORTNOY & QUINN
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiff)

By:

A handwritten signature in black ink, appearing to read "Stuart H. Sostmann", written over a horizontal line.

Stuart H. Sostmann, Esquire
Attorney for Defendant Keystone
Rehabilitation Systems

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,)
) CIVIL DIVISION
Plaintiff,)
) No. 02-1415-CD
vs.)
)
KEYSTONE REHABILITATION SYSTEMS,)
a corporation,)
)
Defendant.)

DEPOSITION OF EILEEN BOWERS AMY, R.N.
TUESDAY, DECEMBER 9, 2003

Deposition of EILEEN BOWERS AMY, R.N., called
as a witness by the Plaintiff, taken pursuant to
Notice of Deposition and the Pennsylvania Rules of
Civil Procedure, by and before Maureen T. McCall,
Notary Public in and for the Commonwealth of
Pennsylvania, at the Holiday Inn, Room 103, Routes US
219 and I-80, Dubois, Pennsylvania 15801, commencing
at 12:57 p.m. on the day and date above set forth.



1 compare it to what was produced for me.

2 MR. SOSTMANN: Let's take a break then,
3 because this file contains subsequent information that
4 was provided by my office.

5 (Recess.)

6 MR. SOSTMANN: Let's just put something on
7 the record. What we have done is taken Miss Schmidt's
8 file which contained everything from the first time
9 she was seen through the present, and based on Ms.
10 Amy's recollection and general understanding of what
11 would be in a patient's chart, we are providing it to
12 Plaintiff's counsel based on what they had in January
13 and February of 2001.

14 MR. PORTNOY: Let's go on the record for a
15 second.

16 Q. Ms. Amy, your counsel has enabled me the
17 opportunity to compare your chart regarding Mrs.
18 Schmidt with that which was provided to me.

19 Can you tell me whether these progress notes are
20 pasted onto other pieces of paper in the regular
21 course of business?

22 A. Yes.

23 Q. Is that a yes?

1 A. Yes.

2 Q. Is that the way the chart would have been kept
3 with regard to her?

4 A. Yes.

5 Q. Can you tell me why there's other writing
6 underneath the pasted on part for February 2, 2001?

7 A. In our travel card, we have a blank piece, as
8 this would indicate on the bottom here, that the
9 current date would be on, and we do our notes to
10 ourselves. That will then be dictated in a formal
11 fashion, and then once the dictation is done, that is
12 pasted onto this card.

13 Q. Well, are you telling me that underneath each of
14 the pasted-on progress notes there are handwritten
15 notes regarding this patient? There are?

16 A. That's the way we keep our documentation, yes.

17 MR. PORTNOY: Okay. I don't have them.

18 MR. SOSTMANN: You don't have what?

19 MR. PORTNOY: The handwritten notes.

20 MR. SOSTMANN: Well, I understand.

21 MR. PORTNOY: You think that's just okay?

22 MR. SOSTMANN: Well, Irv, I didn't know it
23 until I saw it today that you didn't have that. We

1 can produce that after we excise all of the
2 typewritten notes that are on top of it.

3 THE WITNESS: There would be no way of
4 taking it off it.

5 MR. PORTNOY: Somebody better do it. I'm
6 not going to ask her further questions, and I'm not
7 going to have you take her deposition.

8 MR. SOSTMANN: We will come back and I can
9 compel you by the court. If I ruin these original
10 records, then we are destroying evidence in this
11 case. If these things can't come off --

12 MR. PORTNOY: I don't know that they can or
13 can't.

14 MR. SOSTMANN: I'm telling you. I'm trying
15 to pick at it now. It's not like correction tape.
16 It's pulling right off the page. Ask her what's under
17 it. If you can answer. I don't know why they are
18 like that, but she can answer.

19 Q. Are you going to be able to read those?

20 A. No.

21 MR. SOSTMANN: You can ask us to produce
22 ones that have the handwritten copies, and I will do
23 my best to do that for you.

1 MR. PORTNOY: I am going to ask you to do
2 that.

3 MR. SOSTMANN: I can't do that today.

4 MR. PORTNOY: I hear you.

5 MR. SOSTMANN: It obviously can't come off.

6 MR. PORTNOY: Let me see what else I don't
7 have.

8 Q. Are there handwritten notes for each of the
9 visits?

10 MR. SOSTMANN: Objection. Are you asking
11 in general or specifically for this?

12 MR. PORTNOY: I'm asking her about this
13 case. Let me give these back to you.

14 Q. Tell me each of the days upon which you believe
15 there are handwritten notes for each of the visits.

16 MR. SOSTMANN: Go through them and tell
17 him. Don't tell him what they say if you can't read
18 them. Tell him if they are there or not.

19 A. There appears to be handwritten notes on 1/15,
20 1/17, 1/19, 1/24, 1/26, 1/29, 1/31, 2/2, handwritten
21 2/7/01.

22 Q. Ms. Amy, so I can be sure I'm going to get a
23 full copy, there appear to be two places where there

1 is a patient history and physical examination, one
2 pasted on the back of a sheet and another --

3 A. That's correct.

4 Q. Why is that?

5 A. The original evaluation is kept in the large
6 chart that's kept in the office. This is attached to
7 the back of the travel card so there is access to the
8 initial eval at all times with the patient.

9 Q. Which is the original? The large one or the
10 small pasted one?

11 A. This is a copy.

12 MR. SOSTMANN: She is pointing to the small
13 version on the back.

14 MR. PORTNOY: There are four pages starting
15 with a Highmark Blue Cross/Blue Shield form dated
16 January 15, 2001, a FAX transmittal memo, a therapy
17 treatment plan, three pages that I don't have.
18 Another therapy treatment plan I don't have. The two
19 therapy treatment plans may be the same.

20 There are two pages, one of which is a FAX
21 transmittal memo, dated January 12, 2001, I don't
22 have. I have no notes of the initial evaluation or of
23 the two pages that are affixed to it.

1 MR. SOSTMANN: Let me see that one,
2 please. Two of the pages are blank, the third one,
3 the first page on it. One sheet you don't have.

4 MR. PORTNOY: Excuse me.

5 MR. SOSTMANN: It has writing on it.

6 MR. PORTNOY: I don't have any of these
7 three pieces of paper period.

8 MR. SOSTMANN: That's fine.

9 MR. PORTNOY: There's a patient medical
10 history questionnaire, two-sided and something
11 attached to it I don't have. Health I.D. card I don't
12 have. Release of medical information form I don't
13 have. For lack of a better term, bone/soft tissue of
14 the forefoot, treatment something I don't have.
15 Operative records I don't have. Information from the
16 hospital, three pages, I don't have.

17 MR. SOSTMANN: You don't have them from
18 Keystone?

19 MR. PORTNOY: Excuse me?

20 MR. SOSTMANN: You don't have Keystone?
21 You do have them in your possession.

22 MR. PORTNOY: I don't have them.

23 THE WITNESS: That wasn't part of our

1 original --

2 MR. SOSTMANN: He is going to ask you.

3 MR. PORTNOY: I don't have any documents at
4 the end that form part of Keystone's chart that
5 contains hospital information.

6 MR. SOSTMANN: I'm going to put on the
7 record that some of the documents that Mr. Portnoy is
8 referring to are not part of the Keystone chart. They
9 are in the file for a patient. It's under treatment
10 chart.

11 MR. PORTNOY: That's what I requested in
12 discovery. Okay.

13 Q. Ma'am, in the hopes that when we resume we may
14 be able to accomplish more, let me simply ask you this
15 for today: Does Patricia Persin continue to work for
16 Keystone?

17 A. Not to my knowledge.

18 Q. Well, does she work at the Dubois facility?

19 A. No.

20 Q. And you're telling me you don't know whether she
21 works at another Keystone facility?

22 A. To my knowledge, she does not work for Keystone
23 at all.

1 Q. Do you know where she currently works?

2 A. No, I do not.

3 Q. Do you know where she currently lives?

4 A. No, I do not.

5 Q. Do you have a last address for her as of the
6 time she last worked for your facility?

7 A. I do not.

8 MR. SOSTMANN: I can provide that to you
9 from corporate. Did I not do so in our responses?

10 MR. PORTNOY: You did not.

11 MR. SOSTMANN: I have no problem providing
12 you the last phone number and address for any of the
13 employees involved in this case.

14 Q. Does Ragina, spelled R-a-g-in-a, Young continue
15 to work for Keystone?

16 A. No.

17 Q. And do you know where she currently lives?

18 A. No.

19 Q. Or works?

20 A. Yes.

21 Q. Where does she work?

22 A. Clarion Hospital.

23 Q. As a therapist, if you know?

1 A. She is a licensed PT assistant.

2 Q. Does Gloria Costanzo, C-o-s-t-a-n-z-o, continue
3 to work for Keystone?

4 A. No.

5 Q. Do you know where she currently lives?

6 A. No.

7 Q. Or works?

8 A. No.

9 MR. PORTNOY: That's it.

10 MR. SOSTMANN: You have the option to read
11 or waive your signature on this document. I'm going
12 to recommend you read it, take a look at everything.
13 She will read.

14 I'd like to put a note on the record for Miss
15 Schmidt's deposition. Based on Mr. Portnoy's
16 statement to me, he is not going to be continuing with
17 Miss Schmidt's deposition today nor continuing with
18 Ms. Amy's deposition today based on the fact that he
19 believes that documents were not provided to him
20 pursuant to previous discovery requests.

21 The documents that he specifically referred to
22 are as follows: A written worksheet of an evaluation
23 that was typed out, an evaluative report of January

1 11, 2001 by Patti Persin. In addition, he was
2 referring to a four-page document which consisted of a
3 Highmark Blue Cross/Blue Shield billing facsimile to
4 where it was included a therapy treatment plan that
5 was not included in the treatment record. It was sent
6 on with a copy of the prescription from the podiatrist
7 in this case which is in Plaintiff's possession and a
8 second copy of this therapy treatment plan.

9 He was also not provided a two-page document
10 which consists of an insurance document to Keystone
11 Health Plan West, and then a FAXed document to them
12 explaining who the patient is that was seen on January
13 11, 2001.

14 There was also a questionnaire that was filled
15 out by Ms. Schmidt, to my understanding, that the
16 Plaintiff says he was not provided a copy of. Beyond
17 that, all documents -- I'm sorry, there was also a
18 copy of Ms. Schmidt's driver's license and Select Blue
19 insurance card that was not provided as a part of the
20 treatment record even though the Select Blue card was
21 provided on another document.

22 Lastly, he was not provided with a release of
23 medical information that was signed by his client

1 which he claimed is part of the treatment record, and
2 also what appears to be a bone/soft tissue of the
3 forefoot treatment outline in terms of what a
4 particular piece of machinery is to do. It's a set
5 document, nothing written by Keystone Rehab.

6 Lastly, he was not provided with copies of
7 hospital records that were in the file but were
8 clearly within his own possession given that he had
9 the material from Dr. Elias and produced them in the
10 responses to discovery.

11 As to Mr. Portnoy's reason for not continuing
12 with these depositions, I find that to be
13 inappropriate.

14 There's also a question as to some handwritten
15 notes which appear to be below the typed notes on the
16 note record at Keystone Rehabilitation. He did not
17 provide any foundation to indicate that these written
18 notes are anything different or are -- different from
19 the typewritten notes other than just a formality, of
20 typing a formal note over the notes taken by the
21 physical therapist or physical therapist assistant.

22 We feel that the discontinuance of Miss Amy's
23 deposition is inappropriate and also the foreclusion

1 of taking the Plaintiff's deposition in this case
2 given that none of these medical records will be
3 question -- none of the records that were not provided
4 to him will be used to question her at her deposition
5 today.

6 It was a great time and expense to come out here
7 today to take these depositions and, therefore, we
8 request sanctions against the Plaintiff if he does not
9 produce his client for deposition this afternoon.

10 MR. PORTNOY: Well, to the extent that a
11 reply or response is required, although there is no
12 one here to rule upon anything, if counsel had
13 responded in good faith to the discovery requests
14 which had been propounded previously by providing a
15 full, complete, unredacted and truthful copy of the
16 Defendant's chart related to its evaluation and
17 treatment of the Plaintiff, we would not be in the
18 position that we are today.

19 The file obviously contains relevant documents
20 because they pertain to Mrs. Schmidt's diagnosis,
21 physical therapy plan and implementation of that plan
22 which, of course, is the very subject matter of this
23 legal action.

1 It would not be appropriate on my part without
2 the ability to review those additional documents to
3 interrogate this witness. It would certainly not be
4 appropriate to allow Mrs. Schmidt to be deposed when
5 documents which pertain to the very issues in this
6 case which involve her have not been provided to me,
7 and I have not had the opportunity to review them or
8 to discuss them with her.

9 So while counsel suggests that sanctions may be
10 appropriate in this case, I'm not about to disagree
11 with that comment. I just wonder which way the court
12 will find the sanctions to be appropriate.

13 To the extent that counsel wants to suggest that
14 these particular documents do or do not contain
15 information which may be relevant to me in my
16 interrogation of this witness, any other witness or
17 for that matter in my preparation of the Plaintiff to
18 respond to his questions, those are, of course, his
19 self-serving statements which I cannot either admit or
20 deny because I simply have not been provided with
21 copies of records that very plainly were requested in
22 discovery and only a portion of which obviously was
23 selectively provided to me including what may be the

1 single or most important information, and that is not
2 somebody's recapitulation of handwritten notes because
3 obviously the typed notes or progress notes are not
4 verbatim recitations of what's contained underneath
5 because what's contained underneath is obviously
6 shorter.

7 So there may very well be significant and other
8 information contained in those notes, but to the
9 extent that counsel wants to place this issue before
10 the court, he has every right to do so.

11 Finally, for whatever its worth, if we are going
12 to be appearing before the court, I was just advised
13 by counsel that his corporate client does, in fact,
14 have information related to where certain people live
15 and so forth that could have been provided but --

16 MR. SOSTMANN: And is willing to be
17 provided at any time it was asked for.

18 MR. PORTNOY: It was asked for. So with
19 that said --

20 MR. SOSTMANN: We are done.

21 MR. PORTNOY: -- I continue to reassert my
22 own position as previously stated; and, in fact, we
23 are done.

(Whereupon, at 2:35 p.m. the deposition was
adjourned.)

C E R T I F I C A T E

COMMONWEALTH OF PENNSYLVANIA :
: SS.:
COUNTY OF ALLEGHENY :

I, Maureen T. McCall, a Notary Public in and
for the Commonwealth of Pennsylvania, do hereby
certify that before me personally appeared EILEEN
BOWERS AMY, R.N., a witness herein, who then was by me
first duly cautioned and sworn to testify the truth,
the whole truth and nothing but the truth in the
taking of her oral deposition in the cause aforesaid;
that the testimony then given by her as above set
forth was reduced to stenotypy by me, in the presence
of said witness, and afterwards transcribed by
computer-aided transcription under my direction.

I do further certify that this deposition was
taken at the time and place specified in the foregoing
caption, and was adjourned.

I do further certify that I am not a relative
of or counsel or attorney for any party hereto, nor am
I otherwise interested in the event of this action.

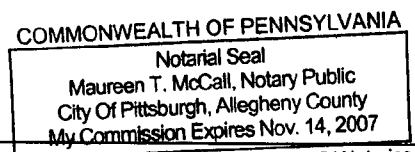
IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my seal of office at Pittsburgh,
Pennsylvania, on this 2nd day of January 2004.

The foregoing certification does not apply to
any reproduction of this transcript in any respect
unless under the direct control and/or direction of
the certifying reporter.

Maureen T. McCall

MAUREEN T. MCCALL, Notary Public
in and for the Commonwealth of
Pennsylvania

My commission expires November 14, 2007.



Member, Pennsylvania Association Of Notaries

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

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April 29, 2004

Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219

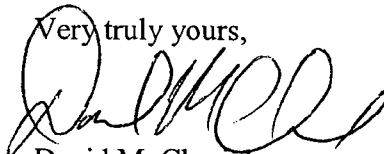


Re: **Anita Schmidt v. Benchmark Med. Inc. T/A Keystone Rehabilitation Systems**
No. 02-1415-CD – Clearfield County
Our File No.: 03125-00616

Dear Mr. Portnoy:

Pursuant to your most recent request for production of documents, enclosed you will find our response to same. As you can see, this includes all hand written as well as typed notes of Keystone Rehabilitation Systems. Also pursuant to your request, please be advised that Sharon Kirkwood is the facilities secretary and the records custodian for my client.

Please feel free to contact me with any questions regarding the foregoing.

Very truly yours,

David M. Chmiel

DMC/tms/Enclosure

12\AL\LAB\DAC\CORR\315778\TMS\03125\0061

cc: Sarah Shackelford
Aileen Amy



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August 16, 2004

Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219

Re: **Anita Schmidt v. Benchmark Med. Inc. T/A Keystone Rehabilitation Systems**
No. 02-1415-CD – Clearfield County
Our File No.: 03125-00616

Dear Mr. Portnoy:

I would like to reschedule your client's deposition with regard to the above-referenced matter in the very near future. Please note that I am available September 20, 21, 22, 29 and 30 to do so.

Please contact me and advise which of these dates are convenient for both you and your client. In the event that none of the dates are convenient, please contact me with dates in early October, 2004.

I look forward to hearing from you.

Very truly yours,

David M. Chmiel

DMC/jdc

Cc: Sarah Shackelford
Aileen Amy

\\12_\\LLAB\\DAC\\CORR\\330269\\JGC\\03125\\00616

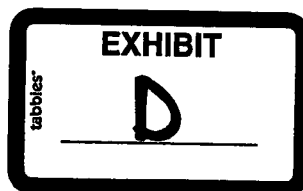
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03125.616

EVANS, PORTNOY, QUINN & O'CONNOR

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412.765.3800

FAX 412.765.3747

FIRM E-MAIL
info@epqlawyers.com

August 18, 2004

David M. Chmiel, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

RE: Anita Schmidt v. Benchmark Med. Inc. t/a
Keystone Rehabilitation Systems
No. 02-1415-CD-Clearfield County

Dear Mr. Chmiel:

In response to your letter of August 16, 2004, please be advised that I am not available for deposition on any of the dates set forth in your letter as the result of my commitments in other cases. Therefore, if you will simply telephone me, or have someone from your office do so, we can arrange a date on which to continue with depositions. However, in that regard, please note that I was in the process of deposing one of your client's employees when the deposition was interrupted. I would obviously insist upon completing that deposition before Ms. Schmidt is deposed.

I'll await your contact concerning scheduling.

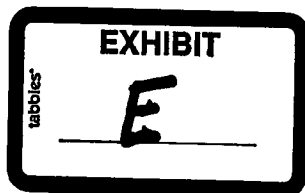
Yours truly,

EVANS, PORTNOY, QUINN & O'CONNOR

BY

Irving M. Portnoy

IMP:cam



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Email: dchmiel@mdwecg.com

August 19, 2004

Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219

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Re: Anita Schmidt v. Benchmark Med. Inc. T/A Keystone Rehabilitation Systems
No. 02-1415-CD – Clearfield County
Our File No.: 03125-00616

Dear Mr. Portnoy:

I received your correspondence of August 18, 2004. I have attempted to contact you on other occasions to schedule depositions on other case without much success. Accordingly, in order to move the process along more effectively, enclosed is a calendar for October, 2004 on which I have crossed out only five days which I would not be available for depositions in this case. Please pick a day, notice the depositions you want and send them to me at your earliest convenience. I will then notice your client's deposition for later the same day.

I look forward to hearing from you.

Very truly yours,

David M. Chmiel

DAC/mas

Cc: Sarah E. Shackelford – Claim No.: HM063720TZ
Aileen Amy

\\12_A\\LIAB\\DAC\\CORR\\331165\\MAG\\03125\\00616



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September 22, 2004

Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219



**Re: Anita Schmidt v. Benchmark Med. Inc. T/A Keystone Rehabilitation Systems
No. 02-1415-CD – Clearfield County
Our File No.: 03125-00616**

Dear Mr. Portnoy:

On August 19, 2004, I sent you my calendar for October, 2004 and requested that you schedule depositions in the above referenced matter. Despite numerous dates available on my calendar that month, you have yet to reply to my correspondence. Accordingly, I have taken the liberty of scheduling your client's deposition for Tuesday, October 24, 2004 at 2:00 p.m. at our offices. In the event that this date and time are not convenient for you or your client, I once again enclose my October, 2004 calendar and request that you pick a date not otherwise crossed out and advise me of same.

Very truly yours,

David M. Chmiel

DMC/mas
Enclosure

Cc: Aileen Amy (w/out enc.)
Sarah E. Shackelford (w/out enc.)

\\12_A\\LIAB\\DAC\\CORR\\335328\\MAG\\03125\\00616



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September 23, 2004

David M. Chmiel, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

RE: Anita Schmidt v. Benchmark Med. Inc. t/a
Keystone Rehabilitation Systems
No. 02-1415-CD-Clearfield County

Dear Mr. Chmiel:

I am in receipt of your letter of September 22, 2004. I have not ignored your prior correspondence. Rather, I was waiting to see whether or not any of the other matters which I already have scheduled in October would cancel so as to allow for the completion of depositions in that month. It appears that such will not be possible. In that regard, I am not available for depositions on October 24, 2004. Moreover, our client will not travel to Pittsburgh for the completion of depositions.

Once my November schedule clarifies, I will contact you relative to the scheduling of depositions.

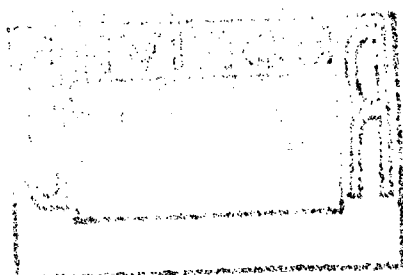
Yours truly,

EVANS, PORTNOY, QUINN & O'CONNOR

BY

Irving M. Portnoy

IMP:cam



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,	)	CIVIL DIVISION
)	
Plaintiff,	)	NO. 02-1415-CD
)	
v.)	
)	
KEYSTONE REHABILITATION)	
SYSTEMS, a corporation,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2005, it is hereby ORDERED, ADJUDGED and DECREED that Defendant's Motion for Sanctions is granted. Plaintiff shall present for a deposition within thirty (30) days of this Order or be precluded from offering any evidence or testimony at trial in this matter.

Further, it is hereby ORDERED that Plaintiff's counsel reimburse Defendant for the preparation and presentation of the Motion for Sanctions in the amount of _____.

By the Court:

_____.J.

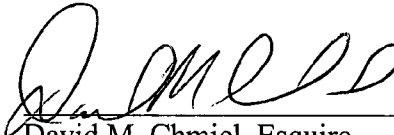
CERTIFICATE OF SERVICE

I hereby certify that I have served upon all persons listed below a true and correct copy of **Motion for Sanctions** in the above-captioned matter this 28th day of January, 2005 via United States First Class Mail, postage pre-paid.

Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre – 36th Floor
Pittsburgh, PA 15219
(Counsel for Plaintiff)

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By: _____


David M. Chmiel, Esquire

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

v.

KEYSTONE REHABILITATION SYSTEMS,
a corporation,

Defendants.

CIVIL ACTION

NO. 02-1415-CD

SCHEDULING ORDER

Filed on Behalf of Defendants

Counsel of Record

Tyler J. Smith, Esquire
Pa. I.D. No. 70492

David M. Chmiel, Esquire
Pa. I.D. No. 76464

Marshall, Dennehey, Warner,
Coleman & Goggin
2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

412-803-1140 - phone
412-803-1188 - fax

FILED
2/3/05
FEB 01 2005

William A. Shaw
Prothonotary/Clerk of Courts

2cc
Amy Chmiel

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,

CIVIL ACTION

Plaintiff,

NO. 02-1415-CD

v.

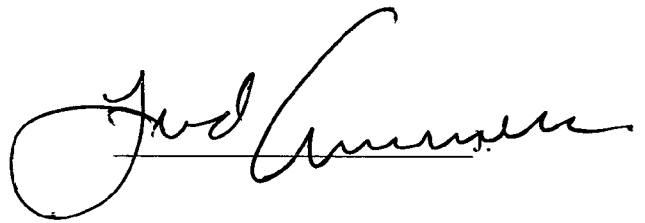
KEYSTONE REHABILITATION SYSTEMS,
a corporation,

Defendants.

SCHEDULING ORDER

AND NOW, to with this 1 day of Feb, 2005, it is
hereby ORDERED, ADJUDGED and DECREED that Defendant's Motion for Sanctions shall be
presented on the 23 day of February, 2005, in Courtroom No. 1
_____ before the Honorable Judge D. M. Murrin at 2:30 o'clock
P.m.

BY THE COURT



CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,	:	CIVIL DIVISION
	:	
Plaintiff,	:	
	:	
vs.	:	NO: 02-1415-CD
	:	
KEYSTONE REHABILITATION SYSTEMS,	:	
a corporation,	:	
	:	
Defendant.	:	

SCHEDULING ORDER

AND NOW, to-wit, this 17th day of February,
2005, it is hereby ORDERED, ADJUDGED, and DECREED that Motion to
Compel Answer to Plaintiff's Second Request for Production of
Documents Directed to Defendant shall be presented on the 23rd
day of February, 2005, in Courtroom No. 1 before the Honorable
Judge Ammerman at 2:30 o'clock p.m.

BY THE COURT:

Judith J. Ammerman J.

FILED
6K 10 3:54 PM 302.0118
FEB 17 2005
Prothonotary

William A. Shaw
Prothonotary

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

No. 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

**MOTION TO COMPEL ANSWER TO
PLAINTIFF'S SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO DEFENDANT**

Defendant.

Filed on behalf of PLAINTIFF

Counsel of Record for this
Party:

IRVING M. PORTNOY, ESQUIRE
PA I.D. #00919

EVANS, PORTNOY, QUINN & O'CONNOR
Firm #724
One Oxford Centre, 36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

JURY TRIAL DEMANDED

FILED *NO cc*
0/11:25/
FEB 16 2005
William A. Shaw
Prothonotary/Clerk of Courts

**MOTION TO COMPEL ANSWER
TO PLAINTIFF'S SECOND REQUEST
FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT**

AND NOW comes the Plaintiff, above-named, by her attorneys Evans, Portnoy, Quinn & O'Connor, with the following Motion to Compel Answer to Plaintiff's Second Answer to Plaintiff's Second Request for Production of Documents Directed to Defendant, wherein the following is a statement:

1. The within action arises out of a claim of professional negligence on the part of the Defendant relative to its treatment of the Plaintiff on and after January 11, 2001.

2. During the course of discovery in this case, the Defendant provided Defendant's Answers to Request for Production of Documents.

3. As attachments to Defendant's Answers to Request for Production of Documents, the Defendant provided to the Plaintiff copies of documents it claimed to be a full, complete, and unredacted copy of all records it possessed relating to treatment and/or care provided to the Plaintiff at any point in time.

4. On December 9, 2004, the Plaintiff obtained the deposition testimony of Eileen Bowers Amy, R.N., the Defendant's facility director and staff physical therapist who provided treatment to the Plaintiff.

5. During the course of the aforementioned deposition testimony, it was discovered that what had previously been provided to the Plaintiff was not, in fact, a full, complete and unredacted copy of all records possessed by the Defendant relating to treatment and/or care provided to the Plaintiff at any point in time. Specifically, Plaintiff had not been provided with copies of certain surgical records, handwritten notes, worksheets, evaluations, treatment plans, prescription forms, drawings and/or diagrams, insurance forms and/or documents, and billing forms. A copy of the transcript of the pertinent deposition testimony is attached hereto and made a part hereof.

6. Thereafter, Defendant provided Answers to Plaintiff's Second Request for Production of Documents Directed to Defendant wherein the Plaintiff requested again that the Defendant provide a full, complete and unredacted copy of all records it possessed relating to treatment and/or care provided to the Plaintiff at any point in time.

7. Defendant's Answer contained the exact same copies as were sent initially, but also included certain handwritten notes on certain dates of treatment.

8. The Answer provided by Defendant is still deficient in that the Defendant still has not provided a full, complete and unredacted copy of Plaintiff's treatment records in that the

copies of records heretofore provided do not contain copies of records specifically identified by witness Amy in her deposition testimony, such as operative records.

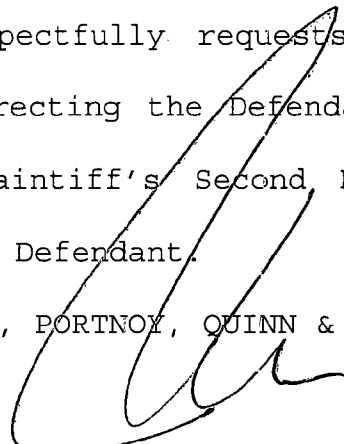
9. Without a full, complete and unredacted copy of all records which the Defendant possesses relating to treatment and/or care provided to the Plaintiff at any point in time, the Plaintiff will be prejudiced in her ability to engage in further discovery and in her ability to prepare her case for trial.

10. In that Defendant did not fully answer Plaintiff's Second Request for Production of Documents, the said Answer does not provide discovery as required by applicable Pennsylvania Rules of Civil Procedure.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter an Order directing the Defendant to file full and complete answers to Plaintiff's Second Request for Production of Documents Directed to Defendant.

EVANS, PORTNOY, QUINN & O'CONNOR

BY:


Irving M. Portnoy, Esquire
Melissa B. Catello, Esquire
Attorneys for the Plaintiff

1 Q. In other words --

2 A. I assume so. That's her handwriting. I assume.

3 Q. What I'm asking you is not whether she wrote
4 them down. I'm asking you whether these are the
5 product of her own thought process? In other words,
6 she spoke with the patient and came up with the
7 diagnosis of plantar fasciitis left lower extremity?

8 A. I wasn't a witness to that. I wasn't there.

9 Q. Then if you don't know, you can tell me that.

10 A. I don't know.

11 Q. Do you know where these diagnoses came from?

12 MR. SOSTMANN: In this particular
13 instance. Not generally. Right here. Do you know
14 where they came from?

15 THE WITNESS: Patti wrote them.

16 Q. Where did she get the information that enabled
17 her to write them?

18 A. She had access to the surgical report.

19 Q. And how do you know that?

20 A. It's part of the chart.

21 Q. Where is the surgical report part of the chart
22 since it's not part of the chart that was given to me?
23 In fact, can you give me the original chart so I can

1 compare it to what was produced for me.

2 MR. SOSTMANN: Let's take a break then,
3 because this file contains subsequent information that
4 was provided by my office.

5 (Recess.)

6 MR. SOSTMANN: Let's just put something on
7 the record. What we have done is taken Miss Schmidt's
8 file which contained everything from the first time
9 she was seen through the present, and based on Ms.
10 Amy's recollection and general understanding of what
11 would be in a patient's chart, we are providing it to
12 Plaintiff's counsel based on what they had in January
13 and February of 2001.

14 MR. PORTNOY: Let's go on the record for a
15 second.

16 Q. Ms. Amy, your counsel has enabled me the
17 opportunity to compare your chart regarding Mrs.
18 Schmidt with that which was provided to me.

19 Can you tell me whether these progress notes are
20 pasted onto other pieces of paper in the regular
21 course of business?

22 A. Yes.

23 Q. Is that a yes?

1 A. Yes.

2 Q. Is that the way the chart would have been kept
3 with regard to her?

4 A. Yes.

5 Q. Can you tell me why there's other writing
6 underneath the pasted on part for February 2, 2001?

7 A. In our travel card, we have a blank piece, as
8 this would indicate on the bottom here, that the
9 current date would be on, and we do our notes to
10 ourselves. That will then be dictated in a formal
11 fashion, and then once the dictation is done, that is
12 pasted onto this card.

13 Q. Well, are you telling me that underneath each of
14 the pasted-on progress notes there are handwritten
15 notes regarding this patient? There are?

16 A. That's the way we keep our documentation, yes.

17 MR. PORTNOY: Okay. I don't have them.

18 MR. SOSTMANN: You don't have what?

19 MR. PORTNOY: The handwritten notes.

20 MR. SOSTMANN: Well, I understand.

21 MR. PORTNOY: You think that's just okay?

22 MR. SOSTMANN: Well, Irv, I didn't know it
23 until I saw it today that you didn't have that. We

1 can produce that after we excise all of the
2 typewritten notes that are on top of it.

3 THE WITNESS: There would be no way of
4 taking it off it.

5 MR. PORTNOY: Somebody better do it. I'm
6 not going to ask her further questions, and I'm not
7 going to have you take her deposition.

8 MR. SOSTMANN: We will come back and I can
9 compel you by the court. If I ruin these original
10 records, then we are destroying evidence in this
11 case. If these things can't come off --

12 MR. PORTNOY: I don't know that they can or
13 can't.

14 MR. SOSTMANN: I'm telling you. I'm trying
15 to pick at it now. It's not like correction tape.
16 It's pulling right off the page. Ask her what's under
17 it. If you can answer. I don't know why they are
18 like that, but she can answer.

19 Q. Are you going to be able to read those?

20 A. No.

21 MR. SOSTMANN: You can ask us to produce
22 ones that have the handwritten copies, and I will do
23 my best to do that for you.

1 MR. PORTNOY: I am going to ask you to do
2 that.

3 MR. SOSTMANN: I can't do that today.

4 MR. PORTNOY: I hear you.

5 MR. SOSTMANN: It obviously can't come off.

6 MR. PORTNOY: Let me see what else I don't
7 have.

8 Q. Are there handwritten notes for each of the
9 visits?

10 MR. SOSTMANN: Objection. Are you asking
11 in general or specifically for this?

12 MR. PORTNOY: I'm asking her about this
13 case. Let me give these back to you.

14 Q. Tell me each of the days upon which you believe
15 there are handwritten notes for each of the visits.

16 MR. SOSTMANN: Go through them and tell
17 him. Don't tell him what they say if you can't read
18 them. Tell him if they are there or not.

19 A. There appears to be handwritten notes on 1/15,
20 1/17, 1/19, 1/24, 1/26, 1/29, 1/31, 2/2, handwritten
21 2/7/01.

22 Q. Ms. Amy, so I can be sure I'm going to get a
23 full copy, there appear to be two places where there

1 is a patient history and physical examination, one
2 pasted on the back of a sheet and another --

3 A. That's correct.

4 Q. Why is that?

5 A. The original evaluation is kept in the large
6 chart that's kept in the office. This is attached to
7 the back of the travel card so there is access to the
8 initial eval at all times with the patient.

9 Q. Which is the original? The large one or the
10 small pasted one?

11 A. This is a copy.

12 MR. SOSTMANN: She is pointing to the small
13 version on the back.

14 MR. PORTNOY: There are four pages starting
15 with a Highmark Blue Cross/Blue Shield form dated
16 January 15, 2001, a FAX transmittal memo, a therapy
17 treatment plan, three pages that I don't have.
18 Another therapy treatment plan I don't have. The two
19 therapy treatment plans may be the same.

20 There are two pages, one of which is a FAX
21 transmittal memo, dated January 12, 2001, I don't
22 have. I have no notes of the initial evaluation or of
23 the two pages that are affixed to it.

1 MR. SOSTMANN: Let me see that one,
2 please. Two of the pages are blank, the third one,
3 the first page on it. One sheet you don't have.

4 MR. PORTNOY: Excuse me.

5 MR. SOSTMANN: It has writing on it.

6 MR. PORTNOY: I don't have any of these
7 three pieces of paper period.

8 MR. SOSTMANN: That's fine.

9 MR. PORTNOY: There's a patient medical
10 history questionnaire, two-sided and something
11 attached to it I don't have. Health I.D. card I don't
12 have. Release of medical information form I don't
13 have. For lack of a better term, bone/soft tissue of
14 the forefoot, treatment something I don't have.
15 Operative records I don't have. Information from the
16 hospital, three pages, I don't have.

17 MR. SOSTMANN: You don't have them from
18 Keystone?

19 MR. PORTNOY: Excuse me?

20 MR. SOSTMANN: You don't have Keystone?
21 You do have them in your possession.

22 MR. PORTNOY: I don't have them.

23 THE WITNESS: That wasn't part of our

1 original --

2 MR. SOSTMANN: He is going to ask you.

3 MR. PORTNOY: I don't have any documents at
4 the end that form part of Keystone's chart that
5 contains hospital information.

6 MR. SOSTMANN: I'm going to put on the
7 record that some of the documents that Mr. Portnoy is
8 referring to are not part of the Keystone chart. They
9 are in the file for a patient. It's under treatment
10 chart.

11 MR. PORTNOY: That's what I requested in
12 discovery. Okay.

13 Q. Ma'am, in the hopes that when we resume we may
14 be able to accomplish more, let me simply ask you this
15 for today: Does Patricia Persin continue to work for
16 Keystone?

17 A. Not to my knowledge.

18 Q. Well, does she work at the Dubois facility?

19 A. No.

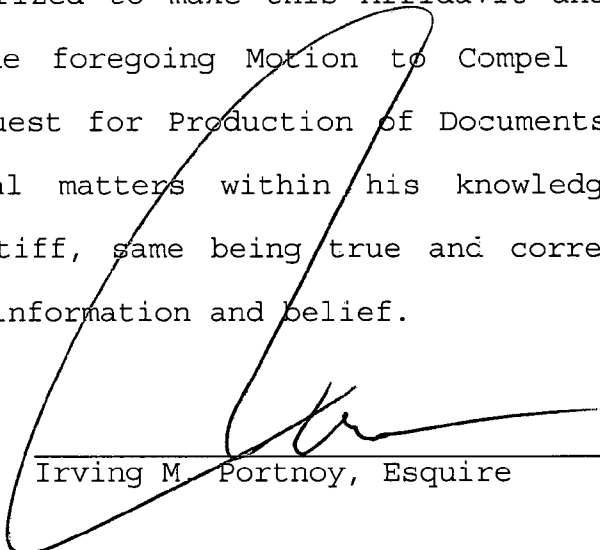
20 Q. And you're telling me you don't know whether she
21 works at another Keystone facility?

22 A. To my knowledge, she does not work for Keystone
23 at all.

A F F I D A V I T

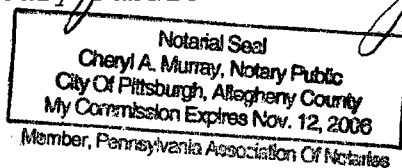
COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF ALLEGHENY :

BEFORE ME, the undersigned authority, personally appeared, IRVING M. PORTNOY, ESQUIRE, who, being duly sworn according to law, deposes and says that he is the attorney for the Plaintiff and, as such, is authorized to make this Affidavit and that the facts set forth in the foregoing Motion to Compel Answer to Plaintiff's Second Request for Production of Documents Directed to Defendant are legal matters within his knowledge as the attorney for the Plaintiff, same being true and correct to the best of his knowledge, information and belief.


Irving M. Portnoy, Esquire

SWORN TO and subscribed before me
this 14th day of February, 2005.


Notary Public



FILED

FEB 16 2005

William A. Shaw
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,	:	CIVIL DIVISION
	:	
Plaintiff,	:	
	:	
vs.	:	NO: 02-1415-CD
	:	
KEYSTONE REHABILITATION SYSTEMS,	:	
a corporation,	:	
	:	
Defendant.	:	

ORDER OF COURT

AND NCW, to-wit, this 14 day of February,
2005, it is hereby ORDERED, ADJUDGED, and DECREED that the
Defendant shall file a full and complete answer to Plaintiff's
Second Request for Production of Documents Directed to Defendant
within _____ days of the date of this Order. If the
Defendant fails to do so, it shall be subject to those sanctions
which the Court shall deem appropriate under the circumstances.

BY THE COURT:

J.

GA
FILED

0 2:34 PM 2005
2cc atty + Smith
2cc atty Portney

6 FEB 24 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

William A. Shaw
Prothonotary

ANITA SCHMIDT

:

VS.

: NO. 02-1415-CD

KEYSTONE REHABILITATION SYSTEMS :

O R D E R

NOW, this 23rd day of February, 2005, following argument on the Defendant's Motion for Sanctions and Plaintiff's Motion to Compel, it is the ORDER of this Court as follows:

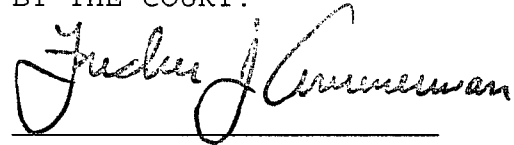
1. Defense counsel has certified that, to the best of his knowledge, information and belief, the Defense has provided all documents as requested by the Plaintiff through the discovery processes. Therefore, Plaintiff's Motion to Compel is hereby dismissed without prejudice to refile the same in the event that Plaintiff should believe that any documentation is lacking;

2. Defendant's Motion for Sanctions is granted to the extent that the Plaintiff, Anita Schmidt, shall present herself for deposition testimony at such time and place as directed by Defense within no more than thirty (30) days from this date. In the event that the Plaintiff fails to appear, the

4

Court may enter an order that she be precluded from offering evidence or testimony at trial in the matter.

BY THE COURT:

A handwritten signature in cursive script, reading "Frederick J. Cummings", written over a horizontal line.

President Judge

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

v.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendants.

) CIVIL DIVISION

) NO. 02-1415-CD

) **MOTION TO COMPEL PRODUCTION
OF PERSONNEL FILE**

) Filed on Behalf of Defendants

) Counsel of Record

) David M. Chmiel, Esquire

) Pa. I.D. No. 76464

) **MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

) US Steel Tower, Suite 2900

) 600 Grant Street

) Pittsburgh, PA 15219

) 412-803-1140

)

FILED

mjl:00601
AUG 18 2005

2cc
Atty Chmiel

William A. Shaw
Prothonotary/Clerk of Courts

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

ANITA SCHMIDT,	)	CIVIL DIVISION
)	
Plaintiff,	)	NO. 02-1415-CD
)	
v.)	
)	
KEYSTONE REHABILITATION)	
SYSTEMS, a corporation,)	
)	
Defendants.)	

MOTION TO COMPEL

AND NOW, come the Defendants, Keystone Rehabilitation Systems, by and through their attorneys David M. Chmiel, Esquire and Marshall, Dennehey, Warner, Coleman & Goggin and file their Motion to Compel Personnel File, and in support thereof, and aver as follows:

1. Plaintiff has filed a Complaint alleging negligence on the part of the Defendant in the administration of physical therapy.

2. As part of the Plaintiff's claim for damages, Plaintiff contends that she has sustained a loss of earning capacity and has been deprived of earnings. (Complaint, ¶ 12(c) and (e))

3. At all times material hereto, Plaintiff was employed by Clearfield County as a secretary for District Court Number 46301. Plaintiff maintains that she was absent from work for six (6) weeks as a result of the conduct of the Defendant.

4. Following Plaintiff's deposition, counsel for Defendant requested Plaintiff's employment file. Attached hereto and marked as Exhibit "A" is a true and correct copy of counsel's correspondence of March 28, 2005.

5. On April 18, 2005, counsel for Defendant reminded Plaintiff's counsel that he was looking forward to receipt of the employment files so that he could evaluate the wage loss claim in this case. Attached hereto and marked as Exhibit "B" is a true and correct copy of this correspondence.

6. On June 13, 2005, correspondence was once again directed to Plaintiff's counsel regarding the Plaintiff's employment file. Attached hereto and marked as Exhibit "C" is a true and correct copy of this correspondence.

7. On June 14, 2005, Plaintiff's counsel finally responded to this specific request and advised that she has ordered the personnel file and would promptly forward a copy. Attached hereto and marked as Exhibit "D" is a true and correct copy of this correspondence.

8. As of the present time, Plaintiff has yet to provide the Plaintiff's employment file.

9. Without the Plaintiff's employment file, Defendant is severely prejudiced in its ability to evaluate the alleged wage loss and loss of earning capacity claims.

WHEREFORE, Defendant respectfully requests this Honorable Court enter an order directing Plaintiff to provide a full and complete copy of the personnel file within seven (7) days or be subject to further sanctions of court.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By: 

David M. Chmiel, Esquire

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

A PROFESSIONAL CORPORATION www.marshalldennehey.com

Suite 2900, 600 Grant Street • Pittsburgh, PA 15219
(412) 803-1140 • Fax (412) 803-1188

Direct Dial: (412) 803-1189
Email: dchmiel@mdwecg.com

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March 28, 2005



Melissa Catello, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219

Re: **Anita Schmidt v. Benchmark Med. Inc. T/A Keystone Rehabilitation Systems**
No. 02-1415-CD – Clearfield County
Our File No.: 03125-00616

Dear Ms. Catello:

As per my request at your client's deposition, I would ask that you follow up and determine whether or not she can locate the orthotic which she received in late January of 2001. In addition, please provide updated medical records from Dr. Rice, as well as the Plaintiff's employment file.

Thank you in advance for your courtesy and attention to the foregoing.

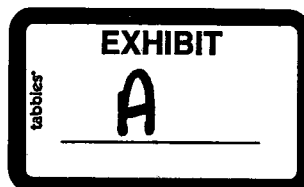
Very truly yours,

David M. Chmiel

DMC/mas

cc: Sarah E. Shackelford
Claim No.: HMO63720TZ

\\12_A\LIAB\DAC\CORR\359791\MAG\03125\00616



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Suite 2900, 600 Grant Street • Pittsburgh, PA 15219
 (412) 803-1140 • Fax (412) 803-1188

Direct Dial: 412-803-1189
 Email: dchmiel@mdwecg.com

April 18, 2005

Melissa Catello, Esquire
 Evans, Portnoy & Quinn
 One Oxford Centre
 36th Floor
 301 Grant Street
 Pittsburgh, PA 15219

Re: **Anita Schmidt v. Benchmark Med. Inc. T/A Keystone Rehabilitation Systems**
No. 02-1415-CD – Clearfield County
Our File No.: 03125-00616

Dear Ms. Catello:

Thank you for your correspondence of April 14, 2005 advising that your client is no longer in possession of the prosthetics which were prescribed for her. Upon review of your client's deposition transcript and my correspondence to you of March 28, 2005, I note that Ms. Schmidt has an appointment with Dr. Rice coming up in May. I would ask that you provide me with copies of all of Dr. Rice's records after, and including this visit. In addition, I look forward to receiving your client's employment file so that I can further evaluate the wage loss claim in this case.

As always, I thank you for your professional courtesy with regard to the foregoing.

Very truly yours,

David M. Chmiel

DMC/mas

Cc: Sarah E. Shackelford

Claim No.: HM063720TZ

\\12_A\LIAB\DAC\CORR\362869\MAG\03125\00616



MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

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Direct Dial: (412) 803-1189
Email: dchmiel@mdwecg.com

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June 13, 2005



Melissa Catello, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219

Re: Anita Schmidt v. Benchmark Med. Inc. T/A Keystone Rehabilitation Systems
No. 02-1415-CD – Clearfield County
Our File No.: 03125-00616

Dear Ms. Catello:

Please contact me and advise when I can expect to receive the medical records of Dr. Rice as well as your client's personnel file as per previous requests.

Thank you for your attention to the foregoing.

Very truly yours,

David M. Chmiel

DMC/sjc

\\12_A\LIAB\DAC\CORR\370014\SJC\03125\00616



EVANS, PORTNOY, QUINN & O'CONNOR

ATTORNEYS AT LAW

ONE OXFORD CENTRE, 36TH FLOOR

301 GRANT STREET

PITTSBURGH, PENNSYLVANIA 15219-6401

CHARLES E. EVANS
IRVING M. PORTNOY
JOHN E. QUINN
MANNING J. O'CONNOR II
MARK E. MILSOP
MELISSA B. CATELLO
DOUGLAS C. HART
COLLEEN R. KARTYCHAK

412.765.3800
FAX 412.765.3747

FIRM E-MAIL
info@epqlawyers.com

June 14, 2005

David M. Chmiel, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

RE: Anita Schmidt v. Benchmark Med. Inc. t/a
Keystone Rehabilitation Systems
No. 02-1415-CD-Clearfield County

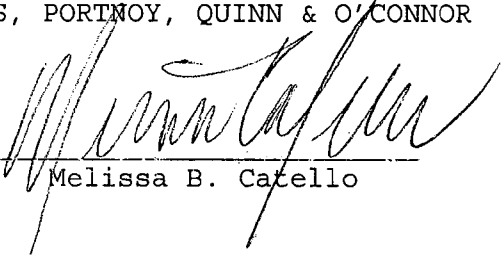
Dear Mr. Chmiel:

As a follow-up to your letter of June 13, 2005, enclosed herewith please find copies of Dr. Rice's records pertaining to our client. With regard to the personnel file, I have ordered same and will promptly forward a copy to you upon receipt.

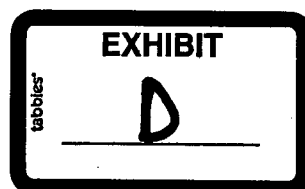
Yours truly,

EVANS, PORTNOY, QUINN & O'CONNOR

BY


Melissa B. Catello

MBC:cam
Enclosure



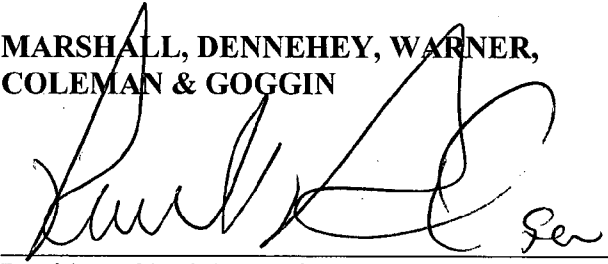
CERTIFICATE OF SERVICE

I hereby certify that I have served upon all persons listed below a true and correct copy of
Motion to Compel Production of Personnel File in the above-captioned matter this 16 day
of August, 2005 via United States First Class Mail, postage pre-paid. 1

Irving M. Portnoy, Esquire
Evans, Portnoy & Quinn
One Oxford Centre – 36th Floor
Pittsburgh, PA 15219
(Counsel for Plaintiff)

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By:


David M. Chmiel, Esquire

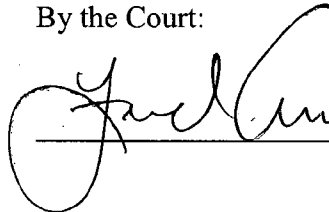
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,	)	CIVIL DIVISION
)	
Plaintiff,	)	NO. 02-1415-CD
)	
v.)	
)	
KEYSTONE REHABILITATION)	
SYSTEMS, a corporation,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, to-wit, this 19 day of August, 2005, upon consideration of Defendant's Motion, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff shall provide the employment and/or personnel file within ^{thirty(30) FSA} ~~seven(7)~~ days or be subject to further sanctions of court, including the possible preclusion of any wage loss or loss of earning capacity claims.

By the Court:



FILED ^{6x}
01/3:36/BJ ^{2cc} Amy Chmiel
AUG 19 2005

William A. Shaw
Prothonotary/Clerk of Courts

GA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

No. 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

PLAINTIFF'S MOTION FOR
RECONSIDERATION OF
OR TO VACATE ORDER ENTERED
AUGUST 19, 2005

Defendant.

Filed on behalf of PLAINTIFF

Counsel of Record for this
Party:

IRVING M. PORTNOY, ESQUIRE
PA I.D. #00919

MELISSA B. CATELLO, ESQUIRE
PA I.D. #90998

EVANS, PORTNOY, QUINN & O'CONNOR
Firm #724
One Oxford Centre, 36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

JURY TRIAL DEMANDED

FILED^{cc}
mjl:15601
AUG 31 2005

William A. Shaw
Prothonotary/Clerk of Courts

**PLAINTIFF'S MOTION FOR RECONSIDERATION OF
OR TO VACATE ORDER ENTERED AUGUST 19, 2005**

AND NOW comes the Plaintiff, above-named, by her attorneys Evans, Portnoy, Quinn & O'Connor, with the following Motion for Reconsideration of or to Vacate Order Entered August 19, 2005, wherein the following is a statement:

1. The within action for personal injuries suffered by the Plaintiff involves allegations of professional negligence on the part of Defendant Keystone Rehabilitation Systems.

2. On or about August 12, 2005, Plaintiff's counsel received a letter from counsel for the Defendant with an enclosed copy of its Motion to Compel Production of Personnel File. The aforementioned letter indicated that Plaintiff's counsel would be advised of the date and time of presentation of the said Motion. A copy of the letter dated August 12, 2005 is attached hereto as Plaintiff's Exhibit "1."

3. Plaintiff's counsel did not receive a notice that the Defendant's Motion was going to be presented. Instead, on or about August 23, 2005, counsel for the Defendant forwarded a copy of an Order signed by The Honorable Fredric J. Ammerman indicating that Plaintiff's counsel was ordered to produce the Plaintiff's employment and/or personnel file by September 19, 2005 or be subject to further sanctions, including the possible

preclusion of any wage loss or loss of earning capacity claims. A copy of Judge Ammerman's Order is attached hereto as Plaintiff's Exhibit "2."

4. It was not the intention of the Plaintiff, at the time of argument on the Defendant's Motion, to object to the production of information from her employment and/or personnel file which would substantiate any claim of lost wages or loss of earning capacity. Rather, it was the Plaintiff's intention to object to the production of her employment and/or personnel file in its entirety in that the said file would contain information which is not relevant to the proof of the said claims and which is of a highly personal nature.

5. The production of the Plaintiff's entire employment and/or personnel file potentially allows for the discovery of information which is not relevant to any of the claims which she asserts, is of a highly personal and confidential nature, and generally is not discoverable, including, but not limited to, the disclosure of the Plaintiff's religious affiliations, information related to payroll deductions for political and/or religious contributions, information concerning members of the Plaintiff's family, information related to childcare, health information which is not relevant to the Plaintiff's claim of injury to her left foot, such as gynecological complaints and/or

information related to family planning, and any and all other information of a similar nature.

6. As previously stated, the Plaintiff has no objection to producing copies of any and all records which would bear upon her claims of wage loss and/or loss of earning capacity, inclusive of any and all information which bears upon the said claims. However, the prior Motion sought the production of the Plaintiff's "entire" employment and/or personnel file which, the Plaintiff believes for the reasons set forth above, is not and should not be discoverable. Attached hereto as Plaintiff's Exhibit "3" are copies of documents which bear upon the said claims and which have been provided to counsel for the Defendant under separate cover.

7. Additionally, counsel for the Defendant failed to comply with Clearfield County Rule of Civil Procedure 208.2(d) which requires each Motion to contain a certification by counsel for the moving party that concurrence in the Motion has been sought from all opposing counsel and that such concurrence has been granted or denied. The aforesaid Rule also provides that failure to comply shall constitute sufficient grounds for the Court to deny the Motion.

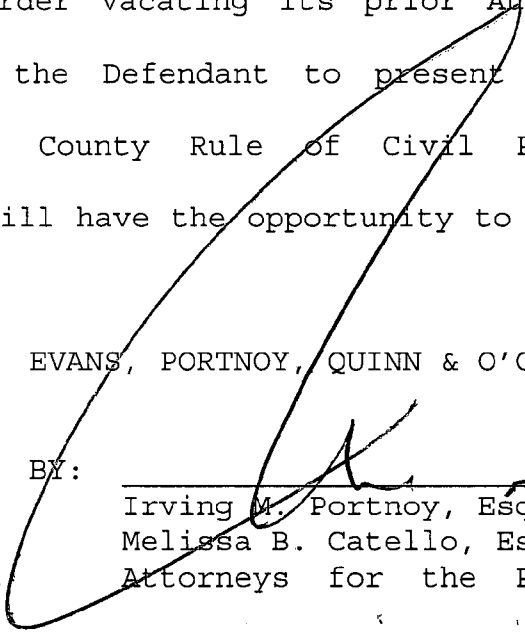
8. Plaintiff's counsel intended to be present for the presentation of the Defendant's Motion and would have contested same with valid grounds, as are set forth above.

9. In the interests of justice, the Plaintiff should be permitted to be heard relative to her opposition to the Defendant's Motion. The Defendant will not be prejudiced by being required to present its Motion since such should have occurred in the first instance.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter an Order vacating its prior August 19, 2005 Order and/or require the Defendant to present same in accordance with Clearfield County Rule of Civil Procedure 208.2(d) so that Plaintiff will have the opportunity to be heard regarding same.

EVANS, PORTNOY, QUINN & O'CONNOR

BY:


Irving M. Portnoy, Esquire
Melissa B. Catello, Esquire
Attorneys for the Plaintiff

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

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August 12, 2005



Melissa Catello, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219

**Re: Anita Schmidt v. Benchmark Med. Inc. T/A Keystone Rehabilitation Systems
No. 02-1415-CD – Clearfield County
Our File No.: 03125-00616**

Dear Ms. Catello:

As I am sure you are aware, I have requested your client's personnel file on numerous occasions. You advised by correspondence of June 14, 2005 that you had requested this and would provide me with a copy promptly. As of the present time, I have not yet received the personnel file. Therefore, enclosed you will find a Motion to Compel. The original of this motion has been filed with the court. I will certainly advise you of the date and time I intend to present the motion.

Obviously, I would prefer that you provide the personnel file so that I can avoid traveling to Clearfield County to present the motion.

Very truly yours,

A handwritten signature in black ink, appearing to read "David M. Chmiel".

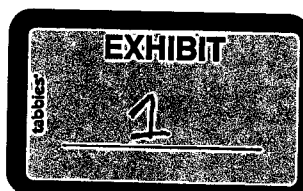
David M. Chmiel

DMC/sjc

Enclosure

cc: Aileen Amy

\\12_A\\LIAB\\DAC\\CORR\\377548\\SJC\\03125\\00616



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,) CIVIL DIVISION
Plaintiff,) NO. 02-1415-CD
v.)
KEYSTONE REHABILITATION)
SYSTEMS, a corporation,)
Defendants.)

ORDER OF COURT

AND NOW, to-wit, this 19 day of August, 2005, upon consideration of Defendant's Motion, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff shall provide the employment and/or personnel file within ~~seven~~ ^{thirty (30) DAYS} days or be subject to further sanctions of court, including the possible preclusion of any wage loss or loss of earning capacity claims.

By the Court:

/s/ Fredric J. Ammerman

J.

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

AUG 19 2005

Attest.

William L. Shiner
Prothonotary/
Clerk of Courts



Clearfield County Government

Claudia M. Read, Controller

Lisa Reddinger, Dep. Controller
Marianne Sankey, Human Resources

Barb Frankhouser, Admin. Asst.
Mollisa Robison, Dept. Clerk III

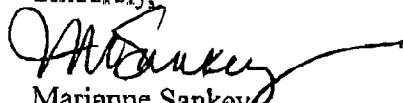
August 25, 2005

To Whom It May Concern:

Anita L. Schmidt has been employed by Clearfield County Government since March 3, 1993. She holds the position of District Justice Secretary. Her current rate of pay is \$9.68 per hour. Ms. Schmidt was earning \$7.68 an hour during the fourth quarter of 2000. I have attached pay reports for a two-month period covering November and December 2000. Also attached are leave reports designating sick days used by Ms. Schmidt since January 11, 2001. I do not show any other benefit losses for Ms. Schmidt during this time period.

Should you require additional documentation or information, please advise.

Sincerely,


Marianne Sankey
Human Resources
Clearfield County Government
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 ext. 1241



08-25-2005
14:32:55

CLEARFIELD COUNTY GOVERNMENT
EMPLOYER HISTORY INQUIRY - CHECK

PAGE 1

Employee: 418609 ANITA L SCHMIDT 170-56-6565

Check No: 00001835 Type: AUTO Check Date: 11/09/00 Period: 10/22/00-11/04/00

LN	DMPT	PAY-CODE	RATE	HOURS	AMOUNT	LN	DEDUCT-CODE	AMOUNT
1	861020	H HOURLY	7.6800	65.00	499.20	12	DD1 DIR DRP	214.40
2	861030	OT1 OT1	7.6800	9.00	69.12	13	DNS DIRECT S	50.00
3						14	MED MEDICARE	8.24
4						15	OPD OPT	0.00
5						16	PRN PENSION	28.42
6						17	PEP RYC PERS	22.73
7						18	U3 U DURA	22.00
8						19	WCC W COMP	0.00
9						20		
10						21		
11						22		
LN	TAX-CODE	AMOUNT	U.C.I.			23		
27	PA	15.91	0.00			24		
28	LD1	5.68	0.00			25		
29						26		

Gross: 568.32 Fed W/H: 55.70 FICA: 35.24 RIC: 0.00
State: 15.91 Oth. Tax: 5.68 Deduct: 445.79 Net: 0.00

08-25-2005

14:32:51

CLEARFIELD COUNTY GOVERNMENT
EMPLOYEE HISTORY INQUIRY - CHECK

PAGE 1

Employee: 418609 ANITA L SCHMIDT 170-56-6565

Check No: 00001942 Type: AUTO Check Date: 11/22/00 Period: 11/05/00-11/18/00

LN	DEPT	PAY-CODE	RATE	HOURS	AMOUNT	LN	DEDUCT-CODE	AMOUNT
1	861020	H HOURLY	7.6800	65.00	499.20	12	DD1 DIR DEV	336.41
2	861030	OT1 OT1	7.6800	9.00	69.12	13	DDS DIRECT S	50.00
3						14	HII HEALTH	0.00
4						15	LI LIFE	0.00
5						16	MED MEDICARE	8.24
6						17	OPD OPT	0.00
7						18	PEN PENSION	28.42
8						19	PEP EXC PERS	22.73
9						20	WCC W COMP	0.00
10						21		
11						22		
LN	TAX-CODE	AMOUNT	U.C.T.			23		
27	PA	15.91	0.00			24		
28	LD1	9.68	0.00			25		
29						26		

Gross:	568.32	Fed W/H:	65.70	FICA:	35.23	EIC:	0.00
State:	15.91	Oth.Tax:	9.68	Deduct:	445.80	Net:	0.00

08-25-2005
14:32:46

CLEARFIELD COUNTY GOVERNMENT
EMPLOYEE HISTORY INQUIRY - CHECK

PAGE 1

Employee: 418609 ANITA L SCHMIDT 170-55-6555

Check No: 00002049 Type: AUTO Check Date: 12/08/00 Period: 11/19/00-12/02/00

LN	DEPT	PAY-CODE	RATE	HOURS	AMOUNT	LN	DEDUCT-CODE	AMOUNT
1	861020	H	HOURLY	7.6800	65.00	499.20	12 DD1 DIR PRF	301.85
2	861030	OT1	OT1	7.6800	6.50	49.92	13 DDA DIRECT S	50.00
3							14 MED MEDICARE	7.97
4							15 OPD OPT	0.00
5							16 PRN PENSION	27.46
6							17 PEP EXC PERB	21.96
7							18 U3 U DUNS	22.00
8							19 WCC W COMP	0.00
9							20	
10							21	
11							22	
LN	TAX-CODE	AMOUNT	U.C.I.				23	
27	PA	15.38	0.00				24	
28	LD1	5.49	0.00				25	
29							26	

Gross: 849.12 Fed W/H: 62.96 FICA: 34.05 EIC: 0.00
State: 15.38 Oth. Tax: 5.49 Deduct: 431.24 Net: 0.00

08-25-2005

14:22:41

CLEARFIELD COUNTY GOVERNMENT
EMPLOYEE HISTORY INQUIRY - CHECK

PAGE 1

Employee: 418609 ANITA L SCHMIDT 170-86-6565

Check No: 00002199 Type: AUTO Check Date: 12/22/00 Period: 12/03/00-12/16/00

LN	DEPT	PAY-CODE	RATE	HOURS	AMOUNT	LN	DEDUCT-CODE	AMOUNT	
1	861020	H	HOURLY	7.6800	65.00	439.20	12	DD1 DIR DRP	326.38
2	861030	OT1	OT1	7.6800	7.00	53.76	13	DD8 DIRECT A	50.00
3							14	HII HEALTH	0.00
4							15	LI LIFE	0.00
5							16	MED MEDICARE	8.01
6							17	OPD OPT	0.00
7							18	PEN PENSION	27.68
8							19	PEP EXC PERA	22.12
9							20	WCC W COMP	0.00
10							21		
11							22		
LN	TAX-CODE	AMOUNT	U.C.I.				23		
27	PA	15.48	0.00				24		
28	LD1	5.53	0.00				25		
29							26		

From:	552.96	Fed W/H:	63.51	FICA..:	34.28	EIC:	0.00
State:	15.48	Oth. Tax:	5.53	Deduct:	434.16	Net:	0.00

08-25-2005

CLEARFIELD COUNTY GOVERNMENT
EMPLOYEE HISTORY INQUIRY - CHECK

PAGE 1

14:32:30

Employee: 418609 ANITA L SCHMIDT 170-56-6565

Check No: 00002266 Type: AUTO Check Date: 01/05/01 Period: 12/17/00-12/30/00

LN	DRPT	PAY-CODE	RATE	HOURS	AMOUNT	LN	DEDUCT-CODE	AMOUNT
1	861020	H HOURLY	7.6800	65.00	499.20	12	DD1 DIR DEP	259.29
2	861030	OT1 OT1	7.6800	2.00	15.36	13	DDA DIRECT S	50.00
3						14	MED MEDICARE	7.46
4						15	OPD OPT	10.00
5						16	PRN PENSION	28.73
6						17	PEP EXC PERS	20.58
7						18	U3 U DURA	22.00
8						19	WCC W COMP	0.00
9						20		
10						21		
11						22		
LN	TAX-CODE	AMOUNT	U.C.I.			23		
27	PA	14.41	0.00			24		
28	LD1	5.15	0.00			25		
29						26		

Gross:	514.56	Fed W/H:	58.04	FICA..:	31.90	EIC:	0.00
State:	14.41	Oth. Tax:	5.15	Deduct:	408.06	Net:	0.00

EMPLOYEE ABSENCE ANALYSIS
DETAIL

EMPLOYEE NAME	TYPE	# DAYS	FROM	THRU	H. DEPT	POSITION	REASON	EXC'D	PAID	RESP. CNTR.	SUPERVISOR	COMMENT
DEPARTMENT: 861020 DM DUB STAFF WAGE												
SCHMIDT ANITA L					418609	861020 DJS	CA			DJD	C. COMMISSIONER	
SICK	5.00	01/15/01	01/19/01	FUL			YES	YES				
SICK	3.00	01/22/01	01/24/01	FUL			YES	YES				
SICK	0.25	01/26/01	01/26/01	FRI PM			YES	YES				
SICK	0.25	01/29/01	01/29/01	MON PM			YES	YES				
SICK	0.25	01/31/01	01/31/01	WED PM			YES	YES				
SICK	0.25	02/02/01	02/02/01	FRI FUL			YES	YES				
SICK	0.25	02/05/01	02/05/01	MON FUL			YES	YES				
SICK	0.50	02/07/01	02/07/01	WED FUL			YES	YES				
SICK	0.25	02/22/01	02/22/01	THU PM			YES	YES				
SICK	0.25	02/26/01	02/26/01	MON PM			YES	YES				
SICK	0.25	02/28/01	02/28/01	WED PM			YES	YES				
SICK	0.25	03/02/01	03/02/01	FRI PM			YES	YES				
SICK	0.25	03/05/01	03/05/01	MON PM			YES	YES				
SICK	0.25	03/07/01	03/07/01	WED PM			YES	YES				
SICK	2.00	04/19/01	04/20/01	FUL			YES	YES				
SICK	5.00	04/23/01	04/27/01	FUL			YES	YES				
SICK	1.00	04/30/01	04/30/01	MON FUL			YES	YES				
SICK	4.00	05/01/01	05/04/01	FUL			YES	YES				
SICK	5.00	05/07/01	05/11/01	FUL			YES	YES				
SICK	5.00	05/14/01	05/18/01	FUL			YES	YES				
SICK	1.00	05/21/01	05/21/01	MON FUL			YES	YES				
SICK	3.00	05/29/01	05/31/01	FUL			YES	YES				
SICK	1.00	06/01/01	06/01/01	FRI FUL			YES	YES				
SICK	0.50	07/26/01	07/26/01	THU PM			YES	YES				
SICK	1.50	10/11/01	10/12/01	PM			YES	YES				
SICK	1.00	01/08/02	01/08/02	TUE FUL			YES	YES				
SICK	0.25	01/14/02	01/14/02	MON AM			YES	YES				
SICK	0.25	02/04/02	02/04/02	MON AM			YES	YES				
SICK	0.25	02/21/02	02/21/02	THU AM			YES	YES				
SICK	1.00	02/27/02	02/27/02	WED FUL			YES	YES				
SICK	0.25	04/29/02	04/29/02	MON AM			YES	YES				
SICK	1.00	04/30/02	04/30/02	TUE FUL			YES	YES				
SICK	0.25	05/20/02	05/20/02	MON AM			YES	YES				
SICK	1.00	06/07/02	06/07/02	FRI FUL			YES	YES				
SICK	0.25	07/02/02	07/02/02	TUE PM			YES	YES				
SICK	1.00	09/09/02	09/09/02	MON FUL			YES	YES				
SICK	0.25	09/30/02	09/30/02	MON AM			YES	YES				
SICK	0.25	10/21/02	10/21/02	MON PM			YES	YES				
SICK	1.00	11/15/02	11/15/02	FRI FUL			YES	YES				
SICK	1.00	04/30/03	04/30/03	WED FUL			YES	YES				
SICK	0.50	06/11/03	06/11/03	WED PM			YES	YES				
SICK	1.00	08/28/03	08/28/03	THU FUL			YES	YES				
SICK	0.50	09/16/03	09/16/03	TUE PM			YES	YES				
SICK	0.50	10/20/03	10/20/03	MON PM			YES	YES				
SICK	0.25	10/23/03	10/23/03	THU PM			YES	YES				
SICK	0.25	10/28/03	10/28/03	TUE PM			YES	YES				
SICK	0.25	11/17/03	11/17/03	MON FUL			YES	YES				
SICK	1.00	11/21/03	11/21/03	FRI FUL			YES	YES				
SICK	3.00	11/24/03	11/26/03	FUL			YES	YES				
SICK	1.00	01/02/04	01/02/04	FRI FUL			YES	YES				

8-25-2005

CLEARFIELD COUNTY
EMPLOYEE ABSENCE ANALYSIS
DETAIL

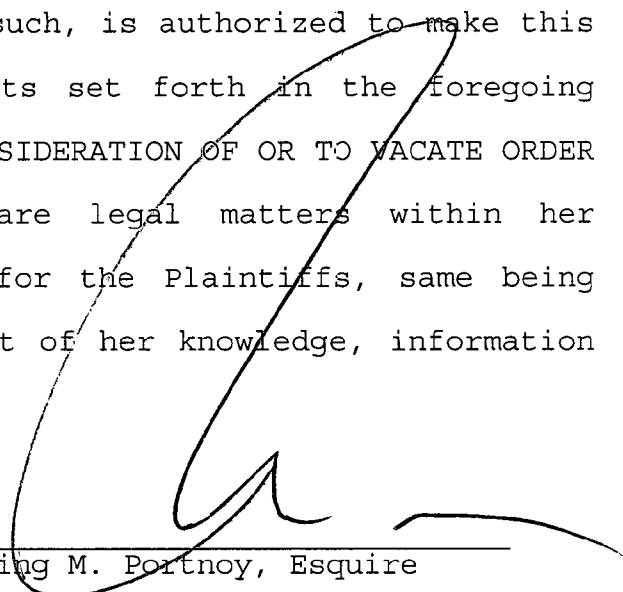
PAGE 2

EMPLOYEE NAME	TYPE	# DAYS	FROM	THRU	EMP. NO	H. DEPT	POSITION	BARG. UNIT	RESP. CNTR.	SUPERVISOR	REASON	EXC'D PAID	SUBSTITUTE	EMPLOYEE	COMMENT
DEPARTMENT: 861020 DM DUR STAFF WAGR															
	SICK	0.50	01/21/04	01/21/04			WED PM					YES	YES		
	SICK	0.50	01/30/04	01/30/04			FRI PM					YES	YES		
	SICK	0.25	02/26/04	02/26/04			THU AM					YES	YES		
	SICK	1.00	03/26/04	03/26/04			FRI FUL					YES	YES		
	SICK	0.25	04/20/04	04/20/04			TUE PM					YES	YES		
	SICK	0.25	04/26/04	04/26/04			MON PM					YES	YES		
	SICK	0.25	05/03/04	05/03/04			MON AM					YES	YES		
	SICK	0.50	05/20/04	05/20/04			THU PM					YES	YES		
	SICK	1.00	05/21/04	05/21/04			FRI FUL					YES	YES		
	SICK	0.25	06/17/04	06/17/04			THU PM					YES	YES		
	SICK	1.00	06/21/04	06/21/04			MON FUL					YES	YES		
	SICK	0.25	07/19/04	07/19/04			MON PM					YES	YES		
	SICK	0.25	08/19/04	08/19/04			THU PM					YES	YES		
	SICK	0.25	08/24/04	08/24/04			TUE PM					YES	YES		
	SICK	0.25	09/08/04	09/08/04			WED PM					YES	YES		
	SICK	0.25	09/20/04	09/20/04			MON PM					YES	YES		
	SICK	0.75	10/25/04	10/25/04			MON PM					YES	YES		
	SICK	0.50	02/03/05	02/03/05			THU PM					YES	YES		
	SICK	1.00	02/17/05	02/17/05			THU FUL					YES	YES		
	SICK	1.00	03/08/05	03/08/05			TUE FUL					YES	YES		
	SICK	1.00	04/08/05	04/08/05			FRI FUL					YES	YES		
	SICK	0.50	05/20/05	05/20/05			FRI PM					YES	YES		
	SICK	0.25	06/20/05	06/20/05			THU PM					YES	YES		
	SICK	0.25	07/11/05	07/11/05			MON PM					YES	YES		
	SICK	0.25	07/26/05	07/26/05			TUE PM					YES	YES		
TOTAL DAYS:		70.00	SICK Accrual Bal: 32.00												
EMPLOYEE# 418609		70.00													
DEPARTMENT:		70.00													
GRAND TOTAL DAYS:		70.00													

A F F I D A V I T

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF ALLEGHENY :

BEFORE ME, the undersigned authority, personally appeared, IRVING M. PORTNOY, ESQUIRE, who, being duly sworn according to law, deposes and says that she is the attorney for the Plaintiffs and, as such, is authorized to make this Affidavit and that the facts set forth in the foregoing PLAINTIFF'S MOTION FOR RECONSIDERATION OF OR TO VACATE ORDER ENTERED AUGUST 19, 2005 are legal matters within her knowledge as the attorney for the Plaintiffs, same being true and correct to the best of her knowledge, information and belief.


Irving M. Portnoy, Esquire

SWORN TO and subscribed before me
this 29th day of August, 2005.


Notary Public

Notarial Seal
Cheryl A. Murray, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Nov. 12, 2008
Member, Pennsylvania Association Of Notaries

FILED

AUG 31 2005

William A. Shaw
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,	:	CIVIL DIVISION
	:	
Plaintiff,	:	
	:	
vs.	:	NO: 02-1415-CD
	:	
KEYSTONE REHABILITATION SYSTEMS,	:	
a corporation,	:	
	:	
Defendant.	:	

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____,
2005, it is hereby ORDERED, ADJUDGED, and DECREED that the The
Honorable Fredric J. Ammerman's Order dated August 19, 2005 is
hereby vacated.

BY THE COURT:

J.

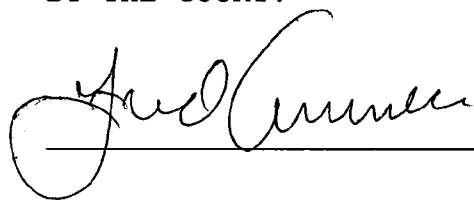
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,	:	CIVIL DIVISION
	:	
Plaintiff,	:	
	:	
vs.	:	NO: 02-1415-CD
	:	
KEYSTONE REHABILITATION SYSTEMS,	:	
a corporation,	:	
	:	
Defendant.	:	

ORDER OF COURT

AND NOW, to-wit, this 1ST day of Sept.,
2005, it is hereby ORDERED, ADJUDGED, and DECREED that argument
on the Defendant's Motion to Compel Production of Personnel File
hereby is or shall be scheduled for the 15th day of
September, 2005. at 2:00 P.M. in Courtroom No. 1.

BY THE COURT:

 J.

FILED 3cc
0/12:2337
SEP 01 2005
Att'y Portnoy
William A. Shaw
Prothonotary/Clerk of Courts

FILED

SEP 01 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

CIVIL DIVISION

No. 02-1415-CD

STIPUALTION OF COUNSEL

Filed on behalf of PLAINTIFF

Counsel of Record for this
Party:

IRVING M. PORTNOY, ESQUIRE
PA I.D. #00919

MELISSA B. CATELLO, ESQUIRE
PA I.D. #90998

PORTNOY & QUINN, LLC
Firm #724
One Oxford Centre, 36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

JURY TRIAL DEMANDED

FILED

SEP 26 2005
WAS:3076 (6)
William A. Shaw
Prothonotary/Clerk of Courts

1 CENT TO ATT

STIPULATION OF COUNSEL

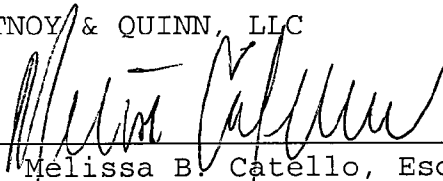
AND NOW, come the Plaintiff, above-named, by and through her attorneys, Portnoy & Quinn, LLC, and the Defendant, above-named, by and through its attorneys, Marshall, Dennehey, Warner, Coleman & Goggin, and file the within Stipulation of Counsel, stipulating as follows:

1. The above-named parties hereby agree and stipulate that on August 29, 2005 the Plaintiff provided to the Defendant any and all wage documentation from her personnel file provided by Clearfield County Government relevant to the within matter.

2. It is further agreed and stipulated that the Plaintiff's entire personnel file was retrieved by counsel for the Plaintiff and contained documents which are completely irrelevant to the Plaintiff's claim for wage loss in this matter.

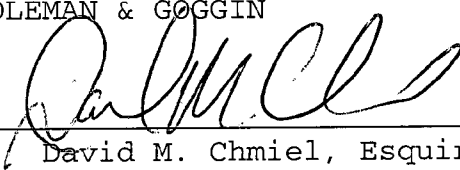
PORTNOY & QUINN, LLC

By


Melissa B. Catello, Esquire
Attorneys for Plaintiff

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

By


David M. Chmiel, Esquire
Attorneys for Defendant

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the within Stipulation of Counsel was mailed via first class mail, postage prepaid, this 22nd day of September, 2005 to the following:

David Chmiel, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

PORTNOY & QUINN, LLC

BY 

Irving M. Portnoy, Esquire
Melissa B. Catello, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

No. 02-1415-CD

vs.

**MOTION TO EXTEND TIME FOR
FILING EXPERTS' REPORTS**

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

Filed on behalf of PLAINTIFF

Counsel of Record for this
Party:

IRVING M. PORTNOY, ESQUIRE
PA I.D. #00919

MELISSA B. CATELLO, ESQUIRE
PA I.D. #90998

PORTNOY & QUINN, LLC
Firm #724
One Oxford Centre, 36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

JURY TRIAL DEMANDED

FILED *NO CC*
m/j:1561
NOV 28 2005 *UN*

William A. Shaw
Prothonotary/Clerk of Courts

**MOTION TO EXTEND TIME
FOR FILING EXPERTS' REPORTS**

AND NOW comes the Plaintiff, above-named, by and through her attorneys Portnoy & Quinn, LLC, with the following Motion to Extend Time for Experts' Reports, respectfully averring as follow:

1. The within medical negligence action involves physical therapy treatments received by the Plaintiff on and after January 11, 2001. The aforesaid treatments included overly aggressive deep massage, the result of which the Plaintiff was caused to suffer severe and serious injuries, including injury to her left lower extremity.

2. The Plaintiff filed her Complaint in Civil Action in Clearfield County, Pennsylvania on or about September 10, 2002.

3. On May 24, 2005, the Defendant filed its Request to Plaintiff for Production of Expert Reports pursuant to Pa.R.C.P. 1042.28(b).

4. On or about October 10, 2005, the Defendant requested a demand from the Plaintiff for the possible amicable settlement of the within matter.

5. On or about November 4, 2005, the Plaintiff replied to Defendant's request, the terms of which may not be disclosed. Also, on the aforesaid date, the Plaintiff requested that the

Defendant allow additional time for the filing of the requested experts' reports in that settlement negotiations were ongoing. See the copy of Attorney Melissa Catello's letter to Attorney David Chmiel dated November 4, 2005, with redactions, attached hereto as Exhibit "A."

6. On November 21, 2005, the Defendant notified the Plaintiff that the said request for a reasonable extension would not be granted. See the copy of Attorney Chmiel's letter dated November 21, 2005 attached hereto as Exhibit "B."

7. Discovery is ongoing in this matter, including the procuring of deposition testimony from certain physical therapists who provided treatments to the Plaintiff.

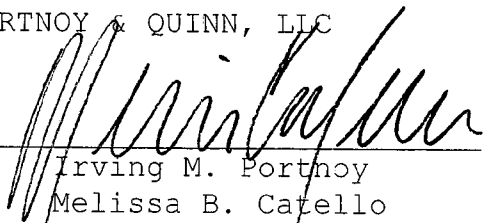
8. Accordingly, the Plaintiff respectfully submits that there is good cause to permit the extension of time for filing of her experts' reports in this matter.

WHEREFORE, the Plaintiff requests this Honorable Court to enter an Order granting the Plaintiff an additional sixty (60) days from the date of the said Order within which to file her experts' reports in this matter.

Respectfully submitted,

PORTNOY & QUINN, LLC

By


Irving M. Portnoy
Melissa B. Catello
Attorneys for Plaintiff

Portnoy & Quinn, LLC

ATTORNEYS AT LAW

One Oxford Centre, 36th Floor
301 Grant Street
Pittsburgh, Pennsylvania 15219-6401

Irving M. Portnoy
John E. Quinn
Mark E. Milsop
Melissa B. Catello
Douglas C. Hart

412.765.3800
FAX 412.765.3747

Firm E-Mail
info@epqlawyers.com

November 4, 2005

David M. Chmiel, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

RE: Anita Schmidt v. Benchmark Med. Inc. t/a
Keystone Rehabilitation Systems
No. 02-1415-CD-Clearfield County

Dear Mr. Chmiel:

As a follow-up to our telephone conversation of a few weeks ago, I am confirming my client's demand in the sum of [REDACTED] for the settlement of this case. I will wait to hear from you in that regard.

Additionally, I notice that the 180-day period is quickly approaching with regard to your request for an expert's report. I would obviously rather forgo further expense in this matter with respect to receiving an actual written report in the event that we are able to settle this matter amicably. Would you be amenable to extending the aforementioned deadline if in fact this case is unable to settle?

I look forward to hearing from you.

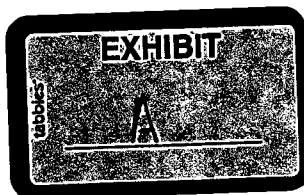
Yours truly,

PORTNOY & QUINN, LLC

BY

Melissa B. Catello

MBC:cam



MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

A PROFESSIONAL CORPORATION www.marshalldennehey.com

Suite 2900, 600 Grant Street • Pittsburgh, PA 15219
(412) 803-1140 • Fax (412) 803-1188

Direct Dial: 412-803-1189
Email: dchmiel@mdwecg.com

PENNSYLVANIA
Bethlehem
Doylestown
Eric
Harrisburg
King of Prussia
Philadelphia
Pittsburgh
Scranton
Williamsport

NEW JERSEY
Cherry Hill
Roseland

DELAWARE
Wilmington

OHIO
Akron

FLORIDA
Ft. Lauderdale
Jacksonville
Orlando
Tampa

November 21, 2005



Melissa Catello, Esquire
Evans, Portnoy & Quinn
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219

Re: **Anita Schmidt v. Benchmark Med. Inc. T/A Keystone Rehabilitation Systems**
No. 02-1415-CD – Clearfield County
Our File No.: 03125-00616

Dear Ms. Catello:

In light of your excessive demand, we are not inclined to grant an extension to provide expert reports. Accordingly, I would ask that you forward your liability expert reports timely.

Thank you for your attention to the foregoing.

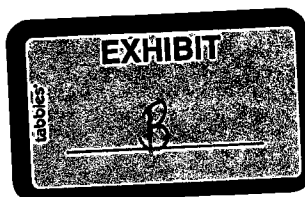
Very truly yours,

A handwritten signature in cursive script, appearing to read "David M. Chmiel".

David M. Chmiel

DMC/sjc

cc: Sarah Shackelford, Claim No.: HMO63720TZ
\\12_A\LIAB\DAC\CORR\390981\SJC\03125\00616



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,	:
	:
Plaintiff,	:
	:
v.	: No. 02-1415-CD
	:
KEYSTONE REHABILITATION	:
SYSTEMS, a corporation,	:
	:
Defendant.	:

ORDER OF COURT

AND NOW, to wit, this _____ day of December, 2005, upon consideration of the foregoing Motion, it is hereby ORDERED, ADJUDGED and DECREED that the Plaintiff is granted an additional sixty (60) days from the date of this Order within which to file her experts' reports.

BY THE COURT:

J.

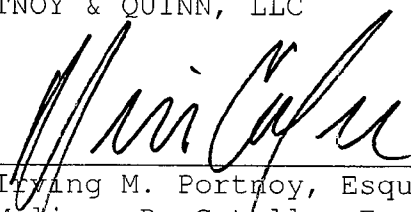
CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the within Motion to Extend Time for Filing Experts' Reports was mailed via first class mail, postage prepaid, this 22nd day of November, 2005 to the following:

David Chmiel, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

PORTNOY & QUINN, LLC

BY



Irving M. Portnoy, Esquire
Melissa B. Catello, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

vs.

KEYSTONE REHABILITATION SYSTEMS,
a corporation,

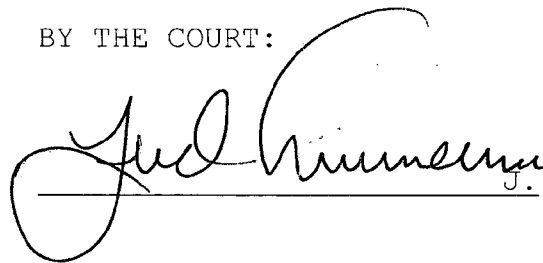
Defendant.

: CIVIL DIVISION
:
:
:
:
NO: 02-1415-CD
:
:
:
:
:

ORDER OF COURT

AND NOW, to-wit, this 5 day of December,
2005, it is hereby ORDERED, ADJUDGED, and DECREED that argument
on the Motion to Extend Time for Filing Experts' Reports hereby
is or shall be scheduled for the 4th day of January,
2006 @ 9:00 A.M.

BY THE COURT:



FILED ^{2cc}
012:42811 Amy Costello
DEC 06 2005 ©

William A. Shaw
Prothonotary/Clerk of Courts

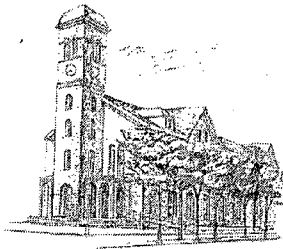
10-10

11.11.01 P 6,0

FILED

DEC 06 2005

William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s)/Attorney(s)

☐ Defendant(s)/Attorney(s)

☐ Other

☐ Special Instructions:

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

v.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendants.

) CIVIL DIVISION

)

) NO. 02-1415-CD

)

) **RESPONSE TO PLAINTIFF'S MOTION**
) **TO EXTEND TIME FOR FILING**
) **EXPERT REPORTS AND MOTION TO**
) **COMPEL**

)

) Filed on Behalf of Defendants

)

) Counsel of Record

)

) David M. Chmiel, Esquire

) Pa. I.D. No. 76464

)

) **MARSHALL, DENNEHEY, WARNER,**
) **COLEMAN & GOGGIN**

) US Steel Tower, Suite 2900

) 600 Grant Street

) Pittsburgh, PA 15219

412-803-1140

FILED

NOV 30 2005

William A. Shaw

Prothonotary/Clerk of Courts

See m/1:25/04 Any Chmiel

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

ANITA SCHMIDT,	)	CIVIL DIVISION
)	
Plaintiff,	)	NO. 02-1415-CD
)	
v.)	
)	
KEYSTONE REHABILITATION)	
SYSTEMS, a corporation,)	
)	
Defendants.)	

**RESPONSE TO PLAINTIFF'S MOTION TO EXTEND TIME FOR FILING EXPERT
REPORTS AND MOTION TO COMPEL**

AND NOW, comes the Defendant, Keystone Rehabilitation Systems, by and through its attorneys David M. Chmiel, Esquire and Marshall, Dennehey, Warner, Coleman & Goggin and files its Response to Plaintiff's Motion for Extension of Time for Filing Expert Reports and Motion to Compel and in support thereof, and avers as follows:

1. Presently before this Honorable Court is Plaintiff's Motion to Extend Time for Filing Expert Reports.
2. Plaintiff has filed a Complaint alleging negligence against the Defendant in the administration of physical therapy. More specifically, Plaintiff alleges that Defendant was negligent on January 11, 2001 in providing an overly aggressive deep massage.
3. Defendant served Plaintiff with its Requests for Production of Expert Reports pursuant to Pa.R.C.P. 1042.28(b) on May 24, 2005. Accordingly, Plaintiff's expert reports were due on or about November 21, 2005.

4. While Plaintiff claims that deposition testimony of certain physical therapists who provided treatments to the Plaintiff must be procured, Plaintiff ignores the following facts: (a) the Request for Production of Expert Reports was served nearly five months prior to the request for a settlement demand; (b) the alleged acts of negligence occurred nearly five years ago; (c) Plaintiff had noticed the deposition of Aileen Amy, an employee of the Defendant, for December 10, 2003 at 1:00 p.m. This deposition took place as scheduled.

5. Plaintiff has not since that time requested that Defendant produce any other individual for deposition despite more than ample opportunity to do so.

6. Plaintiff's failure to timely notice depositions as permitted under Pennsylvania Rules of Civil Procedure is not sufficient grounds for an extension to provide expert reports.

7. As Plaintiff's expert reports are now overdue, Defendant respectfully requests this Honorable Court enter an order directing Plaintiff to comply with Pennsylvania Rules of Civil Procedure and provide expert reports within ten (10) days.

WHEREFORE, Defendant Keystone Rehabilitation Systems, a corporation, respectfully requests this Honorable Court enter an order denying Plaintiff's Motion to Extend Time for Filing Expert Reports and directing Plaintiff to provide any and all liability expert reports within ten (10) days.

Respectfully submitted,

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By: 

David M. Chmiel, Esquire

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

ANITA SCHMIDT,	)	CIVIL DIVISION
)	
Plaintiff,	)	NO. 02-1415-CD
)	
v.)	
)	
KEYSTONE REHABILITATION)	
SYSTEMS, a corporation,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2005, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff's Motion to Extend Time for Filing Expert Reports is DENIED. Plaintiff shall provide the expert liability reports and curriculum vitae of any and all experts who she intends to call to testify at the trial of this matter within ten (10) days. Failure of the Plaintiff to comply with this order will result in the imposition of additional sanctions, including preclusion of expert testimony at trial.

By the Court:

_____. J.

CERTIFICATE OF SERVICE

I hereby certify that I have served upon all persons listed below a true and correct copy of
**RESPONSE TO PLAINTIFF'S MOTION TO EXTEND TIME FOR FILING EXPERT
REPORTS AND MOTION TO COMPEL** in the above-captioned matter this 28th day of
November, 2005 via United States First Class Mail, postage pre-paid.

Irving M. Portnoy, Esquire
Melissa Catello, Esquire
Evans, Portnoy & Quinn
One Oxford Centre – 36th Floor
Pittsburgh, PA 15219
(Counsel for Plaintiff)

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

By: 

David M. Chmiel, Esquire

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

ANITA SCHMIDT

-VS-

KEYSTONE REHABILITATION
SYSTEMS

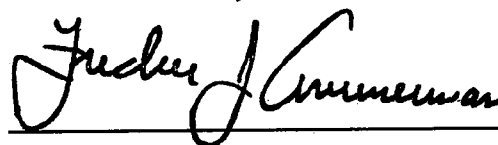
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No. 02-1415-CD

O R D E R

NOW, this 4th day of January, 2006, following argument on the Motion to Extend Time for Filing Experts' Reports, it is the ORDER of this Court that said Motion be and is hereby granted. Plaintiff shall have no more than one hundred twenty (120) days from this date in which to supply Defense counsel with the report(s) of any expert(s). The Court notes that no further delay shall be considered by the Court for the filing of any report unless under extraordinary circumstances as would be set forth in an appropriate motion or petition.

BY THE COURT,



President Judge

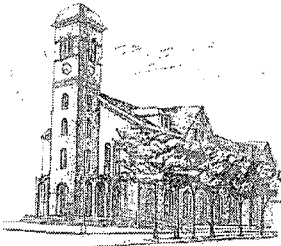
FILED

04:00 PM
JAN 04 2006

1 CC
T. Smith
Sostmann

William A. Shaw
Prothonotary/Clerk of Courts

Chmiel
GK



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw
Prothonotary

DATE: 11/4/06

_____ You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

X Plaintiff(s)/Attorney(s)

X Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

No. 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

**PLAINTIFF'S RESPONSE TO
DEFENDANT'S REQUEST FOR
PRODUCTION OF EXPERT REPORT**

Defendant.

Filed on behalf of PLAINTIFF

Counsel of Record for this
Party:

IRVING M. PORTNOY, ESQUIRE
PA I.D. #00919

MELISSA B. CATELLO, ESQUIRE
PA I.D. #90998

PORTNOY & QUINN, LLC
Firm #724
One Oxford Centre, 36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

JURY TRIAL DEMANDED

FILED No cc
m/11:08/01
APR 26 2006 (J)

William A. Shaw
Prothonotary/Clerk of Courts

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
REQUEST FOR PRODUCTION OF EXPERT REPORT**

Please see the attached copy of the report of Dawn L.
Schusler, MSPT, dated April 17, 2006.

Respectfully submitted,

PORTNOY & QUINN, LLC

By: 

Irving M. Portnoy, Esquire

Melissa B. Catello

Attorney for Plaintiff

April 17, 2006

Melissa B. Catello, Esquire
Portnoy & Quinn, LLC
One Oxford Center, 36th Floor
301 Grant Street
Pittsburgh PA 15219-6401

Re: Anita L. Schmidt

Dear Ms. Catello:

At your request, I have reviewed the case involving Anita Schmidt and the care and treatment provided to her at Keystone Rehabilitation Systems in Dubois, PA from January 10, 2001 through February 5, 2001. You provided me with the following documents, which I reviewed and relied upon in rendering my opinions contained in this report:

1. Record of ultrasounds of the arch of Ms. Schmidt's left foot performed on November 7, 2000 at Dubois Regional Medical Center
2. Records of same day surgery performed by Dr. Elias at Dubois Regional Medical Center on December 14, 2000
3. Records of Treatment provided by Brian M. Elias, D.P.M. from November 3, 2000 through November 12, 2001
4. Records of physical therapy treatment provided at Keystone Rehabilitation Systems from January 11, 2001 through February 7, 2001
5. Records of same day surgery performed by Dr. Elias at Dubois Regional Medical Center on April 19, 2001
6. Letter from Allegheny Orthotics and Prosthetics dated February 19, 2001
7. Records of physical therapy treatments provided at Dubois Regional Medical Center from February 21 through March 21, 2001
8. Record of magnetic resonance imaging study of Ms. Schmidt's left foot performed on November 13, 2001 at Dubois Regional Medical Center
9. Report of Brian M. Elias, D.P.M. dated June 18, 2002
10. Records of treatment provided by Charles W. Rice, D.P.M. from August 12, 2003 through May 17, 2005
11. Various pleadings
12. Deposition testimony of Ms. Schmidt, Eileen Amy, PT, Ragina Whitling, LPTA, Gloria Costanzo, LPTA, and Patricia A. Persin, MSPT

Ms. Schmidt underwent a surgical excision of a benign lesion/fibromatosis, as well as a plantar fasciotomy, which was located on the bottom of her left foot. Brian Elias, D.P.M. performed the surgery at Dubois Medical Center on December 14, 2000. Following surgery, Dr. Elias prescribed a course of physical therapy at Keystone Rehabilitation Systems in Dubois.

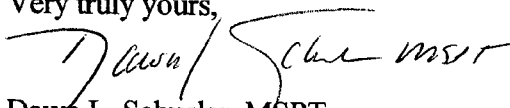
Ms. Schmidt began physical therapy on 1/11/01. Physical therapy included a multitude of modalities, exercises and gait training with a variety of therapists and physical therapy assistants. On initial evaluation it is stated, "incisions were welled healed and no redness evident". On 1/15/01, massage was initiated. On 1/17/01, patient received massage (cross friction) and debridement at incision sites. On 1/19/01, patient again received massage (cross friction). A summary to Dr. Elias on 1/22/01 indicates patient again received moderately aggressive scar tissue massage and that "surgical sites are reddened and slow to heal".

It is my opinion that the treatment and care provided to Ms. Schmidt was in deviation of the standard of care required of a physical therapist in the following manners:

1. Performing overly aggressive massage upon the incision sites on the bottom of Ms. Schmidt's left foot
2. In continuing to perform aggressive massage after the incision sites appeared to deteriorate
3. In failing to promptly notify Dr. Elias, the prescribing physician, of the deterioration of the incision sites from the initial evaluation time

It is also my opinion that the negligent treatment and care provided to Ms. Schmidt at Keystone Rehabilitation Systems in Dubois, PA, as indicated above, contributed to the risk of complications, which ensued.

Very truly yours,


Dawn L. Schusler, MSPT


CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the within **PLAINTIFF'S RESPONSE TO DEFENDANT'S REQUEST FOR PRODUCTION OF EXPERT REPORT** was mailed via first class mail, postage prepaid, this 24th day of April, 2006 to the following:

David Chmiel, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

PORTNOY & QUINN, LLC

BY



Irving M. Portnoy, Esquire
Melissa B. Catello, Esquire
Attorney for Plaintiff

William A. Shaw
Prothonotary/Clerk of Courts

APR 26 2006

FILED

LA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

CIVIL DIVISION

No. 02-1415-CD

PRAECIPE FOR TRIAL

Filed on behalf of PLAINTIFF

Counsel of Record for this
Party:

IRVING M. PORTNOY, ESQUIRE
PA I.D. #00919

MELISSA B. CATELLO, ESQUIRE
PA I.D. #90998

PORTNOY & QUINN, LLC
Firm #724
One Oxford Centre, 36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

JURY TRIAL DEMANDED

FILED (En)

AUG 28 2006

m/1:00/w
William A. Shaw
Prothonotary/Clerk of Courts

no C/L

PRAECIPE FOR TRIAL

AND NOW comes the Plaintiff, above-named, by her attorneys Portnoy & Quinn, LLC, with the following Praecipe for Trial, respectfully certifying as follows:

1. There are no Motions outstanding and discovery in this matter has been completed and the within case is ready for trial.

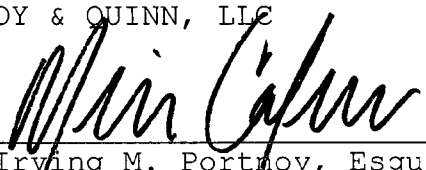
2. The Plaintiff has demanded a jury trial in this matter.

3. Notice of the within Praecipe was provided this date via United States Mail to all other counsel of record.

WHEREFORE, the Plaintiff requests that the within matter be placed on the next available jury trial term.

PORTNOY & QUINN, LLC


BY:


Irving M. Portnoy, Esquire
Melissa B. Catello, Esquire
Attorneys for the Plaintiff

A F F I D A V I T

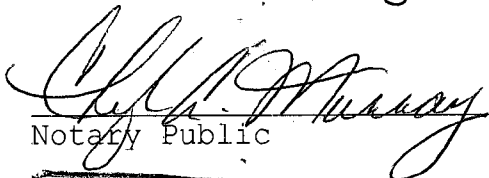
COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF ALLEGHENY :

BEFORE ME, the undersigned authority, personally appeared, MELISSA B. CATELLO, ESQUIRE, who, being duly sworn according to law, deposes and says that she is the attorney for the Plaintiff and, as such, is authorized to make this Affidavit and that the facts set forth in the foregoing PRAECIPE FOR TRIAL are legal matters within her knowledge as the attorney for the Plaintiff, same being true and correct to the best of her knowledge, information and belief.

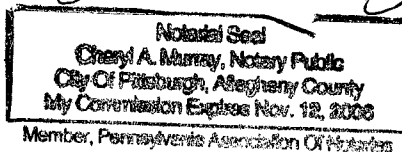


Melissa B. Catello

SWORN TO and subscribed before me
this 25th day of August, 2006.



Notary Public



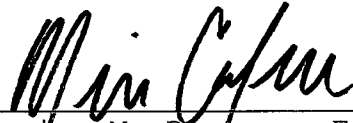
CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the within **PRAECIPE FOR TRIAL** was mailed via first class mail, postage prepaid, this 25th day of August, 2006 to the following:

David Chmiel, Esquire
Marshall, Dennehey, Warner,
Coleman & Goggin
US Steel Tower, Suite 2900
600 Grant Street
Pittsburgh, PA 15219

PORTNOY & QUINN, LLC

BY


Irving M. Portnoy, Esquire
Melissa B. Catello, Esquire
Attorney for Plaintiff

FILED
AUG 28 2006
William A. Shaw
Prothonotary/Clerk of Courts

CA

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

ANITA SCHMIDT

NO. 02-1415-CD

V.

KEYSTONE REHABILITATION
SYSTEMS, A Corporation

ORDER

AND NOW, this 24th day of January, 2007, following Pre-Trial Conference, it is
the ORDER of this Court as follows:

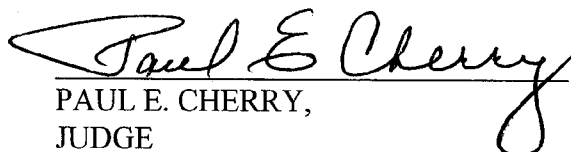
1. Jury Selection in this matter is scheduled for February 1, 2007, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Trial in this matter is scheduled for May 29, 30, 31 and June 1, 2007, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
3. The deadline for providing any and all outstanding discovery shall be by and no later than forty-five (45) days prior to the commencement of trial.
4. Counsel for the parties, if they so desire, may submit a Trial Brief to the Court no more than fifteen (15) days prior to the commencement of trial.
5. The deadline for submitting any and all Motions shall be by and no later than forty-five (45) days prior to the commencement of trial.
6. Points for Charge shall be submitted to the Court by and no later than fifteen (15) days prior to the commencement of trial.
7. Proposed Verdict Slip shall be submitted to the Court by and no later than fifteen (15) days prior to the commencement of trial.
8. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

FILED
01/31/07
JAN 24 2007

William A. Shaw
Prothonotary/Clerk of Courts

ICC
Attys: Portnoy
T. Smith
S. Sastmann
D. Chmiel
(EK)

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

JAN 24 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/24/07

 You are responsible for serving all appropriate parties.

 X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

CIVIL DIVISION

NO. 02-1415-CD

**DEFENDANT'S MOTION IN LIMINE TO
LIMIT PLAINTIFF'S RECOVERY OF
MEDICAL EXPENSES**

Filed on behalf of Defendant Keystone
Rehabilitation Systems, a corporation

Counsel of record for this party:

David M. Chmiel, Esquire
Pa. I.D. No. 76464

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**
2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

(412) 803-1140

FILED ^{rec}
m10:18/61 ^{Atty}
APR 19 2007 ^{Chmiel}

William A. Shaw
Prothonotary/Clerk of Courts

(6K)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

NO. 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

**DEFENDANT'S MOTION IN LIMINE TO LIMIT PLAINTIFF'S RECOVERY OF
MEDICAL EXPENSES**

AND NOW, comes the Defendant Keystone Rehabilitation Systems, by and through its counsel, David M. Chmiel, Esquire and Marshall, Dennehey, Warner, Coleman & Goggin, and files the within Motion in Limine to Limit Plaintiff's Recovery of Medical Expenses, and in support thereof, avers as follows:

1. Plaintiff has commenced the within action alleging negligence in the administration of physical therapy on the part of the Defendant's agents, servants and/or employees.
2. Defendant has filed an Answer and New Matter denying liability and raising various affirmative defenses.
3. Plaintiff is seeking, among other damages, recovery of sums paid for medical services rendered to Anita Schmidt following the treatment rendered by Defendant.
4. Documentation provided by Plaintiff's counsel during the course of discovery indicates that approximately \$10,000.00 has been billed for services rendered to Anita Schmidt.

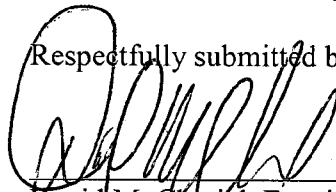
However, this is not the amount paid and/or accepted as payment in full by the healthcare providers.

5. Pursuant to Pennsylvania case law, Plaintiff is limited in the amount of medical damages she can present to a jury at trial to the amount paid and/or accepted as payment in full by the healthcare providers. Moorehead v. Crozer Chester Medical Center, 763 A.2d 376 (Pa. 2000).

6. To allow Plaintiff to present medical bills beyond the amount paid and/or accepted as payment in full would result in a windfall benefit to the Plaintiff and essentially punish the Defendant. This would be contrary the compensatory nature of damages. See Moorehead, supra.

WHEREFORE, Defendant Keystone Rehabilitation Systems respectfully requests that this Honorable Court enter an order limiting the medical specials to be admitted into evidence to the amount paid and/or accepted as payment in full by the healthcare providers.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read 'D. Chmiel', is written over a horizontal line.

David M. Chmiel, Esquire
Attorney for Defendant

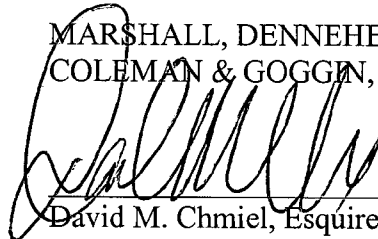
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DEFENDANT'S MOTION IN LIMINE TO LIMIT PLAINTIFF'S RECOVERY OF MEDICAL EXPENSES** was served by U. S. Mail, First Class, postage pre-paid, this 11th day of April, 2007, on the below listed:

The Honorable Paul E. Cherry
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Melissa Catello, Esquire
EVANS, PORTNOY & QUINN
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiff)

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN,



David M. Chmiel, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

NO. 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

ORDER OF COURT

AND NOW, this ____ day of _____, 2007, upon consideration of Defendant's Motion in Limine, it is hereby ORDERED, ADJUDGED and DECREED that said motion is GRANTED. Plaintiff shall be limited to the amounts paid to and/or accepted as payment in full by the healthcare providers.

BY THE COURT:

J. _____

1

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

CIVIL DIVISION

NO. 02-1415-CD

SCHEDULING ORDER

Filed on behalf of Defendant Keystone
Rehabilitation Systems, a corporation

Counsel of record for this party:

David M. Chmiel, Esquire
Pa. I.D. No. 76464

**MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN**

2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

(412) 803-1140

FILED^{ICC}
01/4:00/301 Amy Chmiel
APR 17 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

NO. 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

SCHEDULING ORDER

AND NOW, this 16th day of April, 2007, Defendant Keystone Rehabilitation Systems, having filed two Motions in Limine, it is hereby ORDERED, ADJUDGED, and DECREED that oral argument on these motions shall be on the 24th day of May at 10:00 o'clock a.m./p.m. in courtroom number 2.

Any opposition shall be filed on or before May 7, 2007

BY THE COURT:

Paul E. Cherry

FILED

APR 17 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/17/07

☒ You are responsible for serving all appropriate parties.

____ The Prothonotary's office has provided service to the following parties:

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

UA

FILED 3cc
m/mine/Bob Atty
APR 12 2007 Chmiel
William A. Shaw
Prothonotary/Clerk of Courts (GR)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

NO. 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

**DEFENDANT'S MOTION IN LIMINE TO LIMIT THE TESTIMONY OF DAWN L.
SCHUSLER, M.S.P.T.**

AND NOW, comes the Defendant Keystone Rehabilitation Systems, by and through its counsel, David M. Chmiel, Esquire and Marshall, Dennehey, Warner, Coleman & Goggin, and files the within Motion in Limine to Limit the Testimony of Dawn L. Schusler, M.S.P.T., and in support thereof, avers as follows:

1. The Plaintiff has commenced the within lawsuit alleging negligence in the administration of massage therapy as part of Plaintiff's physical therapy.
2. Defendant has filed an Answer and New Matter denying liability and raising various affirmative defenses.
3. Plaintiff has identified Dawn L. Schusler, M.S.P.T. as a liability expert and provided the report of Ms. Schusler during the course of discovery. A true and correct copy of Dawn Schusler's report is attached hereto and marked as Exhibit "A". At the conclusion of her report, Ms. Schusler states:

It is also my opinion that the negligent treatment and care provided to Ms. Schmidt at Keystone Rehabilitation Systems in Dubois, PA,

as indicated above, contributed to the risks of complications which ensued.

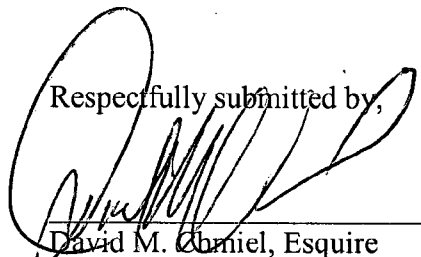
4. Pursuant to well established Pennsylvania Supreme Court case law, Ms. Schusler is not permitted to testify regarding causation of the injuries and damages alleged in this case: see Flanagan v. Labe, 690 A.2d 183 (Pa. 1997).

5. Causation of the injuries and damages allegedly sustained is more appropriate for a medical doctor, especially in light of complications sustained by Ms. Schmidt, including subsequent surgery and continued complaints.

6. It is abundantly clear that Ms. Schusler should not be permitted to testify regarding causation of the injuries and damages claim in this case.

WHEREFORE, Defendant Keystone Rehabilitation Systems respectfully requests that this Honorable Court grant the instant Motion in Limine and preclude Ms. Schusler from testifying as to the causation of any injuries and damages.

Respectfully submitted by,



David M. Corniel, Esquire
Attorney for Defendant

April 17, 2006

Melissa B. Catello, Esquire
Portnoy & Quinn, LLC
One Oxford Center, 36th Floor
301 Grant Street
Pittsburgh PA 15219-6401

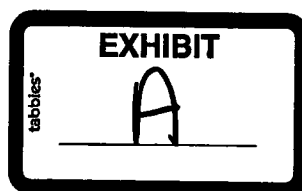
Re: Anita L. Schmidt

Dear Ms. Catello:

At your request, I have reviewed the case involving Anita Schmidt and the care and treatment provided to her at Keystone Rehabilitation Systems in Dubois, PA from January 10, 2001 through February 5, 2001. You provided me with the following documents, which I reviewed and relied upon in rendering my opinions contained in this report:

1. Record of ultrasounds of the arch of Ms. Schmidt's left foot performed on November 7, 2000 at Dubois Regional Medical Center
2. Records of same day surgery performed by Dr. Elias at Dubois Regional Medical Center on December 14, 2000
3. Records of Treatment provided by Brian M. Elias, D.P.M. from November 3, 2000 through November 12, 2001
4. Records of physical therapy treatment provided at Keystone Rehabilitation Systems from January 11, 2001 through February 7, 2001
5. Records of same day surgery performed by Dr. Elias at Dubois Regional Medical Center on April 19, 2001
6. Letter from Allegheny Orthotics and Prosthetics dated February 19, 2001
7. Records of physical therapy treatments provided at Dubois Regional Medical Center from February 21 through March 21, 2001
8. Record of magnetic resonance imaging study of Ms. Schmidt's left foot performed on November 13, 2001 at Dubois Regional Medical Center
9. Report of Brian M. Elias, D.P.M. dated June 18, 2002
10. Records of treatment provided by Charles W. Rice, D.P.M. from August 12, 2003 through May 17, 2005
11. Various pleadings
12. Deposition testimony of Ms. Schmidt, Eileen Amy, PT, Ragina Whitling, LPTA, Gloria Costanzo, LPTA, and Patricia A. Persin, MSPT

Ms. Schmidt underwent a surgical excision of a benign lesion/fibromatosis, as well as a plantar fasciotomy, which was located on the bottom of her left foot. Brian Elias, D.P.M. performed the surgery at Dubois Medical Center on December 14, 2000. Following surgery, Dr. Elias prescribed a course of physical therapy at Keystone Rehabilitation Systems in Dubois.



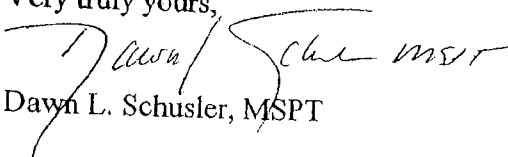
Ms. Schmidt began physical therapy on 1/11/01. Physical therapy included a multitude of modalities, exercises and gait training with a variety of therapists and physical therapy assistants. On initial evaluation it is stated, "incisions were welled healed and no redness evident". On 1/15/01, massage was initiated. On 1/17/01, patient received massage (cross friction) and debridement at incision sites. On 1/19/01, patient again received massage (cross friction). A summary to Dr. Elias on 1/22/01 indicates patient again received moderately aggressive scar tissue massage and that "surgical sites are reddened and slow to heal".

It is my opinion that the treatment and care provided to Ms. Schmidt was in deviation of the standard of care required of a physical therapist in the following manners:

1. Performing overly aggressive massage upon the incision sites on the bottom of Ms. Schmidt's left foot
2. In continuing to perform aggressive massage after the incision sites appeared to deteriorate
3. In failing to promptly notify Dr. Elias, the prescribing physician, of the deterioration of the incision sites from the initial evaluation time

It is also my opinion that the negligent treatment and care provided to Ms. Schmidt at Keystone Rehabilitation Systems in Dubois, PA, as indicated above, contributed to the risk of complications, which ensued.

Very truly yours,


Dawn L. Schusler, MSPT

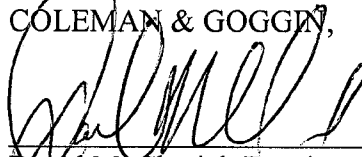
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **DEFENDANT'S MOTION IN LIMINE TO LIMIT THE TESTIMONY OF DAWN L. SCHUSLER, M.S.P.T.** was served by U. S. Mail, First Class, postage pre-paid, this 11th day of April, 2007, on the below listed:

The Honorable Paul E. Cherry
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Melissa Catello, Esquire
EVANS, PORTNOY & QUINN
One Oxford Centre
36th Floor
301 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiff)

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN,



David M. Chmiel, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff,

NO. 02-1415-CD

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

ORDER OF COURT

AND NOW, this ____ day of _____, 2007, upon consideration of Defendant's Motion in Limine, it is hereby ORDERED, ADJUDGED and DECREED that said motion is GRANTED. Dawn L. Schusler, M.S.P.T., is precluded from offering any evidence and/or testimony pertaining to the causation of any of the alleged injuries and damages.

BY THE COURT:

J. _____

1A

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

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff

v.

No. 02-1415-CD

KEYSTONE REHABILITATION SYSTEMS,
a corporation,

Defendant.

ORDER OF COURT

Filed on behalf of Defendant,
Keystone Rehabilitation Systems, a
corporation

JURY TRIAL DEMANDED

Counsel of Record for this Party:

David M. Chmiel, Esquire
Pa. I.D. No. 76464

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN
2900 US Steel Tower
600 Grant Street
Pittsburgh, PA 15219

412-803-1140

FILED 300
013:56304 Atty Chmiel
MAY 10 2007
(62)

William A. Shaw
Prothonotary/Clerk of Courts

Clearfield
**IN THE COURT OF COMMON PLEAS OF ~~WESTMORELAND~~ COUNTY,
PENNSYLVANIA**

ANITA SCHMIDT,

CIVIL DIVISION

Plaintiff

v.

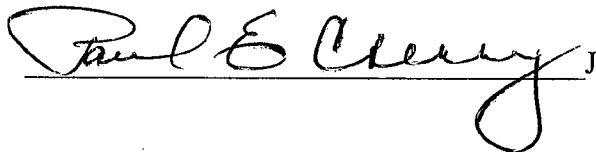
No. 02-1415-CD

KEYSTONE REHABILITATION SYSTEMS,
a corporation,

Defendant.

ORDER OF COURT

AND NOW, this 10th day of May, 2007, upon consideration of counsels' request, it is hereby **ORDERED, ADJUDGED and DECREED** that the oral argument currently scheduled for Thursday, May 24, 2007 on Defendant's Motions in Limine is hereby rescheduled for Monday, May 21, 2007 at 11:30 o'clock ~~a.m.~~ / p.m. before the undersigned.


_____ J.

FILED

MAY 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: Slide7

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

LA

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

ANITA SCHMIDT

-VS-

KEYSTONE REHABILITATION
SYSTEMS, a corporation

No. 02-1415-CD

O R D E R

AND NOW, this 21st day of May, 2007, following argument on Defendant's Motion in Limine, it is the ORDER of this Court as follows:

1. The Court hereby withholds ruling on said Motion pending receipt and review of the videotape of Dawn L. Schusler, M.S.P.T.;

2. Defendant's Motion in Limine to Limit Plaintiff's Recovery of Medical Expenses is hereby granted. The amount that can be recovered shall be Three Thousand Five Hundred Thirty-Two Dollars and Seventy-Five (\$3,532.75) Cents.

BY THE COURT,



Judge

FILED

01:35 PM
MAY 22 2007

William A. Shaw
Prothonotary/Clerk of Courts

Attys: Portnoy
T. Smith
Sostmann, Chmiel

FILED

MAY 22 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/22/07

 You are responsible for serving all appropriate parties.

X The Prothonotary's office has provided service to the following parties:

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANITA SCHMIDT,

Plaintiff,

vs.

KEYSTONE REHABILITATION
SYSTEMS, a corporation,

Defendant.

CIVIL DIVISION

No. 02-1415-CD

**PRAECIPE TO SETTLE AND
DISCONTINUE**

Filed on behalf of PLAINTIFF

Counsel of Record for this
Party:

IRVING M. PORTNOY, ESQUIRE
PA I.D. #00919

MELISSA B. CATELLO, ESQUIRE
PA I.D. #90998

PORTNOY & QUINN, LLC
Firm #724
One Oxford Centre, 36th Floor
301 Grant Street
Pittsburgh, PA 15219
(412) 765-3800

JURY TRIAL DEMANDED

FILED 1 Cert copy
of disc issued
m/12:03pm to Atty
JUN 18 2007 Portnoy
(UM) & Ice C/A.
William A. Shaw
Prothonotary/Clerk of Courts

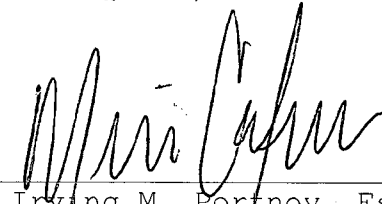
PRAECIPE TO SETTLE AND DISCONTINUE

TO THE PROTHONOTARY:

Please settle and discontinue the above-captioned matter of record as same has now been settled. Kindly issue a Certificate of Costs.

PORTNOY & QUINN, LLC

BY



Irving M. Portnoy, Esquire
Melissa B. Catello, Esquire
Attorneys for Plaintiff

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

CIVIL DIVISION

COPY

Anita Schmidt

Vs.

No. 2002-01415-CD

Keystone Rehabilitation Systems

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 June 18, 2007, marked:

Settled and discontinued

Record costs in the sum of \$85.00 have been paid in full by Irving M. Portnoy Esq..

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 18th day of June A.D. 2007.



William A. Shaw, Prothonotary