

03-393-CD.
FRANCIS L. SELVAGE, ET AL. VS. CLEARFIELD HOSPITAL,
ETAL.

Francis L. Selvage, Dawn L. Retorick vs. Clearfield Hospital, Lois Eisenman, Jackie Stone, Thelma Stratton

Civil Other

Date		Judge
3/20/2003	X Filing: Praeipce for Writ of Summons Paid by: West, James J. Receipt number: 1857398 Dated: 03/20/2003 Amount: \$85.00 (Check) 4 CC and Writs to Sheriff 3 CC and Writs to Attorney West	No Judge
5/19/2003	X Sheriff Returns: Now, March 24, 2003, served Defendants at place of Employment. Shff. Hawkins \$38.37 and Surcharge \$40.00 paid by Atty.	No Judge
9/18/2003	X Complaint. filed by s/James J. West, Esquire Verification s/Frances L. Selvage s/Dawn L. Retorick Certificate of Service 1 cc to Atty West	No Judge
10/21/2003	X Filing: Praeipce for entry of appearance filed by Atty. Eric T. Smith, S. Elaine Diedrich and Schnader, Harrison, Segal & Lewis, LLP on behalf of Defendants. 1 CC to Atty. Copy to CA	No Judge
11/12/2003	X Preliminary Objections filed by Atty. Smith. 1 CC to Atty. X Amended Complaint. filed by, s/James J. West, Esquire Verification s/Dawn L. Retorick s/Frances L. Selvage Certificate of Service 1 cc to Atty	No Judge
12/1/2003	X Preliminary Objections to Amended Complaint and certificate of service filed by Atty. Smith. 1 CC to Atty.	No Judge
1/8/2004	X ORDER, NOW, this 7th day of January, 2004, re: Rule issued upon Plaintiff. Rule Returnable the 19th day of Feb.,2004, at 10:00 a.m.in Courtroom #1. by the Court, s/FJA,P.J. 2 cc w/Memo re: responsibility to serve rule on all parties to Atty Diedrich	Fredric Joseph Ammerman
1/14/2004	X Affidavit Of Service, Court's Order dated January 7, 2004 and Defendant's Preliminary Objections to Amended Complaint upon: JAMES J. WEST, ESQ. filed by, s/Eric T. Smith, Esq. no cc	Fredric Joseph Ammerman
2/3/2004	X Answer To Defendants' Preliminary Objections to Amended Complaint. filed by, s/James J. West, Esquire Certificate of Service 2 cc to Atty West	Fredric Joseph Ammerman
3/19/2004	X ORDER, AND NOW, this 17th day of March, 2004, re: Defendants Preliminary Objections. by the Court, s/FJA, P.J. 1 cc Atty West, 2 cc Atty Smith	Fredric Joseph Ammerman
4/28/2004	X Answer And New Matter To Amended Complaint. filed by, s/S. Elaine Diedrich, Esq. Verification s/Lois Eisenman s/Jon R. Steen s/Jackie Stone s/Thelma Stratton Certificate of Service 1 cc to Atty	Fredric Joseph Ammerman
5/21/2004	X Answer To New Matter. filed by, s/James J. West, Esquire Verification s/Dawn L. Retorick s/Frances L. Selvage Certificate of Service no cc	Fredric Joseph Ammerman
12/6/2004	X Certificate Prerequisite to Service of a Subpoena To Serve Documents and Things Pursuant to Pa.R.C.P. 4009.21, filed by s/ James J. West, Esquire. No CC.	Fredric Joseph Ammerman
12/17/2004	X Defendants' Motion for Protective Order filed by Atty. E. Smith. 1 CC to Atty.	Fredric Joseph Ammerman
12/21/2004	X Order, NOW, this 20th day of Dec., 2004, upon consideration of Defendants' Motion for Protective Order, a Rule is hereby issued upon Plaintiffs to Appear and Show Cause why the Motion should not be granted. Rule Returnable is scheduled the 3rd of Jan. 2005, at 2:30 p.m. in Courtroom no. 2, Cifd. co. Courthouse. BY THE COURT, /s/ Paul E. Cherry, Judge. 2CC & Memo Re: Service to Atty Smith	Paul E. Cherry
12/30/2004	X Answer to Defendants' Motion for Protective Order, filed by s/James West, Esq. Three CC Attorney West	Paul E. Cherry

Case	Parties	Filing date	Judgment	Disposition	Disposition Date
2006-01628-CD	Berringer, Michelle D. Defendant Citifinancial Plaintiff JMMMP Company Plaintiff	09/18/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: Writ of Execution Reissued 9-18-2007	Writ of Execution	9/18/2007
2006-02021-CD	Brumberg, James Defendant Brumberg, Manuela Defendant LaSalle Bank, N.A. Plaintiff	09/17/2007	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$56,735.67	Writ of Execution	9/17/2007
2007-00564-CD	HSBC Mortgage Services, In Plaintiff Smith, David W. Defendant Smith, Lorie A. Defendant	09/18/2007	Default Judgment In favor of: Plaintiff Judgment amount or comment: 73,996.12	Open	9/18/2007
2007-00564-CD	HSBC Mortgage Services, In Plaintiff Smith, David W. Defendant Smith, Lorie A. Defendant	09/18/2007	Default Judgment In favor of: Plaintiff Judgment amount or comment: 73,996.12	Writ of Execution	9/18/2007
2007-00567-CD	CSB Bank Plaintiff Moore, Dawn D. Defendant Moore, Robert A. Defendant	09/20/2007	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$18,558.25	Open	9/20/2007
2007-00621-CD	Lezzer Lumber, Inc. Plaintiff Torrell & Bernardo Land Cor| Defendant	09/20/2007	Judgment Note In favor of: Plaintiff Judgment amount or comment: Release of Lot #40 in the Coke Hill Estates	Release/Lien	9/20/2007
2007-00694-CD	Bank of America N.A. (USA) Plaintiff Fleet National Bank Plaintiff Moore, Dawn D. Defendant Moore, Robert A. Defendant	09/21/2007	Default Judgment In favor of: Plaintiff Judgment amount or comment: \$36,858.96	Open	9/21/2007

Civil Other

Date		Judge
5/26/2005	X Order, AND NOW, this 25th day of May, 2005, following oral argument and the submission of briefs on Defendants' Motion for Protective Order in response to Plaintiffs' Subpoena to Produce Documents or Things for Discover, it is the ORDER of the Court as follows: (see original). BY THE COURT/s/ Paul E. Cherry, Judge. 1CC Attys: J. West, E. Smith	Paul E. Cherry
10/24/2005	X Notice of Intent to Serve Subpoenas to Produce Documents and Things for Discovery Pursuant to Rule 4009.21, filed by Teri Imbarlina Patak Esq. No CC.	Paul E. Cherry
10/28/2005	X Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22 Directed to Pennsylvania Nurses Association, OPEIU, LOCAL 112, filed by Terri Imbarlina Patak Esq. No CC.	Paul E. Cherry
12/1/2005	X Stipulation for Protective Order, dated December 1, 2005. In Re: Confidential Recordings. BY THE COURT: /s/ Paul E. Cherry, Judge. 1CC Atty Diedrich.	Paul E. Cherry
4/3/2006	Motion For Summary Judgment Filed on Behalf of Defendant Clearfield, Hospital, filed by s/ Terri Imbarlina Patak No CC	Paul E. Cherry
	Motion For Summary Judgment Filed on Behalf of Defendants Lois Eisenman, Jackie Stone and Thelma Stratton. Filed by s/ Terri Imbarlina Patak, Esquire. No CC	Paul E. Cherry
4/5/2006	Scheduling Order, NOW, this 4th day of April, 2006, it is Ordered that Defendants Lois Eisenman, Jackie Stone and Thelma Stratton's Motion for Summary Judgment shall be argued on May 11, 2006, at 11:00 a.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 4 Atty. Patak	Paul E. Cherry
	Scheduling Order, NOW, this 4th day of April, 2006, it is Ordered that Defendant Clearfield Hospital's Motion for Summary Judgment shall be argued on May 11, 2006, at 11:00 a.m. in Courtroom No. 2. By The Court, /s/ Paul E. Cherry, Judge. 4CC Atty. Patak	Paul E. Cherry
4/28/2006	Motion For Two Week Extension to Answer Summary Judgment Motion, filed by s/ James J. West, Esquire	Paul E. Cherry
5/5/2006	Order, NOW, this 1st day of May, 2006, Motion for a 14-day Extension of Time in which to file an Answer to the Motion for Summary Judgment is Granted and the Plaintiffs' counsel is granted a 14-day extension in which to respond to the Defendants' Motion for Summary Judgment. By The Court, /s/ Paul E. Cherry, Judge.	Paul E. Cherry
	X Order, NOW, this 4th day of May, 2006, upon consideration of Defendants' Motion for Summary Judgment, Ordered that argument on said Motion has been rescheduled from May 11, 2006 at 11:00 a.m. to the 2nd day of June 2006 at 9:00 a.m. in Courtroom No. 2. It is the responsibility of Plaintiffs' Counsel to serve certified copies of said scheduling Order upon all Defendants. By The Court, /s/ Paul E. Cherry, Judge. 5CC Atty West	Paul E. Cherry
6/6/2006	X Order NOW, this 2nd day of June 2006, following argument on Defendants' Motion for Summary Judgment, it is the ORDER of this Court that counsel for Defendants shall provide the Court with response to oral argument of Plaintiffs, and Plaintiffs shall provide reply and memorandum of law to defendant's reply and memorandum of law within no more than twenty (20) days from today's date. BY THE COURT: /s/ Paul E. Cherry, Judge. 2CC Atty J. West and E. Smith.	Paul E. Cherry

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Date: 9/21/2007

Time: 03:51 PM

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Clearfield County Court of Common Pleas

User: LMILLER

Civil Disposition Report

CT COMMON PLEAS,

All Case Types

From 9/17/2007 to 9/21/2007

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Disposition Date
2007-00700-CD	Anderson, Shirley J. Plaintiff Clearfield Bank & Trust Com Subject CNB Bank Subject First Commonwealth Bank Subject Northwest Savings Bank Subject	09/17/2007	Default Judgment In favor of: Plaintiff Judgment amount or comment: 9/17/2007 Praecipe for Partial Discontinuance of Levy/Garnishments	Discontinued/Disc	9/17/2007
2007-01217-CD	Chase Bank USA, N.A. Plaintiff Cummings, Donald J. Defendant	09/20/2007	Consent Judgment In favor of: Plaintiff Judgment amount or comment: \$3,753.01	Open	9/20/2007
2007-01332-CD	Lee, Nikki L. Plaintiff McGary Electric Defendant McGary, Bobbie Defendant Timberland Federal Credit U Subject	09/18/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$4,454.00	Writ of Executio	9/18/2007
2007-01333-CD	Lee, Nikki L. Plaintiff McGary, Kirt Defendant Timberland Federal Credit U Subject	09/18/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$4,316.50	Writ of Executio	9/18/2007
2007-01366-CD	D. C. Guelich Explosive Co. Plaintiff Madera Enterprises, Inc. Defendant	09/21/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$8,127.50	Writ of Executio	9/21/2007
2007-01521-CD	Equity One, Inc. Plaintiff Sloppy, Robert Defendant	09/17/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$3,730.22	Open	9/17/2007
2007-01523-CD	Leach, Christopher Defendant Northwest Savings Bank Plaintiff	09/17/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$3,450.34	Open	9/17/2007

Civil Other

Date		Judge
10/16/2006	<p>X Opinion and Order, filed cert. to Atty's Smith & West. Now, this 16th day of October, 2006, Order regarding Motion for Summary Judgment as follows: Request to Dismiss Plaintiffs' Complaint in its entirety is hereby DENIED. Request to Dismiss Plaintiffs' claim for Intentional Infliction of Emotional Distress is hereby GRANTED.</p>	Paul E. Cherry
12/11/2006	<p>X Certificate of Readiness for Trial, Re: Jury Trial, filed by s/James J. West, Esq. One CC Attorney West</p>	Paul E. Cherry
3/19/2007	<p>X Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22 directed to Gentiva Health Services, Olsten Health Services, and the Pennsylvania Department of Health, filed by s/ S. Elaine Diedrich Esq. No CC.</p>	Paul E. Cherry
3/28/2007	<p>X Defendants' Motion to Compel Plaintiffs to Submit to Mental Examination by Physician, filed by s/ S. Elaine Diedrich, Esquire. No CC</p>	Paul E. Cherry
3/28/2007	<p>X Defendants' Motion For Status Conference, filed by s/ S. Elaine Diedrich, Esquire. No CC</p>	Paul E. Cherry
3/29/2007	<p>X Order, NOW, this 29th day of March, 2007, Ordered that a status conference and argument on the Motion to Compel will be held on the 3rd day of April, 2007, immediately following Civil Call, which commences at 11:00 a.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: J. West, E. Smith</p>	Paul E. Cherry
4/5/2007	<p>X Order, NOW, this 3rd day of April, 2007, Ordered that discovery shall close by July 31, 2007. (see original) Pretrial conference shall be held at 1:00 p.m. on August 24, 2007 with Jury Selection to be at 9:00 a.m. on August 28, 2007. Trial shall be held on October 15th through the 23rd, 2007. Counsel are not required to appear for Civil Call on July 26, 2007. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, E. Smith</p>	Paul E. Cherry
4/11/2007	<p>X Defendants' Supplement to Motion to Compel Mental Examination of Plaintiffs and Motion for Status Conference, filed by s/ John K. Gisleson Esq. No CC.</p>	Paul E. Cherry
4/19/2007	<p>Miscellaneous Payment: Subpoena Paid by: Schnader Harrison Segal & Lewis LLP Receipt number: 1918645 Dated: 4/19/2007 Amount: \$9.00 (Check)</p>	Paul E. Cherry
5/4/2007	<p>X Order, NOW, this 3rd day of May, 2007, it is Ordered that Pre-Trial Conference scheduled on August 24, 2007 is rescheduled to August 24, 2007, at 11:00 a.m. in Judge's Chambers. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, E. Smith</p>	Paul E. Cherry
5/30/2007-7 not in file	<p>Defendants' Motion for Protective Order, filed by Atty. Diedrich no cert. copies.</p>	Paul E. Cherry
5/31/2007	<p>X Order, this 30th day of May, 2007, it is Ordered that telephone hearing with regard to Defendants' Motion for Protective Order shall be scheduled for June 6, 2007, at 11:30 a.m. Counsel for Defendants shall initiate said telephone hearing by contacting counsel for the Plaintiff and the Court. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: E. Smith, West</p>	Paul E. Cherry
6/8/2007	<p>X Order, this 6th day of June, 2007, following argument on the Defendant's Motion for Protective Order and upon consideration of same, said Motion is granted as follows: (see original) By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, E. Smith</p>	Paul E. Cherry

Clearfield County Court of Common Pleas

Civil Disposition Report

CT COMMON PLEAS,

All Case Types

From 9/17/2007 to 9/21/2007

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Disposition Date
2007-01528-CD	Gabriel, Catherine J. Defendant Gabriel, Harry J. Defendant Katzen Investments Plaintiff Schramm, Richard M. Defendant Universal Display Co., Inc. Defendant	09/17/2007	Judgment Note In favor of: Plaintiff Judgment amount or comment: \$77,493.85	Open	9/17/2007
2007-01529-CD	CSB Bank Plaintiff Zortman, Susan Defendant	09/17/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: 1060.15	Open	9/17/2007
2007-01530-CD	CSB Bank Plaintiff Stucke, William B. Defendant	09/17/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: 4006.02	Open	9/17/2007
2007-01536-CD	Commonwealth of Pennsylvania Plaintiff Fairman, Emily D. Defendant Fairman, William S. Defendant	09/19/2007	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$7,198.35	Open	9/19/2007
2007-01538-CD	American Debt Sales Plaintiff Centurion Capital Corporation Plaintiff Dillon, Michelle M. Defendant Household Bank Plaintiff Palisades Acquisition XVI, LI Plaintiff	09/19/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$2,495.35	Open	9/19/2007
2007-01539-CD	Aspire Plaintiff Dickson, James K. Defendant Midland Credit Management, Plaintiff Midland Funding LLC Plaintiff	09/19/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$1,193.97	Open	9/19/2007

Civil Other

Date		Judge
7/17/2007	X Order, this 17th day of July, 2007, it is Ordered that Pre-Trial Conference is rescheduled from August 24, 2007, to August 27, 2007 at 2:30 p.m. in Courtroom 2. By The Court, /s/ Paul e. Cherry, Judge. 1CC Attys: West, E. Smith	Paul E. Cherry
7/27/2007	not on file Defendant's Motion for Protective Order, filed by s/S. Elaine Diedrich No CC	Paul E. Cherry
7/30/2007	X Order, this 30th day of July, 2007, Motion for Protective Order shall be Granted. Plaintiffs' Notice of Deposition is quashed. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: J. West, E. Smith	Paul E. Cherry
8/27/2007	X Amended Pretrial Statement of Defendants, filed by s/ S. Elaine Diedrich, Esquire. no CC	Paul E. Cherry
8/28/2007	X Order, Jury Selection is scheduled for August 28, 2007, at 9:00 a.m. in Courtroom 2. Trial is scheduled for Oct. 15, 16, 17, 18, 19, 22, 23, 2007, beginning at 9:00 a.m. in Courtroom 2. (see original). By The Court, /s/ Paul E. Cherry, Judge. 1CC Attys: J. West, E. Smith	Paul E. Cherry
9/14/2007	X Defendants' Motion in Limine to Preclude Argument or Evidence Concerning the Plaintiffs' Damages. filed by s/ S. Elaine Diedrich Esq. 1CC Atty.	Paul E. Cherry
	X Defendants' Motion to Strike Plaintiffs' Jury Demand on Their Whistleblower and Mcare Act Claims or, in the Alternative, to Preclude Plaintiffs' Counsel from Describing the Plaintiffs at Trial as "Whistleblowers" or Referencing the Term "Whistleblower" or the "Whistleblower Law", filed by s/ S. Elaine Diedrich Esq. 1CC Atty.	Paul E. Cherry
	X Defendants' Motion in Limine to Preclude Evidence at Trial Concerning the 2004 Department of Health Survey of Clearfield Hospital and the Reasons for Defendants Eisenman and Stone Leaving their Employment with Clearfield Hospital in 2004, filed by s/ S. Eliane Diedrich Esq. 1CC Atty.	Paul E. Cherry
	X Defendant's Motion in Limine to Preclude any Evidence of Alleged Retaliation against Plaintiffs Occurring before September 21, 2002, filed by s/ S. Eliane Diedrich Esq. 1CC Atty.	Paul E. Cherry
	X Defendants' Motion in Limine to Preclude Evidence Concerning "Chest Pains" Allegedly Suffered by Fran Selvage in 2002, filed by s/ S. Eliane Diedrich Esq. 1CC Atty.	Paul E. Cherry
	X Defendants' Motion in Limine to Preclude Argument or Evidence on Plaintiff Retorick's Leg Condition or Related Pain, filed by s/ S. Eliane Diedrich Esq. 1CC Atty.	Paul E. Cherry
	X Defendants' Motion in Limine to Preclude Plaintiffs' Expert Report and Expert Testimony of Stanley E. Schneider, filed by s/ S. Elaine Diedrich Esq. 1CC Atty.	Paul E. Cherry
	X Defendants' Motion in Limine to Preclude Plaintiffs From Introducing Evidence that After They Resigned Their Employment, Thelma Stratton Did Not Recommend Them for Rehire, filed by s/ S. Eliane Diedrich Esq. 1CC Atty.	Paul E. Cherry
9/17/2007	X Motion to Withdraw Jury Demand and Proceed Non-Jury as to All Counts, filed by s/ James J. West, Esquire. No CC	Paul E. Cherry
	X Motion In Limine to Exclude The Testimony of Defendants' Expert Witnesses, filed by s/ James J. West, Esquire. No CC	Paul E. Cherry
	X Plaintiffs' Reply to Defendants' Memorandum of Law on Preclusion of Evidence on Damages, filed by s/ James J. West, Esquire. No CC	Paul E. Cherry

Case	Parties	Filing date	Judgment	Disposition	Disposition Date
2007-01540-CD	Anderson, Michael J. Defendant HSBC/Private Label Plaintiff Palisades Collection LLC Plaintiff	09/19/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: 3123.50	Open	9/19/2007
2007-01541-CD	JMMMP Company Plaintiff Leigey, Larry E. Defendant	09/19/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: 907.85	Open	9/19/2007
2007-01541-CD	JMMMP Company Plaintiff Leigey, Larry E. Defendant	09/19/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: 907.85	Writ of Executio	9/19/2007
2007-01543-CD	PA State Employees Credit l Plaintiff Sawyer, Catherine A. Defendant	09/20/2007	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$3,437.34	Open	9/20/2007
2007-01547-CD	Commonwealth of Pennsylvæ Plaintiff Newman, Marsha J. Defendant Newman, Norman D. Defendant	09/20/2007	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$3,845.81	Open	9/20/2007
2007-01548-CD	Commonwealth of Pennsylvæ Plaintiff Conklin, Mike J. Defendant	09/20/2007	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$1,428.15	Open	9/20/2007
2007-01549-CD	Commonwealth of Pennsylvæ Plaintiff Kephart, Nesta A. Defendant Kephart, Wallace A. Defendant	09/20/2007	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$848.24	Open	9/20/2007
2007-01550-CD	Brewbaker, Charles N. Defendant Commonwealth of Pennsylvæ Plaintiff	09/20/2007	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment:	Open	9/20/2007
2007-01551-CD	Commonwealth of Pennsylvæ Plaintiff Kahl, Michelle F. Defendant Kahl, Stuart E. Defendant	09/20/2007	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$1,090.57	Open	9/20/2007

Francis L. Selvage, Dawn L. Retorick vs. Clearfield Hospital, Lois Eisenman, Jackie Stone, Thelma Stratton

Civil Other

Date		Judge
9/19/2007	X Order, this 19th day of Sept., 2007, Defendants' Motion in Limine to Preclude Any Evidence of Alleged Retaliation Against Plaintiffs Occurring Before Sept. 21, 2002, shall be argued on Oct. 5, 2007, at 1:30 p.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. CC to Gisleson & West	Paul E. Cherry
	X Order, this 19th day of Sept., 2007, it is Ordered that the Defendants' Motion in Limine to Preclude Evidence at Trial Concerning the 2004 Department of Health Survey of Clearfield Hospital and the Reasons for Defendants Eisenman and Stone Leaving Their Employment with Clearfield Hospital in 2004 shall be argued on Oct. 5, 2007, at 1:30 p.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. CC to Gisleson & West	Paul E. Cherry
	X Order, this 19th day of Sept., 2007, it is Ordered that Defendants' Motion in Limine to Preclude Evidence Concerning "Chest Pains" Allegedly Suffered by Fran Selvage in 2002 shall be argued on Oct. 5, 2007, at 1:30 p.m. in Courtroom 2. By The court, /s/ Paul E. Cherry, Judge. CC to Gisleson and West	Paul E. Cherry
	X Order, this 19th day of Sept., 2007, it is Ordered that Defendants' Motion to Strike Plaintiffs' Jury Demand on Their Whistleblower and MCARE Act Claims, or, in the Alternative, to Preclude Plaintiffs' Counsel from Describing the Plaintiffs as "Whistleblowers" or Reference the Term "Whistleblower" or the "Whistleblower Law" shall be argued on Oct. 5, 2007, at 1:30 p.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. CC to Gisleson & West	Paul E. Cherry
	X Scheduling Order, this 19th day of Sept., 2007, it is Ordered that Defendants' Motion in Limine to Preclude Argument or Evidence Concerning the Plaintiffs' Damages shall be argued on Oct. 5, 2007, at 1:30 pm. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. CC to Attys: Gisleson & West	Paul E. Cherry
	X Scheduling Order, NOW, this 19th day of Sept., 2007, it is Ordered that Defendants' Motion in limine to Preclude Plaintiffs from Introducing Evidence that After They Resigned Their Employment, Thelma Stratton Did not Recommend Them for Rehire shall be argued on Oct. 5, 2007, at 1:30 p.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. CC to Attys. Gisleson & West	Paul E. Cherry
	X Scheduling Order, this 19th day of Sept., 2007, it is Ordered that Defendants' Motion in Limine to Preclude Plaintiffs' Expert Report and Expert Testimony of Stanley E. Schneider shall be argued on Oct. 5, 2007, at 1:30 p.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. CC to Gisleson & West	Paul E. Cherry
	X Scheduling Order, this 19th day of Sept 2007, it is Ordered that Defendants' Motion in Limine to Preclude Argument or Evidence on Plaintiff Retorick's Leg Condition or Related Pain shall be argued on Oct. 5, 2007, at 1:30 p.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. CC to Attys: Gisleson, West	Paul E. Cherry
9/24/2007	X Order, NOW, this 24th day of Sept., 2007, upon consideration of the Motion to Withdraw Jury Demand and Proceed Non-Jury As to All Counts, it is Ordered that said Motion is Denied. It is further Ordered that the Plaintiffs are voluntarily dismissing the actions set forth for defamation (Count IV) and false lights (Count V) and said Counts are Dismissed. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys; J. West, J. Gisleson, E. Smith	Paul E. Cherry

Date: 9/21/2007

Time: 03:51 PM

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Clearfield County Court of Common Pleas

User: LMILLER

Civil Disposition Report

CT COMMON PLEAS,

All Case Types

From 9/17/2007 to 9/21/2007

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Disposition Date
2007-01552-CD	Commonwealth of Pennsylvania Plaintiff Parada, Dennis K. Defendant	09/20/2007	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$819.66	Open	9/20/2007
2007-01553-CD	Commonwealth of Pennsylvania Plaintiff Cuthbert, Angela J. Defendant Cuthbert, Jeremy Defendant	09/20/2007	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$1,815.03	Open	9/20/2007
2007-01556-CD	LVNV Funding, LLC Plaintiff Muckey, Richard S. Defendant	09/21/2007	DJ Transcript Judgment In favor of: Plaintiff Judgment amount or comment: \$3,272.87	Open	9/21/2007

Date: 9/28/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 11:12 AM

ROA Report

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Case: 2003-00393-CD

Current Judge: Paul E. Cherry

Francis L. Selvage, Dawn L. Retorick vs. Clearfield Hospital, Lois Eisenman, Jackie Stone, Thelma Stratton

Civil Other

Date Judge

9/24/2007 Order, this 24th day of Sept., 2007, argument on Plaintiffs' Motion in Limine to Exclude the Testimony of Defendants' Expert Witnesses shall be held on the 5th day of Oct., 2007 at 1:30 p.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Atty. West Paul E. Cherry

*** FAX TX REPORT ***

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Courthouse

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To: SHARON

From: William A. Shaw

Fax: ~~814-765-7659~~ 378-7175

Date: September 21, 2007

Phone:

Pages: 6

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Urgent

For Review

Please Comment

Please Reply

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•Comments:

Civil Other

Date	Selected Items	Judge
10/3/2007	✓ Defendants' Response in Opposition to Plaintiffs' Motion in Limine to Exclude the Testimony of Defendants' Expert Witnesses, filed by Atty. Gisleson no cert. copies.	Paul E. Cherry
10/5/2007	✓ Praecipe, Kindly enter the attached expert report and curriculum vitae of Stanley E. Schneider, Ed.D. as part of the record on the above-referenced matter. Filed by s/ James J. West, Esquire. 2CC Atty. West	Paul E. Cherry
10/9/2007	✓ Praecipe, kindly enter the attached supplemental expert report Stanley E. Schneider, Ed.D. as part of the record. Filed by s/ James J. West, Esquire. no CC	Paul E. Cherry
10/10/2007	✓ Order, this 10th day of Oct., 2007, it is Ordered that Plaintiff's Motion in Limine to Exclude the Testimony of Defendants' Expert Witnesses is Granted in part and Denied in part. Defendant's expert testimony of psychologist Paul M. Bernstein shall be permitted. Defendant's are precluded from offering the expert testimony of Michelle M. McGonigal. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, Gisleson & Smith	Paul E. Cherry
	✓ Order, this 10th day of Oct., 2007, it is Ordered that Defendants' memorandum of Law in Support of their Motion in Limine to Preclude Argument or Evidence Concerning the Plaintiffs' Damages is GRANTED. It is further ordered: (see original). By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, Gisleson & Smith	Paul E. Cherry
	✓ Order, this 10th day of Oct. 2007, it is Ordered that Defendants' Motion in Limine to Preclude Plaintiffs from Introducing Evidence that After They Resigned their Employment, Thelma Stratton Did Not Recommend Them for Rehire shall be Denied. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, Gisleson & Smith	Paul E. Cherry
	✓ Order, this 10th day of Oct., 2007, it is Ordered that Defendants' Motion in Limine to Preclude Plaintiffs' Expert Report and Testimony of Stanley E. Schneider shall be and is Denied. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, Gisleson & Smith	Paul E. Cherry
	✓ Order, this 10th day of Oct., 2007, it is Ordered that Defendants' Motion in Limine to Preclude Evidence at Trial Concerning the 2004 Department of Health Survey of Clearfield Hospital and the Reasons for Defendants Eisenman and Stone Leaving their Employment with Clearfield Hospital in 2004 is Granted. It is further ordered: (see original). By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West Gisleson & Smith	Paul E. Cherry
	✓ Order, this 10th day of Oct., 2007, it is Ordered that Defendants' Motion to Strike Plaintiffs' Jury Demand on Their Whistleblower and MCARE Act Claims or, in the Alternative, to Preclude Plaintiffs' Counsel from Describing the Plaintiffs at Trial as "Whistleblowers" or Referencing the Term "Whistleblower" or the "Whistleblower Law" shall be Granted. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, Gisleson & Smith	Paul E. Cherry
	✓ Order, this 10th day of Oct., 2007, it is Ordered that Defendants' Motion in Limine to Preclude Any Evidence of Retaliation Against Plaintiffs Occurring Prior to Sept. 21, 2002 is Granted. Plaintiffs may not introduce any evidence of retaliatory acts or reprisal occurring prior to Sept. 21, 2002. Plaintiffs may only introduce evidence of events occurring prior to Sept. 21, 2002 for the limited purpose of providing background to events that occurred after that date. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, Gisleson & Smith	Paul E. Cherry

Date: 10/18/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 02:17 PM

ROA Report

Page 2 of 2

Case: 2003-00393-CD

Current Judge: Paul E. Cherry

Francis L. Selvage, Dawn L. Retorick vs. Clearfield Hospital, Lois Eisenman, Jackie Stone, Thelma Stratton

Civil Other

Date	Selected Items	Judge
10/10/2007	✓ Order, this 10th day of Oct., 2007, it is Ordered that Defendants' Motion in Limine to Preclude Evidence Concerning " Chest Pains" Allegedly Suffered by Fran Selvage in 2002 is Granted. It is Further Ordered that any evidence concerning chest pains that Plaintiff Fran Selvage experienced in 2002 is hereby precluded. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, Gisleson & Smith	Paul E. Cherry
10/10/2007	✓ Order, NOW, this 10th day of Oct., 2007, it is Ordered that Defendants' Motion in Limine to Preclude Argument or Evidence on Plaintiff Retorick's Leg Condition or Related Pain is Granted. It is Further Ordered that any evidence concerning Plaintiff Retorick's leg condition, related pain, or pain allegedly suffered traveling to Carlisle, PA is hereby precluded. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: West, Gisleson & Smith	Paul E. Cherry

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCIS L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
809 Turnpike Avenue
P.O. Box 992
Clearfield, PA 16830

LOIS EISENMAN, Director of Nursing
809 Turnpike Avenue
P.O. Box 992
Clearfield, PA 16830

JACKIE STONE, Vice President of Nursing
809 Turnpike Avenue
P.O. Box 992
Clearfield, PA 16830

THELMA STRATTON, ICU Unit
Manager
809 Turnpike Avenue
P.O. Box 992
Clearfield, PA 16830

Defendants

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

:
:
: No. 03-393-CD

:
: Civil Action - Law
:
: Jury Trial Demanded

FILED

MAR 20 2003

William A. Shaw
Prothonotary

PRAECIPE FOR WRIT OF SUMMONS

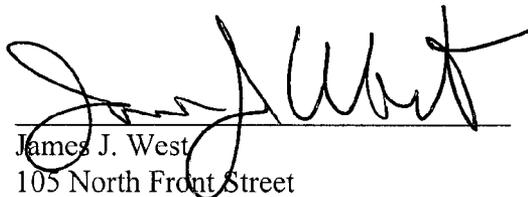
TO THE PROTHONOTARY OF SAID COURT:

Please issue writ of summons in the above-captioned action.

Four (4) Writs of Summons shall be issued and forwarded to the Clearfield County
Sheriff.

Respectfully Submitted,

WEST LONG LLC



James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

Dated: March 19, 2003

Counsel for Plaintiffs

WRIT OF SUMMONS

TO THE ABOVE NAMED DEFENDANT(S):

**You are notified that the above-named Plaintiff has commenced an action against
you.**



Prothonotary
(Seal)

Dated: 3-20-03

FILED

013:2084
MAR 20 2003

WAS
William A. Shaw
Prothonetary

Atty ~~West~~ pd. 85.00

4 cc a/w/ths to SHY

3 cc a/w/ths to Atty West

2

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 13817

SELVAGE, FRANCIS L. & DAWN L. RETORICK

03-393-CD

VS.

CLEARFIELD HOSPITAL al

PRAECIPE & WRIT OF SUMMONS

SHERIFF RETURNS

NOW MARCH 24, 2003 AT 2:05 PM SERVED THE WITHIN PRAECIPE & SUMMONS ON CLEARFIELD HOSPITAL, DEFENDANT AT EMPLOYMENT, 809 TURNPIKE AVE., PO BOX 992, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ELAINE C. KARCHENER, ADMIN. SEC., A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF. SERVED BY: MORGILLO

NOW MARCH 24, 2003 AT 2:05 PM SERVED THE WITHIN PRAECIPE & SUMMONS ON JACKIE STONE, VP OF NURSING, DEFENDANT AT EMPLOYMENT, CLEARFIELD HOSPITAL, 809 TURNPIKE AVE., PO BOX 992, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ELAINE C. KARCHENER, ADMIN. SECRETARY, A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF. SERVED BY: MORGILLO

NOW MARCH 24, 2003 AT 2:05 PM SERVED THE WITHIN PRAECIPE & SUMMONS ON THELMA STRATTON, ICU UNIT MANAGER, DEFENDANT, AT EMPLOYMENT, CLEARFIELD HOSPITAL, 809 TURNPIKE AVE., PO BOX 992, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ELAINE C. KARCHENER, ADMIN. SECRETARY, A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF. SERVED BY: MORGILLO

NOW MARCH 24, 2003 AT 2:05 PM SERVED THE WITHIN PRAECIPE & SUMMONS ON LOIS EISENMAN, DIRECTOR OF NURSING, DEFENDANT, AT EMPLOYMENT, CLEARFIELD HOSPITAL, 809 TURNPIKE AVE., PO BOX 992, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO ELAINE C. KARCHENER, ADMIN. SECRETARY, A TRUE AND ATTESTED COPY OF THE ORIGINAL PRAECIPE & SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF. SERVED BY: MORGILLO

Return Costs

Cost Description
38.37 SHERIFF HAWKINS PAID BY: ATTY CK# 1036
40.00 SURCHARGE PAID BY: ATTY CK# 1037

FILED
MAY 19 2003
William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

19 Day Of May 2003

[Signature]

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

[Signature]

Chester A. Hawkins
Sheriff

FILED

SEP 18 2003

William A. Shaw
Prothonotary/Clerk of Courts

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

:
:
: No. 03-393-CD

:
: Civil Action - Law

NOTICE

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

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

David S. Meholick
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641 x 5982

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

:
:
: No. 03-393-CD

:
: Civil Action - Law

NOTICE

USTED HA SIDO DEMANDADO A EN CORTE. Si usted desea defenderse de las demandas que se presentan mas adelante en las sugientes paginas, debe tomar accion dentro de los proximos veinte (20) dias despues de la notificacion de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comoparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aqui en entra suya. Se le advierte de que si usted falla de tomar accion como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamacion o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin mas aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO IMMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO O NO PUEDE PAGARLE A UNO, LLAME O VAYA A LA SIGUIENTE OFICINA PARA AVERIGUAR DONDE PUEDE ENCONTRAR ASISTENCIA LEGAL.

David S. Meholick
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
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West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

COMPLAINT

AND NOW, come the Plaintiffs, Frances L. Selvage and Dawn L. Retorick, by and through their counsel, James J. West, Esquire, and files the following Complaint against the Clearfield Hospital, Lois Eisenman, Jackie Stone, Thelma Stratton and, in support thereof, alleges as follows:

PARTIES

1. The Plaintiff, Frances L. Selvage is an adult individual with an address of 302 Merrill Street, Clearfield, Clearfield County, Pennsylvania.
2. The Plaintiff, Dawn L. Retorick is an adult individual with an address of 806 Grassflat Avenue, Morrisdale, Clearfield County, Pennsylvania.
3. The Defendant, Clearfield Hospital, is an incorporated hospital located at 809 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania.

4. The Defendant Lois Eisenman, is the Director of Nursing at the Clearfield Hospital located at 805 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania.

5. The Defendant Jackie Stone, is the Vice President of Nursing at the Clearfield Hospital located at 805 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania.

6. The Defendant Thelma Stratton, is the Intensive Care Unit Manager at the Clearfield Hospital located at 805 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania.

JURISDICTION AND VENUE

7. Jurisdiction of the parties in this matter is proper in the Courts of Pennsylvania pursuant to the provisions of 42 Pa.C.S. §5301 et seq.

8. Venue is proper in Clearfield County under Rule 1006, Pa.R.Civ.P., because the cause of action arose in Clearfield County and under Rule 2179, Pa.R.Civ.P., because the Defendants regularly conducted business in Clearfield County.

SUMMARY OF THE CASE

9. This is a suit by two long-time nurses in the Intensive Care Unit (ICU) of the Clearfield Hospital against the hospital and three of its employees who were managers and supervisors in the Intensive Care Unit (ICU) based upon unlawful discharge in violation of Pennsylvania's Public Policy, violation of the State Whistleblower law, retaliation, violation of the Medical Care Availability and Reduction of Error Act (MCARE Act), defaming the Plaintiffs and placing the them in a false light.

10. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick, were both registered nurses who had, a combined total of approximately thirty years' experience in the ICU of the Clearfield Hospital. The ICU is a critical unit of the hospital requiring a high degree of training

and skill for nurses in order to protect the lives and safety of the patients that are admitted to that unit for care. The Plaintiffs had functioned with the required high degree of skill for a combined total of approximately thirty years doing an outstanding job caring for the people of Clearfield County and other individuals admitted to and treated by the ICU of the Clearfield Hospital.

11. In approximately 1999 it appear that the hospital management was intentionally cutting back and diluting the quality of care being administered by the ICU and putting the patients admitted to that unit at risk of serious injury and even death. In order to reverse this situation, the Plaintiffs began reporting deficiencies that they noted in the ICU and the quality of treatment being administered as well as deficiencies in the qualifications of various staff members being assigned to the ICU by managers/supervisors. These reports were filed by Plaintiffs through the chain of command at the Clearfield Hospital.

12. The Defendants, acting as managers/supervisors and representatives of the Clearfield Hospital and being within the scope of their authority, began systematically punishing the Plaintiffs for making such reports by humiliating them in front of their coworkers, subjecting them to different treatment than other employees, systematically ignoring their complaints and ultimately initiated a defamatory whispering campaign whereby they would intentionally humiliate, belittle and discredit the Plaintiffs and ultimately force them to leave the Clearfield Hospital by exposing them to treatment that would cause a reasonable nurse, under the circumstances, to resign, i.e., constructive discharge.

13. In November, 2002, both of the Plaintiffs resigned and bring this action for constructive discharge and retaliation in violations of the Whistleblower Statute, violation of the MCARE Act, and defamation.

SPECIFIC FACTUAL ALLEGATIONS

14. In November of 1999, Frances L. Selvage and Dawn L. Retorick wrote to Jackie Stone, Vice President of Nursing at Clearfield Hospital concerning the personnel being assigned to the ICU and the safety of ICU patients, stating as follows:

In the past, it has always been required that a nurse in ICU or ER has to meet certain criteria to qualify for a job in these units. These criteria have been at least one-year med-surg. experience, ACLS, a critical care course and an arrhythmia course. These are basic skills needed to function safely and effectively. This is in the best interest of the patients. Occasionally, life-threatening situations arise when the nurse must act quickly and individually. Due to this fact, we do not feel that these standards should be lowered.

(See Exhibit 1, attached hereto.)

The Plaintiffs made numerous additional written and oral complaints about the staffing of the ICU and how it was compromising patient care and jeopardizing safety of patients. Some of the written complaints are attached hereto as follows:

a. March 26, 1999 - Alert Form - RN assigned to ICU not qualified to read monitors in ICU or to chart on ICU chart. Qualified float nurse not allowed to be assigned.

(Exhibit 2)

b. December 29, 2000 - Problem Form – RN assigned to ICU not qualified, unfamiliar with ICU routine and overwhelmed by it – “compromising patient care and jeopardizing their safety with lack of experienced people.” (Exhibit 3)

c. November 20, 2001 - Letter to Mrs. Stone, Vice President of Nursing - “the practice of hiring untrained ICU nurses to fill vacancies in the unit is an accident waiting to happen for our staff and imminent danger to our patients.” (Exhibit 4)

- d. January 31, 2002 - Problem Form - Nurse sleeping during reports several days in a row and leaving ICU without notifying charge nurse to study for test. (Exhibit 5)
- e. February 1, 2002 - Staffing Alert Report - Reporting case load assignment being excessive, lack of acuity with staff and lack of a unit clerk. RNs were assigned three to four patients each, several patients were unstable after operations and were disoriented, crawling out of bed and screaming. (Exhibit 6)
- f. February 1, 2002 - Problem Form - Staffing difficulty, LPN not properly trained for critical care patients and refused to provide post-mortem care to a patient who had passed away. LPN also interrupted doctor while making rounds by rushing into room and loudly announcing "what are you doing checking up on me." (Exhibit 7)
- g. February 12, 2002 - Staffing Alert Report - Case load assignment excessive, staff lacked acuity, unit clerk not assigned, new patients transferred and admitted without adequate staff, and a patient was hemorrhaging while distraught family members were crying. Hemorrhaging patient required two nurses and other patients, including a dying ICU patient were not receiving adequate services due to understaffing. (Exhibit 8)
- h. April 16, 2002 - Staffing Alert Report - Case load assignment excessive, not provided with unit clerk, patients transferred to unit without adequate staff, LPN assigned without adequate training, one LPN sent to the unit was still on orientation, RNs were busy with a patient who coded (emergency). Management ordered RNs to give the LPN assignments or they would be declared insubordinate. (Exhibit 9)
- i. April 25, 2002 - Problem Form - LPN assigned to patient with Tritrated drips of Dopamine & Dobutamine and an AV dissociation, also assigned patients with Epidural

and A-line, concern that LPN assigned beyond the scope of her practice and competency.

(Exhibit 10)

j. April 25, 2002 - Problem Form - Nurse continues to doze off when receiving reports on patient status for the patients she will be giving care to. Also left unit at 11:15 p.m. without notifying other nurses. (Exhibit 11)

k. August 31, 2002 - Problem Form - Staff performance problem, persons being assigned as float nurses were not properly oriented and would not know what to do if other ICU staff members became busy. (Exhibit 12)

l. Pennsylvania Nurses Association Grievance Form - Position in ICU is being filled by nurse without adequate experience, proper ACLS certification and emergency room orientation. Nurses being assigned who have never taken critical care course and do not meet the job qualifications. (Exhibit 13)

m. Job Qualifications for part-time, temporary, critical care nurse as published by Clearfield Hospital requiring med-surg experience, ACLS verified and critical care course within five years or successful completion of the Critical Care Challenge Exam. (Exhibit 14)

15. These written reports were supplemented by oral reports of the dangers that patients were being exposed to by having untrained and inexperienced personnel being assigned to care for specific patients in the ICU.

16. The Defendants took no appropriate corrective action as a result of these numerous oral and written reports, but rather, the Defendants retaliated against Frances L. Salvage and Dawn L. Retorick for reporting these events and incidents of understaffing and improper assignment of staff to ICU patients.

17. This retaliation included, but was not limited to, the following:

a. treating the Plaintiffs different from other nurses and singling them out for punishment and reprimand when others committing similar acts were not punished or given different and lighter punishments;

b. threatening to fire the Plaintiffs and intimidating them by yelling and even calling them liars in the presence of their peers;

c. taking away the ICU's clerk thereby increasing the Plaintiffs' workloads;

d. refusing to allow the Plaintiffs to attend educational classes including required refresher courses for nurses working in ICU;

e. telling Plaintiffs' coworkers that they were unjustifiably "picking on" other employees on the 3:00 to 11:00 shift;

f. telling Plaintiffs and fellow workers that they cannot have training because "it is my understanding you will be leaving soon";

g. doing a write up and report against the Plaintiff, Dawn L. Retorick, on incidents on days when she was not working;

h. making derogatory entries in the ICU communication books concerning the Plaintiffs;

i. arbitrarily threatening punishment even when implementing suggestions that the Plaintiffs made;

j. attempting to schedule one work day in the middle of Plaintiff's long-scheduled vacation to the state of Utah so in an attempt to destroy her ability to take that vacation;

- k. threatening to make the Plaintiffs work during their scheduled vacations;
- l. accosting, degrading and humiliating Plaintiffs at every opportunity and to the point where chest pains, sleeplessness, nervous upset, and other identifiable physical reactions were experienced and required medical intervention;
- m. threatening to interfere with their reputations and established nursing carriers by accusing Plaintiffs of abandoning their patients if anything happened to the patients assigned to the unqualified personnel in addition to their own caseload; and
- n. broadcasting and publicizing all of the above to the Plaintiffs' coworkers, neighbors, friends, associates in its attempt to hold them up to ridicule and scorn in the community and thereby discredit their credibility when they complained about patients being put in jeopardy at the Clearfield Hospital.

18. In addition to the above conduct, the Defendants and those acting in concert with them began a campaign intentionally designed to turn their peers and other hospital employees against the Plaintiffs, humiliate and isolate the Plaintiffs and cause such harm and difficulty that Plaintiffs would leave their positions as nurses in the ICU.

19. This campaign was calculated to intentionally cause and inflict emotional distress and consisted of the named individual Defendants doing the following:

- a. telling the Plaintiffs' coworkers that they were troublemakers who could not be trusted;
- b. telling Plaintiffs' coworkers to "watch them" and that they are difficult to work with;
- c. telling Plaintiffs' coworkers that they were untruthful and "liars";

d. telling Plaintiffs' coworkers that management disagrees with the Plaintiffs and that they were going to be disciplined;

e. telling Plaintiffs' coworkers that they were the reason the ICU could not be staffed properly because no one wanted to or could work with them;

f. telling Plaintiffs' coworkers that specially named ICU employees left the ICU because of the way the Plaintiffs treated them; and

g. calling in new employees and telling them that the Plaintiffs were "difficult personalities", that people working with Plaintiffs needed "to be strong" and directing them that if they had any trouble to report it to management.

**STATUTORY, REGULATORY AND ETHICAL DUTIES
OF A REGISTERED NURSE**

20. Under Pennsylvania's Professional Nursing Law, 63 Pa.C.S.A. §212, *et seq.*, at §224, a Registered Nurse's license can be refused, suspended or revoked if:

a. the Registered Nurse acts in such a manner as to present an immediate and clear danger to the public health or safety, 63 Pa.C.S.A. §224(a)(7); or

b. the Registered Nurse commits unprofessional conduct by failing to conform to an ethical or quality standard embraced by the professional community in Pennsylvania, 63 Pa.C.S.A. §224(a)(9).

21. Under the Professional and Vocational Standards promulgated by the State Board of Nursing, 49 Pennsylvania Code §21.18(a), a registered nurse is required to:

1) Only undertake a specific practice if the Registered Nurse has the necessary knowledge, preparation, experience, and competency to execute the practice;

2) Act to safeguard the patient from the incompetence, abuse or illegal practice of any individual; and

3) Document and maintain accurate records.

22. Under the Professional and Vocational Standards promulgated by the State Board of Nursing, 49 Pennsylvania Code, §21.18(b) a Registered Nurse is forbidden from:

1) Knowing aiding, abetting or assisting another person in violating or circumventing a Board regulation or other law;

2) Leaving a nursing assignment prior to reporting and notifying appropriate personnel.

23. In addition, various codes of ethics apply to Registered Nurses. For example, the American Nursing Association Code of Ethics for Nurses provides, in pertinent part, as follows:

1. The nurse, in all professional relationships, practices with compassion and respect for the inherent dignity, worth and uniqueness of every individual, unrestricted by considerations of social or economic status, personal attributes, or the nature of health problems.

2. The nurse's primary commitment is to the patient, whether an individual, family, group, or community.

3. The nurse promotes, advocates for, and strives to protect the health, safety, and rights of the patient.

4. The nurse is responsible and accountable for individual nursing practice and determines the appropriate delegation of tasks consistent with the nurse's obligation to provide optimum patient care.

5. The nurse owes the same duties to self as to others, including the responsibility to preserve integrity and safety, to maintain competence, and to continue personal and professional growth.

6. The nurse participates in establishing, maintaining, and improving healthcare environments and conditions of employment conducive to the provision of quality health care and consistent with the values of the profession through individual and collective action.

**COUNT I
WHISTLEBLOWER STATUTE**

24. The averments of paragraphs 1 through 23, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

25. Clearfield Hospital received Medicaid funds and was otherwise funded in any amount by the Commonwealth of Pennsylvania and its political subdivisions and qualified as a “public body” within the meaning of the Whistleblower Law, 43 P.S. §1422.

26. The Plaintiffs, Dawn L. Retorick and Frances L. Selvage, were at all relevant times employed by Clearfield Hospital as charge nurse and relief charge nurse, respectively, in the ICU and meet the definition of an employee performing services for wages for a public body under the Whistleblower Law, 43 P.S. §1422.

27. The Defendants, Lois Eisenman, Jackie Stone and Thelma Stratton, were persons who supervised the Plaintiffs or supervisors of Plaintiffs’ supervisors under the Whistleblower Law, 43 P.S. §1422.

28. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick, believed in good faith that they were verbally and in writing reporting wrongdoing and waste to their superiors as well as other appropriate agencies such as the Pennsylvania Department of Health and the Pennsylvania Nurses Association which had jurisdiction over regulatory violations waste, professional conduct, ethics and wrongdoing such as they were reporting.

29. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick, were threatened and discriminated and retaliated against in their compensation, terms, conditions, locations and privileges of employment because they made good faith reports and were about to report,

verbally and in writing, the above enumerated instances of wrongdoing and waste in violation of the Whistleblower Law, 43 P.S. §1422.

30. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick, were constructively discharged and forced to leave their positions in the Clearfield Hospital ICU, positions they had held for a total of approximately twenty-five of their thirty years at Clearfield Hospital and to seek employment at a distant location, because of their reports of waste and wrongdoing, 43 P.S. §1423(a), and are entitled to damages as outlined in Counts VII and VIII of this Complaint.

COUNT II
MEDICAL CARE AVAILABILITY AND REDUCTION OF ERROR (MCARE) ACT
40 P.S. §1303.101

31. The averments of paragraphs 1 through 30, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

32. The MCARE Act, 40 P.S. §1303.101 at §1303.308 requires health care workers such as the Plaintiffs herein to report serious events and incidents that they reasonably believe to have occurred within covered facilities such as Clearfield Hospital.

33. The incidents described in this Complaint were reported not only in writing, (examples are attached hereto as Exhibits 1 through 13) but were also reported to Dr. James Davidson, after he was appointed as the Clearfield Hospital's Patient Safety Officer under the MCARE Act.

34. The MCARE Act, 40 P.S. §1303.308(e) specifically provides that a healthcare worker who reports the occurrence of a serious event or incident shall not be subject to any retaliatory action for making such a report and shall have the protections and remedies set forth in the Whistleblower Law, 43 P.S. §1422.

35. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick, are also entitled to invoke the Whistleblower Law under the provisions of the MCARE Act and are entitled to damages as outlined in Counts VII and VIII of this Complaint.

**COUNT III
CONSTRUCTIVE DISCHARGE IN
VIOLATION OF PUBLIC POLICY**

36. The averments of paragraphs 1 through 35, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

37. The Commonwealth of Pennsylvania has a strong public policy encouraging medical professionals including Registered Nurses to report waste and wrongdoing to appropriate authorities for corrective action. This policy is reflected in the Whistleblower Law, 43 P.S. §1421 et seq.; the MCARE Act, 40 P.S. §1303.307 et seq.; The Professional Nursing Law, 63 P.S. §212 et seq.; *The Professional and Vocational Standards* promulgated by the State Board of Nursing, 40 Pennsylvania Code §21.18(a) and (b); and *The Nurses Code of Ethics* all discussed earlier in this Complaint.

38. The conduct of the Plaintiffs was in conformity with the strong public policy represented by the above-cited Statutes, Regulations and various Codes of Ethics which, as a matter of public health, safety, morals and welfare, require Registered Nurses to speak out when patients in their charge are being threatened by the actions of hospital managers and administrators such as the Defendants.

39. The Defendants retaliated against the Plaintiffs for attempting to adhere to the above-cited public policies. The nature and extent of this relationship is outlined in the preceding incorporated paragraphs, particularly paragraphs 17(a)-(n).

40. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick were constructively discharged by the Defendants actions in retaliating and creating a hostile work environment under which a reasonable nurse adhering to law and ethics could not work entitling the Plaintiffs to damages as outlined in Counts VII and VIII of this Complaint.

**COUNT IV
DEFAMATION**

41. The averments of paragraphs 1 through 40, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

42. The named individual Defendants were all acting within the scope of their authority and on behalf of the Defendant, Clearfield Hospital, when they uttered and promulgated the following untruthful allegations against the Plaintiffs:

- a. telling the Plaintiffs' coworkers that they were troublemakers who could not be trusted;
- b. telling Plaintiffs' coworkers to "watch them" and that they are difficult to work with;
- c. telling Plaintiffs' coworkers that they were untruthful and "liars";
- d. telling Plaintiffs' coworkers that management disagrees with the Plaintiffs and that they were going to be fired or otherwise disciplined;
- e. telling Plaintiffs' coworkers that they were the reason the ICU could not be staffed properly because no one wanted to or could work with them;
- f. telling Plaintiffs' coworkers that certain named ICU employees left the ICU because of the way the Plaintiffs treated them; and

g. calling in new employees and telling them that the Plaintiffs were “difficult personalities”, that people working with Plaintiffs needed “to be strong” and directing them that if they had any trouble to report it to management.

43. The above statements were defamatory and were understood by the hearers as applying to the Plaintiffs.

44. The above statements were uttered by the Defendants intentionally, were not privileged and caused harm to the Plaintiffs in that they created and added to a hostile work environment which resulted in the Plaintiffs being constructively discharged by their long-time employer.

45. The above statements were intended and calculated to harm the Plaintiffs in their profession as Licensed Registered Nurses and did, in fact, so harm the Plaintiffs resulting in both of the Plaintiffs having to seek work elsewhere at great expense and inconvenience and resulting in their separation from their families for extended lengths of time and other damages outlined in Counts VII and VIII of this Complaint.

**COUNT V
INVASION OF PRIVACY/FALSE LIGHT**

46. The averments of paragraphs 1 through 45, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

47. The Defendants’ utterings and publications of the aforementioned statements, representations of fact, inferences and innuendo placed the Plaintiffs in a false light in the public eye and in the eyes of their coworkers which would be highly offensive to a reasonable person, and which was, in fact, highly offensive to the Plaintiffs.

48. As a direct and proximate result of the publication of the Defendants' comments, the Plaintiffs suffered injury and damages for which they are entitled to compensation and punitive damage as set forth in Counts VII and VIII of this Complaint.

**COUNT VI
INTENTIONAL INFLICTION OF
EMOTION HARM AND PUNITIVE DAMAGES**

49. The averments of paragraphs 1 through 48, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

50. Because of the actions of the Defendants, the Plaintiffs have suffered emotional harm necessitating treatment and medication.

51. In their violation of the Whistleblower Statute, the MCARE Act, the Constructive Discharge Violation of Public Policy, the Defamation of the Plaintiffs, and the placing of Plaintiffs in a false light, the Defendants and each of the has acted in an extreme and outrageous manner towards the Plaintiffs.

52. As a direct and proximate result of the Defendants' conduct, the Plaintiffs have suffered severe emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, irritability and other alterations of their personalities all of which injuries are of a continuous nature.

53. The severe emotional stress suffered by the Plaintiffs as a result of the intentional and outrageous actions of the Defendants was a reasonable and foreseeable reaction by the Plaintiffs under all the circumstances entitling them to damages as outlined in Counts VII and VIII of this Complaint.

**COUNT VII
PUNITIVE DAMAGES**

54. The averments of paragraphs 1 through 53, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

55. The conduct of the Defendants as outlined in Counts I through VI has been outrageous so that Plaintiffs are entitled to an award of punitive damages adequate to insure that these Defendants do not engage in any type of similar conduct in the future.

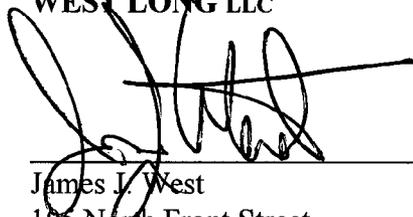
**COUNT VIII
DAMAGES**

56. The averments of paragraphs 1 through 56, and their subparts, are incorporated herein by reference as if fully set forth herein.

57. The Plaintiffs are entitled to and claim as damages front pay, expenses of finding and engaging in other employment, an amount for emotional harm, pain and suffering, medical expenses, damages for loss of reputation, attorneys fees and costs, and such other amounts and relief as this Court would deem proper under the circumstances.

Respectfully Submitted,

WEST LONG LLC



James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

Dated: September 17, 2003

Counsel for Plaintiffs

VERIFICATION

I, Frances L. Selvage, hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 9/15/03

Frances L. Selvage
Frances L. Selvage

VERIFICATION

I, Dawn L. Retorick, hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 9-15-03

Dawn L. Retorick
Dawn L. Retorick

CERTIFICATE OF SERVICE

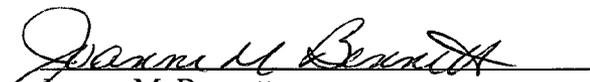
I hereby certify that on this 17th day of **September, 2003**, a true and correct copy of the foregoing Complaint was served upon the party named below by depositing same in the United States Mail, Certified, Return Receipt Requested, addressed as follows:

Clearfield Hospital
809 Turnpike Avenue
P.O. Box 992
Clearfield, PA 16830

Lois Eisenman
Director of Nursing
809 Turnpike Avenue
P.O. Box 992
Clearfield, PA 16830

Jackie Stone
Vice President of Nursing
809 Turnpike Avenue
P.O. Box 992
Clearfield, PA 16830

Thelma Stratton, ICU Unit
Manager
809 Turnpike Avenue
P.O. Box 992
Clearfield, PA 16830


Joanne M. Bennett
Paralegal

November 30, 1999

Mrs. Stone

In the past, it has always been required that a nurse in ICU or ER has to meet certain criteria to qualify for a job in these units. These criteria have been at least one-year med-surg. experience, ACLS, a critical care course and an arrhythmia course. These are basic skills needed to function safely and effectively. This is in the best interest of the patients. Occasionally, life-threatening situations arise when the nurse must act quickly and individually. Due to this fact, we do not feel that these standards should be lowered.

We are writing this letter to make everyone aware of our concern with the lack of qualifications and experience of Tammy Charles RN. She lacks med-surg. experience, knowledge base and critical thinking skills to meet the standard of care required for an intensive care unit nurse. Many of these concerns are directly related to the lack of fundamental nursing care and knowledge that could and should have been obtained in a med-surg. and/or medical telemetry setting. Strengthening these concerns is the lack of education for arrhythmia, ACLS and critical care. This is not directed at Tammy as a person, she tries to do her best, our main concern is for the patient's safety. The fact that Tammy has no med-surg. experience, no critical care course and no ACLS, compromises pt safety and is unfair to Tammy herself. She needs more med-surg. knowledge so she can be

self-assured when situations arise. ICU is not the place to gain basic nursing experience. You cannot replace a life or undo something that occurred because the knowledge was not there to prevent it.

Due to the above, we the undersigned do not feel it is in the best interests of the hospital to allow this nurse to function in a critical care unit without basic knowledge and experience. Furthermore, we do not feel comfortable accepting responsibility as shift charge nurses being ultimately accountable for her actions and/or patient care.

Sincerely,
Dawn Kitoruck RN, CCRN
Sharon Haylett RN
Fran J. J. RN

Cc: Sharon Rainey
Tom Conlin
Jane Woolridge

Bridgett Jacobson **ALERT FORM**
 We Dawn Retorick, Kevin Holland, registered nurses employed by
Clearfield Hospital (Print Name)
 (Institution/Agency)

having completed the PRE-ALERT process, hereby register my concern regarding the following condition(s) of nursing practice:

A - Assessment Assess the problem. Be specific.
*Assess the problem. Be specific. ^{brankielitis} R/O RSU
 9pts in ICU, 2 of which are pediatric, 1 is a 2 month old
 second is 9yr. new onset seizure, ?OD. other pts ~~are~~ include 1 septic on vent, 1
 in isolation for VRE, another sepsis & polynephritis, 2 fresh post-op. & 2 unresponsive pts.*

L - List Write a concise list of your concern(s) pertinent to this issue.
*Staffed w/ 3 ICU RN's. after much complaining brought RN from OB who
 is not qualified to read monitors or chart on ICU chart. Not oriented to ICU
 procedures. Float not allowed to be assigned.*

E - Evaluation Identify the factor(s) and relevant information necessary to evaluate this concern.

R - Recommendations Suggest a plan to prevent this problem from recurring in the future.
*Adequately staff ICU w/ qualified personnel, who
 can function if an emergency arises.*

T - Target Action Describe action(s) taken and results of your intervention.
*called Debbie Miller for additional help. No ICU help obtained.
 Denny Charles RN volunteered to work 11-7 but was told NO.
 Instead is going to be replaced by an OB nurse RN or LPN who
 again is unable to read monitors. With staffing the way it is
 currently, septic patients cannot be kept separate from surgical or peds pts.*

Date form completed 3/26/99 By D Retorick (Signature)

Response to nurse by _____ (Signature) ON _____ (Date)

Copy #1 to Nursing Management Received by _____ Date _____

CLEARFIELD HOSPITAL PROBLEM FORM

TYPE OF PROBLEM: Interdepartmental/Interpersonal Problem
 Incident Investigation (Incident # _____)

TODAY'S DATE: _____ TIME: _____

PERSON COMPLETING THIS FORM: _____ DEPT: _____

<u>NATURE OF PROBLEM</u>	<u>IF MEDICATION INCIDENT, CHECK CATEGORY</u>
<input type="checkbox"/> Equipment Malfunction/Availability	<input type="checkbox"/> Category A (Event had the capacity to cause error)
<input type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Error occurred, but med did not reach Pt)
<input checked="" type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Med reached Pt but did not cause Pt harm)
<input type="checkbox"/> Charges/Billing Problem	<input type="checkbox"/> Category D (Error resulted in need for increased monitoring but no Pt harm)
<input type="checkbox"/> Supplies Inadequate/Inferior	<input type="checkbox"/> Category E (Error resulted in need for treatment or intervention and caused temporary harm)
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Error resulted in initial or prolonged hospitalization and caused temporary harm)
<input type="checkbox"/> Waiting/Delay Problem	<input type="checkbox"/> Category G (Error resulted in permanent Pt harm)
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Error resulted in near-death event)
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Error resulted in Pt death)
<input type="checkbox"/> Lost Item	
<input type="checkbox"/> Other _____	

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT/CIRCUMSTANCES/PERSONS INVOLVED:
On 12-29-00 regular ICU staff member was told at start of shift that she would be the float. She was replaced by med/surg RN with no ICU experience. In ICU was a patient on the vent, a GI bleed which had been transfused with 17 units PRBC's & 7 FFP since admission but currently stable, a post-op nephrectomy with stent & stoma present on R, an acute MI which is confused.

Although this nurse was very willing to help out, she was very much overwhelmed by the ICU setting. She was unfamiliar with ICU routine, charting, location of supplies & dirty utility. Was not aware that she had to give her own meds. During report she was specifically told to do hourly urines on the fresh post-op by both Kevin & myself.

~~SEND THIS FORM TO YOUR MANAGER~~ (Continued)

When doing vitals, she was again ~~not~~ instructed to empty entire Foley bag at 4pm & 8pm and to empty urometer every hour. I watched her document the first hourly output and then instructed her where the next one would be put. Since she is working as staff & not being oriented I did not feel it was necessary to read & check her nurses notes hourly. If she is here to orient than she should be co-assigned with the charge nurse & not given an assignment. If she is to take an assignment then she should be able to function independently. Since she is not able to float due to lack of ED experience, then how can she staff ED with no ED experience? We are compromising patient care & jeopardizing their safety with lack of experienced people who know how to respond in an emergency.

Dana S. Retarducci RN

Kerri Anderson RN

November 20,2001

Dear Mrs. Stone,

I am writing this letter in response to the warning notice that I received on 11/15/01. As we have discussed previously both in person and in written communication, the practice of hiring untrained ICU nurses to fill vacancies in the unit is an accident waiting to happen for our staff and imminent danger to our patients. Administration continues to hire nurses with no critical care experience, no ACLS, no arrhythmia course and has not been providing these for the new employees in a timely matter. The new nurse involved in this incident has been in ICU for 4-5 months and has just yesterday received the arrhythmia course. She still has not received ACLS or the critical care course. She was recently scheduled to take ACLS but due to the lack of an arrhythmia course, she was cancelled. It is totally unrealistic to expect a nurse with no ICU knowledge base to safely and effectively care for critical care patients.

For proper teaching and orientation of a new nurse in any setting to occur, there should be a patient assignment with a skilled nurse, one with the experience necessary to orient that person properly. Even prior to this night, the orientee had been given her own patient care assignment and the person orienting her had a different assignment. She has been considered regular staff on several different occasions throughout this orientation period. For instance, on 11/7/01 when six admissions were received on the 3-11 shift. This evening there was, as usual, no clerk to stamp the chart, assemble the chart or take orders off. I was already assigned to two other critical care patients and she had a ventilator patient and got a new admission. There was no way that the orientee could be properly mentored when the two other staff members were doing their own admissions, taking off orders and searching the hospital for drugs since the pharmacy was also closed. It is impossible to properly orient an inexperienced RN under these conditions. I feel this disciplinary action was inappropriate, that the true problem is due to the negligence of administration and not due to my ability to properly mentor the orientee. I am requesting that you place a copy of this letter in my file with my disciplinary letter.

Sincerely

Dawn L Retorick, RN ,CCRN
ICU Charge nurse

Cc: Thelma Stratton
Kent Hess
Dan Burfield
Jane Woolridge

CLEARFIELD HOSPITAL
PROBLEM FORM

TYPE OF PROBLEM: Interdepartmental/Interpersonal Problem
 Incident Investigation (Incident # _____)

TODAY'S DATE: 1-31-02 / 2-1-02 TIME: 3P

PERSON COMPLETING THIS FORM: Dawn Retorick WCCO DEPT: ICU

NATURE OF PROBLEM	IF MEDICATION INCIDENT, CHECK CATEGORY
<input type="checkbox"/> Equipment Malfunction/Availability	<input type="checkbox"/> Category A (Event had the capacity to cause error)
<input checked="" type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Error occurred, but med did not reach Pt)
<input type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Med reached Pt but did not cause Pt harm)
<input type="checkbox"/> Charges/Billing Problem	<input type="checkbox"/> Category D (Error resulted in need for increased monitoring, but no Pt harm)
<input type="checkbox"/> Supplies Inadequate/Inferior	<input type="checkbox"/> Category E (Error resulted in need for treatment or intervention and caused temporary harm)
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Error resulted in initial or prolonged hospitalization and caused temporary harm)
<input type="checkbox"/> Waiting/Delay Problem	<input type="checkbox"/> Category G (Error resulted in permanent Pt harm)
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Error resulted in near-death event)
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Error resulted in Pt death)
<input type="checkbox"/> Lost Item	
<input type="checkbox"/> Other _____	

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT/CIRCUMSTANCES/PERSONS INVOLVED:

LPN falling asleep during report several days in a row. Also leaves floor to study for nursing exam in am. without notifying charge nurse or other RN.

SEND THIS FORM TO YOUR MANAGER

**PENNSYLVANIA NURSES ASSOCIATION
OPEIU, Local 112
STAFFING ALERT REPORT**

I, DAWN Retonick, a Registered Nurse employed at Clearfield Hospital.
(Name) (Hospital, Agency)

on 3-11³⁰, ICU, hereby object to the assignment as:
(Shift) (Unit)

- charge nurse team leader
 primary nurse team member/patient care assignment

made to me by Thelma Stratton at 3p on 2-1-02 for the
(Supervisor/person in charge) (time) (date)

following reasons.

- | | |
|---|---|
| <ul style="list-style-type: none"> <input type="checkbox"/> not oriented to unit <input type="checkbox"/> not trained or experienced in area assigned <input type="checkbox"/> given an assignment which posed a serious threat to my health or safety <input type="checkbox"/> given an assignment outside my current job description <input checked="" type="checkbox"/> case load assignment is excessive and interferes with delivery of adequate patient care (<u>Community Health</u>) <input type="checkbox"/> given an assignment for which I have not had orientation, education or in-service | <ul style="list-style-type: none"> <input checked="" type="checkbox"/> lack of adequate staff for acuity
(Check appropriate description) <input type="checkbox"/> staffed with excessive registry personnel <input type="checkbox"/> staffed with unqualified registry personnel <input type="checkbox"/> staffed with excessive number unlicensed personnel <input type="checkbox"/> short staffed <input checked="" type="checkbox"/> not provided with unit clerk <input type="checkbox"/> transferred or admitted new patient (s) to unit without adequate staff <input type="checkbox"/> other: _____
(Please specify) |
|---|---|

This assignment is accepted because I have been instructed to do so, under protest, despite my objections.

STAFFING COUNT on date of objection:

	Regular	Float/Casual/Pool	Registry	Staff currently employed on unit
RN	<u>2 (2-3-11p STAFF + 1 working days/evenings)</u>			
LPN	<u>2</u>			<u>1</u>
AIDE				

one OB Nurse

CLERK yes _____ no X

CENSUS (on date of objection)

Acuity:

high

average low

Unit capacity: 12 currently 11

Brief statement of problem: Unit very busy w acutely ill pts. Unit staffed w 2 (3-11) reg. staff + 1 RN doing a double shift, + LPN on orientation + 1 OB LPN. RNs had to take 3-4 patients each. Several pts receiving bid products, one on Nipride one on Dopamine. One disoriented crawling COB + screaming. Unstable post-op. Pyxis also broken requiring one LPN to run for drugs frequently. LPN's are limited to doing Vitals, turning patients + answering bells. Patient care suffered due to workload. Neither LPN experienced in ICU.

ACTIONS TAKEN BY NURSE:

Notified Supervisor John Lucas Date/Time 2-1-02 5pm
 Notified Nursing Administrator _____ Date/Time _____
 Notified: PNA Service Representative _____ Date/Time _____
 Copy #1: to Nursing Supervisor Copy #2: Pennsylvania Nurses Association
 Copy #3: retained by Nurse 5000 Tilghman Street, Suite 248
 Copy #4: JCAH, DOH Allentown, PA 18104

**CLEARFIELD HOSPITAL
PROBLEM FORM**

TYPE OF PROBLEM: Interdepartmental/Interpersonal Problem
 Incident Investigation (Incident # _____)

TODAY'S DATE: 2-1-02 TIME: 3pm

PERSON COMPLETING THIS FORM: Dawn Retorick RNCCED DEPT: IU

<u>NATURE OF PROBLEM</u>	<u>IF MEDICATION INCIDENT, CHECK CATEGORY</u>
<input type="checkbox"/> Equipment Malfunction/Availability	<input type="checkbox"/> Category A (Event had the capacity to cause error)
<input checked="" type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Error occurred, but med did not reach Pt)
<input type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Med reached Pt but did not cause Pt harm)
<input type="checkbox"/> Charges/Billing Problem	<input type="checkbox"/> Category D (Error resulted in need for increased monitoring, but no Pt harm)
<input type="checkbox"/> Supplies Inadequate/Inferior	<input type="checkbox"/> Category E (Error resulted in need for treatment or intervention and caused temporary harm)
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Error resulted in initial or prolonged hospitalization and caused temporary harm)
<input type="checkbox"/> Waiting/Delay Problem	<input type="checkbox"/> Category G (Error resulted in permanent Pt harm)
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Error resulted in near-death event)
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Error resulted in Pt death)
<input type="checkbox"/> Lost Item	
<input type="checkbox"/> Other _____	

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT/CIRCUMSTANCES/PERSONS INVOLVED:

Given LPN from OB to assist c busy IU. LPN is not trained
in critical care. Refuses to assist clean up patients. When
asked to assist Lori Strunk c post-mortem care, states "
I don't want to."

When asked to change bed because of drainage from NG
on bed, did change bed but later when I was rounding
with Dr. Conrad she came rushing into room and loudly
announced. "What are you doing checking up on me."

SEND THIS FORM TO YOUR MANAGER

**PENNSYLVANIA NURSES ASSOCIATION
OPEIU, Local 112
STAFFING ALERT REPORT**

I, Dawn Retorick (Name), a Registered Nurse employed at Clearfield Hospital (Hospital, Agency)
on 3-11 (Shift), ICU (Unit), hereby object to the assignment as:

- charge nurse
 primary nurse
 team leader
 team member/patient care assignment

made to me by Todd Lucas (Supervisor/person in charge) at 2-12-02 6p (time) on 2-12-02 (date) for the

following reasons.

- not oriented to unit
- not trained or experienced in area assigned
- given an assignment which posed a serious threat to my health or safety
- given an assignment outside my current job description
- case load assignment is excessive and interferes with delivery of adequate patient care (~~Community Health~~)
- given an assignment for which I have not had orientation, education or in-service
- lack of adequate staff for acuity (Check appropriate description)
 - staffed with excessive registry personnel
 - staffed with unqualified registry personnel
 - staffed with excessive number unlicensed personnel
 - short staffed
 - not provided with unit clerk
 - transferred or admitted new patient (s) to unit without adequate staff.
 - other: hemorrhaging patient & distraught family members crying. (Please specify)

This assignment is accepted because I have been instructed to do so, under protest, despite my objections.

STAFFING COUNT on date of objection:

	Regular	Float/Casual/Pool	Registry	Staff currently employed on unit
RN	3			
LPN				
AIDE				

CLERK yes _____ no

CENSUS (on date of objection) 7 Acuity: high average low Unit capacity: 12

Brief statement of problem: Had pt admitted c tracheal hemorrhage, pt ended up bleeding profusely from nose, mouth & trachea requiring 2 nurses to keep airway suctioned. Receiving bld rapidly. Had paralyzed pt with trach who required frequent tracheal & orally suctioning. Restless pt on vent crawling COB. Received new admission. Dying pt in another room having seizures. New post-op crawling COB & pulling surgical dressing off. New MI transferred into ICU. One nurse left on floor to do orders & care for other patient's while 2 nurses attending hemorrhaging pt. Float had to be in ER because they had no unit clerk.

ACTIONS TAKEN BY NURSE:

Notified Supervisor 6pm 8¹⁵pm 10p Todd Lucas Date/Time 2/12/02 - told to manage 1st time
 Notified Nursing Administrator _____ Date/Time said he called unit manager 2nd time
 Notified: PNA Service Representative _____ Date/Time "she would not come in"
 Copy #1: to Nursing Supervisor
 Copy #2: Pennsylvania Nurses Association third time states "Well the ER 5000 Tilghman Street, Suite 248 Allentown, PA 18104 doesn't have a clerk either."
 Copy #3: retained by Nurse
 Copy #4: JCAH, DOH



Also had 6 doctors making rounds during this time

new pt on ICU - staff nurse

**PENNSYLVANIA NURSES ASSOCIATION
OPEIU, Local 112
STAFFING ALERT REPORT**

I, Fran Selvage, a Registered Nurse employed at Clearfield Hospital
(Name) (Hospital, Agency)
on 3-11, ICU, hereby object to the assignment as:
(Shift) (Unit)

- charge nurse team leader
 primary nurse team member/patient care assignment

made to me by _____ at _____ on 4/16/02 for the
(Supervisor/person in charge) (time) (date)

following reasons.

- | | |
|--|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> not oriented to unit <input type="checkbox"/> not trained or experienced in area assigned <input type="checkbox"/> given an assignment which posed a serious threat to my health or safety <input type="checkbox"/> given an assignment outside my current job description <input checked="" type="checkbox"/> case load assignment is excessive and interferes with delivery of adequate patient care (Community Health) <input type="checkbox"/> given an assignment for which I have not had orientation, education or in-service | <ul style="list-style-type: none"> <input type="checkbox"/> lack of adequate staff for acuity
(Check appropriate description) <input type="checkbox"/> staffed with excessive registry personnel <input type="checkbox"/> staffed with unqualified registry personnel <input type="checkbox"/> staffed with excessive number unlicensed personnel <input type="checkbox"/> short staffed <input checked="" type="checkbox"/> not provided with unit clerk <input checked="" type="checkbox"/> transferred or admitted new patient (s) to unit without adequate staff <input checked="" type="checkbox"/> other: <u>LPN's & φ CRITICAL CARE COURSE</u>
(Please specify) |
|--|--|

This assignment is accepted because I have been instructed to do so, under protest, despite my objections.

STAFFING COUNT on date of objection:

	Regular	Float/Casual/Pool	Registry	Staff currently employed on unit
RN	3			
LPN	1			
AIDE				

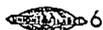
CLERK yes _____ no X

CENSUS (on date of objection) 10 Acuity: high average low Unit capacity: 12

Brief statement of problem: RN's tied up & code LPN left on floor, she could not mix drips had critical pts (one on insulin qh another dobutamine qh, 4 admissions, LPN's assignment, is not able to function alone (independently) due to high acuity
RN's tied up & code 7:25 - 9:58pm Called supervisor for help sent 2 LPN's from OB, one who was on orientation (held 3 wks ago)

ACTIONS TAKEN BY NURSE:

Notified Supervisor _____ Date/Time _____
Notified Nursing Administrator _____ Date/Time _____
Notified: PNA Service Representative _____ Date/Time _____
Copy #1: to Nursing Supervisor Copy #2: Pennsylvania Nurses Association
Copy #3: retained by Nurse 5000 Tilghman Street, Suite 248
Copy #4: JCAH, DOH Allentown, PA 18104



April 16, 2002
3-11 shift ICU

- 411a new admit uncont A-fib
- 412 pneumonia A-fib HNV since 12noon LPN assigned to this patient . Cathed by RN for 650cc at 0030
- 413 transfer from 1st floor, intubated, coded on transfer to bed in ICU. Amiodorone bolus, then an Amiodorone gtt, lidocaine gtt, dobutamine gtt, central line placed, a-line placed, shocked , 5 times, dobutamine had to ER's defibrillator (Dr. Cardamone wanted a biphasic and we did not have one and the one we had failed 4 times. 3 RN's and 2 physicians tied up in room two and one-half hours.
- 414 new admit CHF, bradycardia, with increased B/P in ER, heartrate in the 30's had atropine, pt vague, old cva.
- 415 COPD, pneumonia, complete care, confused. On dobutamine gtt. for decreased B/P's.
- 417B new admit. DKA, hyperkalemia. Was unresponsive in the ER, vomiting, Potassium 7.3, came up to the unit on insulin gtt, Bld sugar >700
- 418 PAF, increased B/P LPN assigned this patient
- 419 Fresh post op right inguinal hernia. NG tube,
- 420 new admit chest pain.

ICU staffed with 2 RN's and 1 LPN. When informed of admissions, RN from day shift stayed. Initially LPN had an assignment and I had none. Management ordered staff to give LPN assignments or be considered insubordinate. Also threatened to charge RN for abandonment of patients if she refused to oversee LPN. LPN with no Critical Course was given an assignment as demanded by management. Charge nurse was tied up and unable to closely monitor LPN. Patient's safety was jeopardized. Supervisor notified of critical situation in ICU and responded with 2 more LPN's to watch the floor! These LPN's were from OB, one of which was orienting (hired 3 weeks ago). There were plenty of people working but only 3 that were qualified. Unable to delegate duties to LPN's, who are not familiar with ICU. The LPN's were used to pass meds, do vitals, and accuchecks.

3-11 shift has no unit clerk and therefore must do all there own orders and admissions. The pharmacy is not here and we have to obtain what we need from our pyxis or run to the other floors to obtain necessary meds. We had 12 different sets of orders to do ourselves (a unit clerk did come up for one hour to assist) There were seven physicians making rounds on our shift. None of the RN's had breaks, the LPN's did.

**CLEARFIELD HOSPITAL
PROBLEM FORM**

TYPE OF PROBLEM: Interdepartmental/Interpersonal Problem
 Incident Investigation (Incident # _____)

TODAY'S DATE: 4/25/02 TIME: 11:30p

PERSON COMPLETING THIS FORM: D. Retorick, RN, CCRW DEPT: ICU

<u>NATURE OF PROBLEM</u>	<u>IF MEDICATION INCIDENT, CHECK CATEGORY</u>
<input type="checkbox"/> Equipment Malfunction/Availability	<input type="checkbox"/> Category A (Event had the capacity to cause error)
<input type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Error occurred, but med did not reach Pt)
<input type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Med reached Pt but did not cause Pt harm)
<input type="checkbox"/> Charges/Billing Problem	<input type="checkbox"/> Category D (Error resulted in need for increased monitoring, but no Pt harm)
<input type="checkbox"/> Supplies Inadequate/Inferior	<input type="checkbox"/> Category E (Error resulted in need for treatment or intervention and caused temporary harm)
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Error resulted in initial or prolonged hospitalization and caused temporary harm)
<input type="checkbox"/> Waiting/Delay Problem	<input type="checkbox"/> Category G (Error resulted in permanent Pt harm)
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Error resulted in near-death event)
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Error resulted in Pt death)
<input type="checkbox"/> Lost Item	
<input type="checkbox"/> Other _____	

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT/CIRCUMSTANCES/PERSONS INVOLVED:

LPN assigned to patient on titrated drips of Dopamine + Dobutamine
and in AV dissociation. Also assigned pt with Epidural
and A-line. I am concerned that this may not be
in her scope of practice as an LPN

SEND THIS FORM TO YOUR MANAGER

INVESTIGATION & RESOLUTION:

The LPN provides skills, technical nursing care to patients according to a plan of care established by a Registered nurse, in accordance with recognized nursing techniques, procedures, established standards and administrative policies of Clearfield Hospital. It is the charge nurses responsibility to make or change patient assignments, assess the staffing needs throughout the shift. Lori is not responsible to manage titrated drugs, epidurals, or A lines. Lori's responsibility would be to collect and document data on assigned patient and assist the RN in the evaluation of the effectiveness of care given.

RESOLUTION:

Without Merit

Level I _____ No Action Taken

With Merit - Action Taken:

Level II _____ Discussed with Individual/Staff involved. _____

Level III _____ Written or Verbal Action

Level IV _____ Policy/Procedure/Practice Change

Level V _____ Trend Identified (Serial in Nature)

Level VI _____ Process Improvement Initiated

Level VII _____ Disciplinary Action Taken

The RN assigned also to this pt would develop a plan of care for this patient x LPN SJ Strutton

Date _____ Signature _____

SEND COMPLETED FORM TO YOUR SENIOR MANAGER

PROBLEMS ONLY - SECOND LEVEL REVIEW (Credentials or Service Excellence Committee):

RESOLUTION: I ___ II ___ III ___ IV ___ V ___ VI ___ VII ___

Date _____ Comments: _____

**CLEARFIELD HOSPITAL
PROBLEM FORM**

TYPE OF PROBLEM: Interdepartmental/Interpersonal Problem
 Incident Investigation (Incident # _____)

TODAY'S DATE: 4/25/02 TIME: 11:30p

PERSON COMPLETING THIS FORM: D Retorick, RN, CCRU DEPT: ICU

<u>NATURE OF PROBLEM</u>	<u>IF MEDICATION INCIDENT, CHECK CATEGORY</u>
<input type="checkbox"/> Equipment Malfunction/Availability	<input type="checkbox"/> Category A (Event had the capacity to cause error)
<input type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Error occurred, but med did not reach Pt)
<input type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Med reached Pt but did not cause Pt harm)
<input type="checkbox"/> Charges/Billing Problem	<input type="checkbox"/> Category D (Error resulted in need for increased monitoring, but no Pt harm)
<input type="checkbox"/> Supplies Inadequate/Inferior	<input type="checkbox"/> Category E (Error resulted in need for treatment or intervention and caused temporary harm)
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Error resulted in initial or prolonged hospitalization and caused temporary harm)
<input type="checkbox"/> Waiting/Delay Problem	<input type="checkbox"/> Category G (Error resulted in permanent Pt harm)
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Error resulted in near-death event)
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Error resulted in Pt death)
<input type="checkbox"/> Lost Item	
<input type="checkbox"/> Other _____	

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT/CIRCUMSTANCES/PERSONS INVOLVED:

Lori continues to doze off when getting report.
She is responsible for complete report on the patients
she is taking care of. Also on this night, I gave live
report because I was too busy to tape. When I came
out of the back room at 11:15, she was leaving the unit
to go home & did not notify myself, Fran or Dianna
who were here. She was assigned two patients

SEND THIS FORM TO YOUR MANAGER

INVESTIGATION & RESOLUTION:

If Lori is falling asleep during report, ^{or leaving early,} it is the responsibility of the charge nurse to resolve this issue at the time of occurrence. One of the responsibilities of a charge nurse is to demonstrate problem solving skills and decision making abilities. This should have been addressed & resolved at the time it took place, not waiting until sometime 5 days later. If the charge nurse is unable to address and resolve, the nos or dept manager should be notified at the time incident took place. Lori did not leave the unit to go home at 11¹⁵ pm, but was going to 2nd floor to work the 11-730 shift and needed to receive report.

RESOLUTION:

Without Merit

Level I _____ No Action Taken

With Merit - Action Taken:

Level II _____ Discussed with Individual/Staff involved

Level III _____ Written or Verbal Action

Level IV _____ Policy/Procedure/Practice Change

Level V _____ Trend Identified (Serial in Nature)

Level VI _____ Process Improvement Initiated

Level VII _____ Disciplinary Action Taken

Date _____ Signature _____

SEND COMPLETED FORM TO YOUR SENIOR MANAGER

PROBLEMS ONLY - SECOND LEVEL REVIEW (Credentials or Service Excellence Committee):

RESOLUTION: I ___ II ___ III ___ IV ___ V ___ VI ___ VII ___

Date _____ Comments: _____

ALL-STATE® LEGAL 900-222-6510 EDRI1 RECYCLED



LOCAL UNIT NUMBER

708

Pennsylvania Nurses Association
Grievance Form

NUMBER

PNA Office Use Only

GENERAL INFORMATION:

Name of Grievant Class Action Grievant Signature _____
 Home Address _____ City _____
 State _____ ZIP _____ Home Phone _____ Work Phone _____
 Grievant's Job Title or Classification RN
 Employer Name Clearfield Hospital
 Employer Address PO Bx 993 Clearfield, Pa 16830

STATEMENT OF GRIEVANCE:

Position of ICU/ER float is being filled by RN w no med/surg experience. No ACLS certification, No ER orientation. Has not taken critical care course. This nurse has approximately 90 days experience.

Job Qualifications state: 1yr Med/surg experience, ACLS verified & Critical Care Course within last 5 years.

BASIS OF GRIEVANCE:

____ Violation of contract article(s)/section(s) _____
 and all other applicable article(s)/section(s).
 ____ Violation of established practice _____ Violation of applicable law or regulation
 ____ Violation of rule/policy/procedure _____ Other (specify) _____

REMEDY DESIRED:

Fill vacancy with qualified staff member.

STEP I	Submitted to _____	Response _____
	Name Date	Name Date
STEP II	Submitted to _____	Response _____
	Name Date	Name Date
STEP III	Submitted to _____	Response _____
	Name Date	Name Date

Date Resolved _____
 Local Unit Representative _____ Date _____
 PNA Staff Labor Representative _____ Date _____
 This grievance has been resolved to my satisfaction _____
Name Date

ALLSTATE® LEGAL 800-325-9510 EDR11 RECYCLED



Exhibit 14

Date of Posting: 11/12 - 11/19/99 5 PM

JOB VACANCY

The following Registered Nurse Position is vacant:

PART-TIME TEMPORARY CRITICAL CARE FLOAT 7:00PM - 7:00AM

Rotating Weekends and rotating holidays.
* option for twelve (12) hour shifts.

Job Summary:

A staff nurse is a professional registered nurse who provides quality nursing care to patients in accordance with recognized nursing techniques, procedures established standards, and administrative policies of Clearfield Hospital and Nursing Division.

Essential Qualifications:

Graduate of an approved school of nursing.
Current licensure by the Pennsylvania State Board of Nursing.
1 year Med/Surg experience.
ACLS verified and Critical Care Course within last 5 years required (if greater than 5 years Successful Completion of Critical Care Challenge Exam)

This posting is a summary only and is subject to the full job description which can be reviewed in the Human Resources Department.

FILED ICE
M 11:35 AM
SEP 18 2003
Amy West

William A. Snaw
Prothonotary/Clerk of Courts

Eric T. Smith (PA Id. No. 70491)
S. Elaine Diedrich (PA Id. No. 87044)
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
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(412) 577-5200

Attorneys for Defendants

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit Manager
Defendants.

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

) No. 03-393-CD
)

) Civil Action - Law
)
)
)
)
)

PRAECIPE FOR ENTRY OF APPEARANCE

Please enter the appearance of Eric T. Smith, S. Elaine Diedrich and Schnader,
Harrison, Segal & Lewis, LLP on behalf of the Defendants in connection with the above-
captioned matter.

SCHNADER HARRISON SEGAL & LEWIS, LLP

By: 

Eric T. Smith
Pa. Id. # 70491
S. Elaine Diedrich
Pa. Id. #84077

FILED

OCT 21 2003

William A. Shaw
Prothonotary

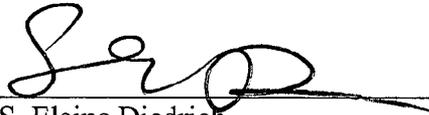
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120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants, Clearfield Hospital, Lois
Eisenman, Jackie Stone and Thelma Stratton

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2003, a true and correct copy of the foregoing **Pracipe for Entry of Appearance** was sent, via U.S. Mail, first class postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

FILED

M 11:49 AM ADD to Deck
Copy to CA
OCT 21 2003

William A. Shaw
Prothonotary

CA

Eric T. Smith (PA Id. No. 70491)
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Attorneys for Defendants

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit Manager
Defendants.

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

No. 03-393-CD
Civil Action - Law

FILED

OCT 21 2003

PRELIMINARY OBJECTIONS

William A. Shaw
Prothonotary

AND NOW come Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and
Thelma Stratton (collectively, "Defendants"), by and through their undersigned counsel and
file the within Preliminary Objections and in support thereof state as follows:

STATEMENT OF FACTS

A. Procedural Background

1. Plaintiffs Dawn L. Retorick ("Retorick") and Frances L. Selvage ("Selvage") commenced this action by Writ of Summons on or about March 20, 2003.
2. On September 17, 2003, Plaintiffs filed their Complaint ("Complaint"). Defendants were served on or around September 19, 2003.

B. Plaintiffs' Claims

3. Plaintiffs' Complaint alleges eight (8) causes of action: Whistleblower Statute (Count I), Medical Care Availability and Reduction of Error (MCARE) Act (Count II), Constructive Discharge in Violation of Public Policy (Count III), Defamation (Count IV), Invasion of Privacy/False Light (V), Intentional Infliction of Emotional Distress (VI), Punitive Damages (Count VII) and Damages (Count VIII).

C. The Allegations of Plaintiffs' Complaint

4. Plaintiffs were employed by Defendant Clearfield Hospital as Intensive Care Unit ("ICU") nurses. *See* Complaint ¶ 9.

5. According to Plaintiffs' Complaint, in November of 2002, both Plaintiffs quit their jobs. *Id.* at ¶ 13.

6. Plaintiffs allege that, in their opinion, the staffing of the ICU was inadequate. *Id.* at ¶¶ 11 and 14. Plaintiffs further allege that they advised the Pennsylvania Nurses Association, OPEIU, and Local 112 of their concerns. *Id.* at ¶¶ 14a, e, g, h, and l.

7. Plaintiffs also allege that they informed Defendants in writing of their opinions on various occasions from March of 1999 to August of 2002. *Id.* at ¶¶ 14b, c, d, f, i, j and k, Exhibits 1, 2, 7, 10, 11 and 12.

8. Plaintiffs allege that on March 26, 1999, Plaintiff Retorick submitted an "Alert Form" on which she indicated her belief that staffing the ICU with three (3) ICU Registered Nurses ("RN's") and one nurse from another unit was not sufficient, *Id.* at ¶14b and Exhibit 2.

9. Plaintiffs allege that on November 30, 1999, Plaintiffs submitted a letter to Defendant Jackie Stone in which she indicated her belief that Tammy Charles, RN, was not qualified to work in the ICU, *Id.* at ¶14a and Exhibit 1.

10. Two years later, on November 20, 2001, Plaintiff Retorick wrote a letter to Defendant Stone regarding the staffing of the ICU, *Id.* at ¶ 14c and Exhibit 4. One year later, on January 31, 2002, Plaintiff Retorick submitted a Problem Form regarding the performance of an LPN, *Id.* at ¶ 14c and Exhibit 5.

11. On February 1, 2002, Plaintiff Retorick submitted a “Problem Form” on which she indicated her belief that an LPN from another unit was not performing properly, *Id.* at ¶ 14f and Exhibit 7.

12. On April 25, 2002, Plaintiff Retorick submitted a “Problem Form” on which she indicated her concern that an LPN assigned to the ICU was performing duties which “may not be in her scope of practice as an LPN.”

13. Defendant Thelma Stratton investigated Retorick’s complaint and advised, *inter alia*, that it was without merit, observing that “it is the charge nurses responsibility to make or change patient assignments, assess the staffing needs throughout the shift.” *Id.* at ¶14i and Exhibit 10.

14. According to the Complaint, Plaintiff Retorick complained again about the performance of an LPN on April 25, 2002, alleging that the LPN “continued to doze off” and left the unit to go home without informing anyone. Defendant Thelma Stratton investigated this allegation as well and stated, *inter alia*, that “it is the responsibility of the charge nurse to resolve [issues] at the time of occurrence. One of the responsibilities of a charge nurse is to demonstrate problem solving skills and decision making abilities. This should have been addressed and

resolved at the time it took place, not waiting until sometime 5 days later.” *Id.* at ¶ 14j and Exhibit 11.

15. Four (4) months later, on August 31, 2002, Plaintiff Retorick submitted a “Problem Form” and stated her belief that nurses assigned to float duties were not being provided proper orientation which “could become a safety issue.” *Id.* at ¶ 14k and Exhibit 12.

Plaintiffs allege that Defendants retaliated against them for these reports and cause them emotional distress.

ARGUMENT

I. Demurrer as to Count I: Plaintiffs Have Failed to State a Cause of Action Under the Pennsylvania Whistleblower Law.

16. Plaintiffs have failed to plead any of the elements necessary to maintain a cause of action under the Pennsylvania Whistleblower Law.

a. General Application and Definitions Under The Whistleblower Law

17. The Pennsylvania Whistleblower Law, 43 Pa.C.S.A. 1423, (“Whistleblower Law”) provides that:

No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location or privileges of employment because the employee ... makes a good faith report or is about to report, verbally or in writing, to the employer or **appropriate authority** an instance of **wrongdoing or waste**.

43 P.S. § 1423(a) (emphasis added).

18. The Whistleblower Law defines “wrongdoing” as:

a violation which is not merely technical or minimal in nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

43 P.S. § 1422.

19. The Whistleblower Law defines “waste” as:

an employer’s conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from Commonwealth or political subdivision source.

Id.

20. “Appropriate authority” for reporting wrongdoing or waste is defined by the

Whistleblower Law as a:

‘federal, state or local government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste’ or a ‘member, officer, agent, representative or supervisory employee of the body, agency or organization.’

43 P.S. § 1422.

21. Plaintiffs have failed to sufficiently plead that Defendants violated the Whistleblower Law.

22. In the instant case, the allegations under the Whistleblower Law are woefully lacking. Specifically, Plaintiffs fail to adequately plead: (a) a cognizable “wrongdoing” (*i.e.*, no violation of an applicable statute or code); (b) a report to an “appropriate authority”; and (c) that an illegal retaliatory discharge occurred. Each of these shortcomings mandate a dismissal of Count I.

b. Plaintiffs Have Failed to Plead “Wrongdoing” or “Waste”

23. Plaintiffs have failed to allege that they made, or were about to make, a report to Defendants or an appropriate authority that Defendants engaged in “*wrongdoing*” or “*waste*” as defined by the Pennsylvania Whistleblowers Law.

24. Plaintiffs have not, and cannot, identify any conduct by any of Defendants which constituted “waste”. Specifically, Plaintiffs have not identified any conduct or omission by

Defendants that resulted in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from a Commonwealth or political subdivision source.

25. Moreover, Plaintiffs have failed to plead Defendants engaged in “wrongdoing.” In order to allege Defendants engaged in “wrongdoing,” Plaintiffs must identify the statute or regulation which Defendants allegedly violated.

26. Plaintiffs’ refer only to the Pennsylvania Professional Nursing Law, 63 P.S. § 212 (sections dealing with refusal, suspension, and revocation of a Registered Nurse’s license), The Professional and Vocational Standards promulgated by the State Board of Nursing, 49 Pa. Code § 21.18(a) and the American Nursing Association Code of Ethics. *See* Complaint ¶¶ 20 – 23. As a matter of law, this is insufficient to come within the purview of the Whistleblower Law.

27. The Pennsylvania Superior Court held in *Riggio v. Burns*, 711 A.2d 497, 501 (Pa.Super. 1998), that state licensing statutes, *codes of conduct and codes of ethics do not fall within the purview of the term “wrongdoing,” as defined by the Whistleblower Law.*

28. The *Riggio* Court further stated:

The statutes merely consist of the legislature’s guidelines for the regulation of the healthcare industry. Each statute delegates to an independent entity the power to investigate and evaluate whether the individual in question has complied with these general standards. They then provide that certain consequences may be imposed if the entity determines that the standards have not been met. The statutes are utterly silent with respect to specific conduct.

Id. at 502.

29. Plaintiffs have only identified licensing statutes and codes of conduct and codes of ethics which govern nurses. Similar to the statutes at issue in *Riggio*, these statutes cannot constitute “wrongdoing” as defined by the Whistleblower Law.

c. ***Plaintiffs Do Not (And Cannot) Allege That They Were Discharged Because Of Their Alleged Complaints***

30. Count I of Plaintiffs' Complaint must further be dismissed because Plaintiffs have failed to allege the elements of a *prima facie* case of retaliatory discharge. *Golashevsky v. Comm. Of Pa. Dep't of Env. Protection*, 720 A.2d 757, 759 (Pa. 1998).

31. Plaintiffs *quit* their jobs with Clearfield Hospital. They have not, and cannot, allege concrete facts or surrounding circumstances that their complaints regarding the staffing of the ICU led to their *discharge*. Accordingly, they cannot state a cause of action for retaliatory discharge under the Whistleblowers Act.

32. For all the above stated reasons, Plaintiff's claim is insufficient to plead a cause of action under the Pennsylvania Whistleblowers Law and, therefore, Count I of the Complaint should be dismissed.

II. **Paragraph 14 and its subparagraphs (a) through (j), Paragraph 33, and Exhibits 1 through 11 of the Complaint must be Stricken.**

33. Plaintiffs have brought a cause of action under the Medical Care Availability and Reduction of Error Act ("MCARE" or the "Act"), and more specifically, Chapter 3 entitled "Patient Safety."

34. Pursuant to Sections 1303.301 through 1303.312 of the Act, the pertinent sections of the Act were not effective until May 19, 2002.¹

35. The Act established a "body corporate and politic to be known as the Patient Safety Authority." 40 P.S. § 1303.303. The Act further provides:

Approval. - Within 60 days of the effective date of this section, [i.e. within 60 days of May 19, 2002], a medical facility shall submit its patient safety plan to the

¹ Sections 1303.301 through 1303.312 of MCARE each provide that they are effective 60 days from March 20, 2002.

department² for approval consistent with the requirements of this section. Unless the department approves or rejects the plan within 60 days of receipt, the plan shall be deemed approved.

Upon approval of the patient safety plan, a medical facility shall notify all health care workers of the medical facility of the patient safety plan. Compliance with the patient safety plan shall be required as a condition of employment or credentialing at the medical facility

40 P.S. § 1303.307(c), (d).

36. In order to claim protection under MCARE, an employee must report the “serious event” or “incident” according to the safety plan of the medical facility. The Act specifically provides:

- (a) **Reporting.** – A health care worker who believes that a serious event or incident has occurred *shall report the serious event or incident according to the patient safety plan of the medical facility* unless the health care worker knows that a report has already been made. The report shall be made immediately or as soon thereafter as reasonably practicable, but in no event later than 24 hours after the occurrence or discovery of a serious event or incident.

40 P.S. § 1303.308(a).

37. The Section of MCARE under which Plaintiffs seek redress is Section 1303.308(d) which states:

- (c) **Liability.** - A health care worker who reports the occurrence of a serious event or incident in accordance with subsection (a) or (b) shall not be subject to any retaliatory action for reporting the serious event or incident and shall have the protections and remedies set forth in . . . Whistleblower Law.

38. All of Plaintiffs’ alleged reports preceded the effective date of MCARE excepting one. *See* Complaint, ¶ 14 (a) – (m). The Act specifically limits recovery to incidents where Plaintiffs reported a “serious event” or “incident” pursuant to and specifically provided for in MCARE. *See* § 1303.308 (c).

² The Department of Health of the Commonwealth. *See* 40 P.S. § 1303.302.

39. Because MCARE was not effective until May 19, 2002, Plaintiffs may not seek redress for any alleged reports pre-dating May 19, 2002. Plaintiffs are, therefore barred, as a matter of law, from recovering damages for reports not made prior to May 19, 2002.

40. As such, paragraph 14 and its subparagraphs (a) through (j), paragraph 33, and Exhibits 1 through 11 of the Complaint must be stricken.

III. Demurrer as to Plaintiff Selvage's Claim under MCARE (Count II).

41. Only Plaintiff Retorick filed a Problem Form after May 19, 2002. *See* Complaint ¶ 14(k); Exhibit 12). As such, Plaintiff Selvage's claim under MCARE (Count II) must be dismissed.

IV. Demurrer as to Count III: Plaintiffs Have Failed to State a Cause of Action for Constructive Discharge in Violation of Public Policy.

42. "Constructive discharge of an at-will employee may serve as a basis for tort recovery if the employer has made working conditions so intolerable that an employee has been forced to resign." *Highhouse v. Avery Transp.*, 443 Pa. Super. 120, 660 A.2d 1374, 1376 (Pa.Super. 1995).

43. Plaintiffs have not alleged any facts which would support a cause of action for constructive discharge.

44. Even if the Court determines that Plaintiffs' allegations sufficiently plead constructive discharge, Plaintiffs' allegations are not sufficient to state a cause of action for Wrongful Discharge.

45. Pennsylvania follows the employment at-will doctrine. Pursuant to this doctrine, “an at-will employee may be terminated for good reason, bad reason, or no reason at all.” *Krajisa v. Keypunch, Inc.*, 622 A.2d 355, 358 (Pa. Super. 1993); *See also, Johnson v. Resources for Human Development, Inc.*, 843 F. Supp. 974, 979 (E.D. Pa. 1994); *Brown v. Hammond*, 810 F. Supp. 644, 645 (E.D. Pa. 1993) (an employer’s right to terminate an at-will employee is “virtually absolute”).

46. No common law cause of action exists for wrongful discharge of an at-will employee except where a “clear mandate” of public policy is violated. *Bruffett v. Warner Communications, Inc.*, 692 F.2d 910 (3d Cir. 1982); *Paul v. Lankenau Hospital*, 569 A.2d 346 (Pa. 1990); *Clay v. Advanced Computer Applications, Inc.*, 559 A.2d 917 (Pa. 1989); *Geary v. United States Steel Corp.*, 319 A.2d 174 (Pa. 1974); *Yetter v. Ward Trucking Corp.*, 585 A.2d 1022 (Pa. Super. 1991).

47. To date, the Pennsylvania Supreme Court has only recognized one (1) public policy exception to the at-will doctrine and the Pennsylvania Superior Court has only recognized three (3). *See Shick v. Shirey*, 552 Pa. 590 (Pa. 1998) (an employee may not be fired for filing a valid worker’s compensation claim); *Reuther v. Fowler & Williams, Inc.*, 255 Pa. Super. 28, 386 A.2d 119 (1978) (an employee may not be fired for serving on jury duty); *Hunter v. Port Authority of Allegheny County*, 419 A.2d 631 (Pa. Super. 1980) (relying on federal court decisions, Pennsylvania statutes and Pennsylvania court decisions and concluding that the defendant violated the Pennsylvania constitution by denying employment to a person with a prior criminal conviction); *Field v. Philadelphia Electric Company*, 565 A.2d 1170, 1180 (Pa. Super. 1989) (an employee may not be fired for reporting violations of federal regulations to the Nuclear Regulatory Commission).

48. As demonstrated above, “[t]he public policy exception has been most frequently applied when a discharge is a result of the employee’s compliance with or refusal to violate a specific provision of a law.” *Woodson v. AMF Leisureland Centers, Inc.*, 842 F.2d 699, 701-02 (3d Cir. 1988). *See also Perks v. Firestone Tire & Rubber Co.*, 611 F.2d 1363 (3d Cir. 1979) (cause of action for wrongful discharge for refusal to submit to a polygraph test when statute forbids such testing).

49. Plaintiffs’ attempt to bootstrap a cause of action for wrongful discharge by arguing that the Whistleblower Law and the MCARE Act are a “clear mandate” of public policy that was violated by their constructive discharge.

50. However, Plaintiffs’ remedies under those statutes are exclusive. *Perry v. Tioga County*, 649 A.2d 186 (Pa. Commw. 1994).

51. Plaintiffs cannot graft an additional cause of action for wrongful discharge on to the same facts but should be forced to pursue their remedies in the appropriate manner.

52. Further, the Pennsylvania Superior Court has held that there is no general public policy protecting whistleblowers in the private sector. *Krajsa v. Key Punch, Inc.*, 622 A.2d 355, 358 (Pa. Super. 1993).

53. Plaintiffs also attempt to argue that their purported constructive discharge violated a “clear mandate” of public policy as set forth in the Pennsylvania Professional Nursing Law, 63 P.S. §212, The Professional and Vocational Standards promulgated by the State Board of Nursing, 49 Pa. Code § 21.18(a) and the American Nursing Association Code of Ethics. *See* Complaint ¶¶ 20 – 23.

54. State licensing statutes, codes of conduct and ethics do not constitute a “clear mandate” of public policy.

55. Without these allegations, Plaintiff's claim is insufficient to plead a cause of action for Constructive Discharge in Violation of Public Policy under Pennsylvania law and, therefore, Count III should be dismissed.

V. Demurrer as to Count IV: Plaintiffs Have Failed to State a Cause of Action for Defamation

56. The elements necessary to properly plead a cause of action for Defamation are:

- (1) that the defendant made a defamatory communication;
- (2) about the plaintiffs;
- (3) that was published to a third party;
- (4) who understood the defamatory meaning of the communication about the plaintiffs;
- (5) where the plaintiffs suffered special harm as a result of the communication; and
- (6) that any privilege invoked by the defendant was abused.

412 P.S. § 8343.

57. Plaintiffs allege that Defendants made comments about Plaintiffs' conduct in the ICU. *See* Complaint ¶ 42.

58. Pennsylvania courts have long held that the court must initially determine whether any of the alleged comments are capable of a defamatory meaning. *Thomas Merton Ctr. v. Rockwell Int'l Corp.*, 497 Pa. 60 (1981).

59. A communication is defamatory if it tends to harm the reputation of another by lowering him in the estimation of the community or to deter third persons from associating with him. *Maier v. Maretti*, 448 Pa. Super. 276 (1995).

60. None of the statements Plaintiffs allege are capable of a defamatory meaning.

61. Without these allegations, Plaintiff's claim is insufficient to plead a cause of action for defamation under Pennsylvania law and, therefore, Count IV should be dismissed.

VI. Demurrer as to Count V: Plaintiffs Have Failed to State a Cause of Action for Invasion of Privacy/False Light

62. The elements necessary to properly plead a cause of action for Invasion of Privacy/False Light are publicity given to private facts, which would be highly offensive to a reasonable person and which are not of legitimate concern to the public. *Strickland v. Univ. of Scranton et. al.*, 1997 Pa. Super. LEXIS 2894, 700 A.2d 979, 987 (Pa. Super. 1997).

63. Publicity "means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge." *Curran v. Children's Service Center of Wyoming County, Inc.*, 396 Pa. Super 29, 39 (quoting Restatement (Second) of Torts § 652D comment a).

64. It is only "when there is such a major misrepresentation of his character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable man in his position, that there is a cause of action for invasion of privacy." *Strickland v. Univ. of Scranton et. al.*, 1997 Pa. Super. LEXIS 2894, 700 A.2d 979, 987 (Pa. Super. 1997).

65. None of the statements Plaintiffs allege are capable of satisfying the elements of invasion of privacy/false light. Further, Plaintiffs have failed to allege the element of publicity.

66. They have not alleged that Defendants made any comments about them, positive or negative, to the public at large or to so many persons that matter became one of public knowledge.

67. Without these allegations, Plaintiff's claim is insufficient to plead a cause of action for invasion of privacy/false light under Pennsylvania law and, therefore, Count V should be dismissed.

VII. Demurrer as to Count VI: Plaintiffs Have Failed to State a Cause of Action for Intentional Infliction of Emotional Distress

68. In order to properly plead a cause of action for intentional infliction of emotion distress plaintiffs must allege, at a minimum that Defendants "by extreme and outrageous conduct intentionally or recklessly cause[d] severe emotional distress" to plaintiffs. *Taylor, et.al. v. Albert Einstein Medical Center, et. al.* 562 Pa. 176 (2000).

69. The "conduct must be so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." *Hoy v. Angelone*, 554 Pa. 134, 151 (1998) (citations and internal quotations omitted).

70. None of the conduct Plaintiffs allege satisfies the minimum pleading requirements to state a cause of action for intentional infliction of emotional distress.

71. Without these allegations, Plaintiff's claim is insufficient to plead a cause of action for intentional infliction of emotional distress under Pennsylvania law and, therefore, Count VI should be dismissed.

VIII. Demurrer as to Counts VII and VIII

72. The Pennsylvania Supreme Court has stated: "the right to punitive damages is a mere incident to a cause of action – an element which the jury may consider in making its

determination – and not the subject of an action itself.” *Feingold v. SEPTA*, 517 A.2d 1270 (Pa. 1979).

73. As set forth in *Kryeski v. Schott*, 9 Pa. D.&C.4th 399, 409-10 (Lackawanna County, 1991):

Plaintiff also seeks punitive damages and separately sets forth a cause of action for such in count VIII. A demand for punitive damages in a separate count with no cause of action stated in the count violates Pa.R.C.P. 1020(a). Rule 1020(a) provides ‘each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief.’ Count VIII does incorporate by reference all preceding paragraphs of the complaint. However, the appropriate method in seeking punitive damages is to request such damages in each separate count of the complaint in accordance with Pa.R.C.P. 1020(a).

74. In *Lulu Mae Nix v. Temple University*, 21 Phila. 459 (1990), the Common Pleas Court dismissed plaintiff’s claim for punitive damages where the claim was alleged in a separate count. The court determined that since plaintiff’s complaint stated no cause of action upon which she could recover, she was precluded from recovering punitive damages. *Id.*

75. Damages are not an independent cause of action but rather, “[t]he right to punitive damages is a mere incident to a cause of action...and not the subject of an action itself.” *Feingold v. Southeastern Pa. Transp. Auth.* 512 Pa. 567 (Pa. 1986)(quoting *Hilbert v. Roth*, 359 Pa. 270 (Pa. 1959)).

76. Accordingly, it is well established that Count VII and VIII are improper and should, therefore, be dismissed.

77. Further, punitive damages are not available under the Whistleblower Act or the MCARE Act. *Rankin v. City of Philadelphia*, 963 F.Supp. 463(1997); 40 P.S. § 1303.308.

78. Accordingly, Counts VII and VIII should be dismissed.

CONCLUSION

For the foregoing reasons, Defendants Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton respectfully request that this honorable Court enter the attached order.

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS, LLP

By:  _____

Eric T. Smith
Pa. Id. # 70491
S. Elaine Diedrich
Pa. Id. #84077

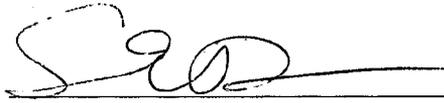
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2003, true and correct copies of the foregoing
Preliminary Objections were sent, via U.S. Mail, first class postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich (PA Id. No. 84077)

FILED

1cc to Letty
OCT 21 2003

William A. Shaw
Prothonotary

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit Manager
Defendants.

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

No. 03-393-CD

Civil Action - Law

ORDER OF COURT

AND NOW, to-wit, this ____ day of _____, 2003, it is hereby ORDERED
ADJUDGED and DECREED that Defendants Preliminary Objections are GRANTED.

Plaintiff Retorick's Counts I, III, IV, V, VI, VII, and VIII of the Complaint are
DISMISSED.

Plaintiff Selvage's Counts I, II, III, IV, V, VI, VII, and VIII of the Complaint are
DISMISSED.

Paragraph 14 and its subparagraphs (a) through (j) and Paragraph 33 of Plaintiffs'
Complaint are STRICKEN.

Exhibits 1 through 11 of Plaintiffs' Complaint are STRICKEN.

BY THE COURT,

J.

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

NOTICE

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

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

David S. Meholick
Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814) 765-2641 x 5982

FILED

NOV 12 2003

William A. Shaw
Prothonotary

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

:
:
: No. 03-393-CD
:

: Civil Action - Law
:
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:

NOTICE

USTED HA SIDO DEMANDADO A EN CORTE. Si usted desea defenderse de las demandas que se presentan mas adelante en las siguientes paginas, debe tomar accion dentro de los proximos veinte (20) dias despues de la notificacion de esta Demanda y Aviso radicando personalmente o por medio de un abogado una comoparecencia escrita y radicando en la Corte por escrito sus defensas de, y objeciones a, las demandas presentadas aqui en entra suya. Se le advierte de que si usted falla de tomar accion como se describe anteriormente, el caso puede proceder sin usted y un fallo por cualquier suma de dinero reclamada en la demanda o cualquier otra reclamacion o remedio solicitado por el demandante puede ser dictado en contra suya por la Corte sin mas aviso adicional. Usted puede perder dinero o propiedad u otros derechos importantes para usted.

USTED DEBE LLEVAR ESTE DOCUMENTO A SU ABOGADO IMMEDIATAMENTE. SI USTED NO TIENE UN ABOGADO O NO PUEDE PAGARLE A UNO, LLAME O VAYA A LA SIGUIENTE OFICINA PARA AVERIGUAR DONDE PUEDE ENCONTRAR ASISTENCIA LEGAL.

David S. Meholick
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FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

AMENDED
COMPLAINT

AND NOW, come the Plaintiffs, Frances L. Selvage and Dawn L. Retorick, by and through their counsel, James J. West, Esquire, and files the following Complaint against the Clearfield Hospital, Lois Eisenman, Jackie Stone, Thelma Stratton and, in support thereof, alleges as follows:

PARTIES

1. The Plaintiff, Frances L. Selvage is an adult individual with an address of 302 Merrill Street, Clearfield, Clearfield County, Pennsylvania.
2. The Plaintiff, Dawn L. Retorick is an adult individual with an address of 806 Grassflat Avenue, Morrisdale, Clearfield County, Pennsylvania.
3. The Defendant, Clearfield Hospital, is an incorporated hospital located at 809 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania.

4. The Defendant Lois Eisenman, is the Director of Nursing at the Clearfield Hospital located at 805 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania.

5. The Defendant Jackie Stone, is the Vice President of Nursing at the Clearfield Hospital located at 805 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania.

6. The Defendant Thelma Stratton, is the Intensive Care Unit Manager at the Clearfield Hospital located at 805 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania.

JURISDICTION AND VENUE

7. Jurisdiction of the parties in this matter is proper in the Courts of Pennsylvania pursuant to the provisions of 42 Pa.C.S. §5301 et seq.

8. Venue is proper in Clearfield County under Rule 1006, Pa.R.Civ.P., because the cause of action arose in Clearfield County and under Rule 2179, Pa.R.Civ.P., because the Defendants regularly conducted business in Clearfield County.

SUMMARY OF THE CASE

9. This is a suit by two long-time nurses in the Intensive Care Unit (ICU) of the Clearfield Hospital against the hospital and three of its employees who were managers and supervisors in the Intensive Care Unit (ICU) based upon unlawful discharge in violation of Pennsylvania's Public Policy, violation of the State Whistleblower law, retaliation, violation of the Medical Care Availability and Reduction of Error Act (MCARE Act), defaming the Plaintiffs and placing the them in a false light.

10. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick, were both registered nurses who had, a combined total of approximately thirty years' experience in the ICU of the Clearfield Hospital. The ICU is a critical unit of the hospital requiring a high degree of training and skill for nurses in order to protect the lives and safety of the patients that are admitted to that

unit for care. The Plaintiffs had functioned with the required high degree of skill for a combined total of approximately thirty years doing an outstanding job caring for the people of Clearfield County and other individuals admitted to and treated by the ICU of the Clearfield Hospital.

11. In approximately 1999 it appear that the hospital management was intentionally cutting back and diluting the quality of care being administered by the ICU and putting the patients admitted to that unit at risk of serious injury and even death. In order to reverse this situation, the Plaintiffs began reporting deficiencies that they noted in the ICU and the quality of treatment being administered as well as deficiencies in the qualifications of various staff members being assigned to the ICU by managers/supervisors. These reports were filed by Plaintiffs through the chain of command at the Clearfield Hospital and were reports of wrongdoing and waste in violation of federal and state statutes and regulations covering the standard of care to which patients are entitled including patients covered by Medicaid and Medicare as well as generally accepted standards of care which are explicit and implicit in federal and state statutes and regulations. These reports continued from 1999 up until the point in time that the Plaintiffs were constructively discharged in November of 2002 and were made both orally and in writing during the entire period.

12. The Defendants, acting as managers/supervisors and representatives of the Clearfield Hospital and being within the scope of their authority, began systematically punishing the Plaintiffs for making such reports by humiliating them in front of their coworkers, subjecting them to different treatment than other employees, systematically ignoring their complaints and ultimately initiated a defamatory whispering campaign whereby they would intentionally humiliate, belittle and discredit the Plaintiffs and ultimately force them to leave the Clearfield

Hospital by exposing them to treatment that would cause a reasonable nurse, under the circumstances, to resign, i.e., constructive discharge.

13. In November, 2002, both of the Plaintiffs resigned and bring this action for constructive discharge and retaliation in violations of the Whistleblower Statute, violation of the MCARE Act, and defamation.

SPECIFIC FACTUAL ALLEGATIONS

MCARE

14. In November of 1999, Frances L. Selvage and Dawn L. Retorick wrote to Jackie Stone, Vice President of Nursing at Clearfield Hospital concerning the personnel being assigned to the ICU and the safety of ICU patients, stating as follows:

In the past, it has always been required that a nurse in ICU or ER has to meet certain criteria to qualify for a job in these units. These criteria have been at least one-year med-surg. experience, ACLS, a critical care course and an arrhythmia course. These are basic skills needed to function safely and effectively. This is in the best interest of the patients. Occasionally, life-threatening situations arise when the nurse must act quickly and individually. Due to this fact, we do not feel that these standards should be lowered.

(See Exhibit 1, attached hereto.)

The Plaintiffs made numerous additional written and oral complaints about the staffing of the ICU and how it was compromising patient care and jeopardizing safety of patients. Some of the written complaints are attached hereto as follows:

a. March 26, 1999 - Alert Form - RN assigned to ICU not qualified to read monitors in ICU or to chart on ICU chart. Qualified float nurse not allowed to be assigned.

(Exhibit 2)

b. December 29, 2000 - Problem Form – RN assigned to ICU not qualified, unfamiliar with ICU routine and overwhelmed by it – “compromising patient care and jeopardizing their safety with lack of experienced people.” (Exhibit 3)

c. November 20, 2001 - Letter to Mrs. Stone, Vice President of Nursing - “the practice of hiring untrained ICU nurses to fill vacancies in the unit is an accident waiting to happen for our staff and imminent danger to our patients.” (Exhibit 4)

d. January 31, 2002 - Problem Form - Nurse sleeping during reports several days in a row and leaving ICU without notifying charge nurse to study for test. (Exhibit 5)

e. February 1, 2002 - Staffing Alert Report - Reporting case load assignment being excessive, lack of acuity with staff and lack of a unit clerk. RNs were assigned three to four patients each, several patients were unstable after operations and were disoriented, crawling out of bed and screaming. (Exhibit 6)

f. February 1, 2002 - Problem Form - Staffing difficulty, LPN not properly trained for critical care patients and refused to provide post-mortem care to a patient who had passed away. LPN also interrupted doctor while making rounds by rushing into room and loudly announcing “what are you doing checking up on me.” (Exhibit 7)

g. February 12, 2002 - Staffing Alert Report - Case load assignment excessive, staff lacked acuity, unit clerk not assigned, new patients transferred and admitted without adequate staff, and a patient was hemorrhaging while distraught family members were crying. Hemorrhaging patient required two nurses and other patients, including a dying ICU patient were not receiving adequate services due to understaffing. (Exhibit 8)

h. April 16, 2002 - Staffing Alert Report - Case load assignment excessive, not provided with unit clerk, patients transferred to unit without adequate staff, LPN assigned

without adequate training, one LPN sent to the unit was still on orientation, RNs were busy with a patient who coded (emergency). Management ordered RNs to give the LPN assignments or they would be declared insubordinate. (Exhibit 9)

i. April 25, 2002 - Problem Form - LPN assigned to patient with Tritrated drips of Dopamine & Dobutamine and an AV dissociation, also assigned patients with Epidural and A-line, concern that LPN assigned beyond the scope of her practice and competency. (Exhibit 10)

j. April 25, 2002 - Problem Form - Nurse continues to doze off when receiving reports on patient status for the patients she will be giving care to. Also left unit at 11:15 p.m. without notifying other nurses. (Exhibit 11)

k. August 31, 2002 - Problem Form - Staff performance problem, persons being assigned as float nurses were not properly oriented and would not know what to do if other ICU staff members became busy. (Exhibit 12)

l. Pennsylvania Nurses Association Grievance Form - Position in ICU is being filled by nurse without adequate experience, proper ACLS certification and emergency room orientation. Nurses being assigned who have never taken critical care course and do not meet the job qualifications. (Exhibit 13)

m. Job Qualifications for part-time, temporary, critical care nurse as published by Clearfield Hospital requiring med-surg experience, ACLS verified and critical care course within five years or successful completion of the Critical Care Challenge Exam. (Exhibit 14)

n. The above enumerated written reports (a-m) are merely examples of reports made between 1999 and November of 2002. The Plaintiffs both made numerous additional oral and written reports of wrongdoing and waste based upon serious events and

incidents to the Defendants after the effective date of the Medical Care Availability and Reduction of Error (MCARE Act) Act, 40 P.S. §1303.101. These reports were the reason that the Defendants decided to intentionally force the Plaintiffs to leave their jobs by implementing a hostile work environment that existed until November of 2002 and resulted in the Plaintiffs' being constructively discharged.

15. These written reports were supplemented by oral reports of the dangers that patients were being exposed to by having untrained and inexperienced personnel being assigned to care for specific patients in the ICU.

16. The Defendants took no appropriate corrective action as a result of these numerous oral and written reports, but rather, the Defendants retaliated against Frances L. Selvage and Dawn L. Retorick for reporting these events and incidents of understaffing and improper assignment of staff to ICU patients.

17. This retaliation included, but was not limited to, the following:

- a. treating the Plaintiffs different from other nurses and singling them out for punishment and reprimand when others committing similar acts were not punished or given different and lighter punishments;
- b. threatening to fire the Plaintiffs and intimidating them by yelling and even calling them liars in the presence of their peers;
- c. taking away the ICU's clerk thereby increasing the Plaintiffs' workloads;
- d. refusing to allow the Plaintiffs to attend educational classes including required refresher courses for nurses working in ICU;
- e. telling Plaintiffs' coworkers that they were unjustifiably "picking on" other employees on the 3:00 to 11:00 shift;

- f. telling Plaintiffs and fellow workers that they cannot have training because “it is my understanding you will be leaving soon”;
- g. doing a write up and report against the Plaintiff, Dawn L. Retorick, on incidents on days when she was not working;
- h. making derogatory entries in the ICU communication books concerning the Plaintiffs;
- i. arbitrarily threatening punishment even when implementing suggestions that the Plaintiffs made;
- j. attempting to schedule one work day in the middle of Plaintiff’s long-scheduled vacation to the state of Utah so in an attempt to destroy her ability to take that vacation;
- k. threatening to make the Plaintiffs work during their scheduled vacations;
- l. accosting, degrading and humiliating Plaintiffs at every opportunity and to the point where chest pains, sleeplessness, nervous upset, and other identifiable physical reactions were experienced and required medical intervention;
- m. threatening to interfere with their reputations and established nursing carriers by accusing Plaintiffs of abandoning their patients if anything happened to the patients assigned to the unqualified personnel in addition to their own caseload; and
- n. broadcasting and publicizing all of the above to the Plaintiffs’ coworkers, neighbors, friends, associates in its attempt to hold them up to ridicule and scorn in the community and thereby discredit their credibility when they complained about patients being put in jeopardy at the Clearfield Hospital.

18. In addition to the above conduct, the Defendants and those acting in concert with them began a campaign intentionally designed to turn their peers and other hospital employees against the Plaintiffs, humiliate and isolate the Plaintiffs and cause such harm and difficulty that Plaintiffs would leave their positions as nurses in the ICU.

19. This campaign was calculated to intentionally cause and inflict emotional distress and consisted of the named individual Defendants doing the following:

- a. telling the Plaintiffs' coworkers that they were troublemakers who could not be trusted;
- b. telling Plaintiffs' coworkers to "watch them" and that they are difficult to work with;
- c. telling Plaintiffs' coworkers that they were untruthful and "liars";
- d. telling Plaintiffs' coworkers that management disagrees with the Plaintiffs and that they were going to be disciplined;
- e. telling Plaintiffs' coworkers that they were the reason the ICU could not be staffed properly because no one wanted to or could work with them;
- f. telling Plaintiffs' coworkers that specially named ICU employees left the ICU because of the way the Plaintiffs treated them; and
- g. calling in new employees and telling them that the Plaintiffs were "difficult personalities", that people working with Plaintiffs needed "to be strong" and directing them that if they had any trouble to report it to management.

**STATUTORY, REGULATORY AND ETHICAL DUTIES
OF A REGISTERED NURSE**

20. Under Pennsylvania's Professional Nursing Law, 63 Pa.C.S.A. §212, *et seq.*, at §224, a Registered Nurse's license can be refused, suspended or revoked if:
- a. the Registered Nurse acts in such a manner as to present an immediate and clear danger to the public health or safety, 63 Pa.C.S.A. §224(a)(7); or
 - b. the Registered Nurse commits unprofessional conduct by failing to conform to an ethical or quality standard embraced by the professional community in Pennsylvania, 63 Pa.C.S.A. §224(a)(9).
21. Under the Professional and Vocational Standards promulgated by the State Board of Nursing, 49 Pennsylvania Code §21.18(a), a registered nurse is required to:
- 1) Only undertake a specific practice if the Registered Nurse has the necessary knowledge, preparation, experience, and competency to execute the practice;
 - 2) Act to safeguard the patient from the incompetence, abuse or illegal practice of any individual; and
 - 3) Document and maintain accurate records.
22. Under the Professional and Vocational Standards promulgated by the State Board of Nursing, 49 Pennsylvania Code, §21.18(b) a Registered Nurse is forbidden from:
- 1) Knowing aiding, abetting or assisting another person in violating or circumventing a Board regulation or other law;
 - 2) Leaving a nursing assignment prior to reporting and notifying appropriate personnel.
23. In addition, various codes of ethics apply to Registered Nurses. For example, the American Nursing Association Code of Ethics for Nurses provides, in pertinent part, as follows:
1. The nurse, in all professional relationships, practices with compassion and respect for the inherent dignity, worth and uniqueness of every individual, unrestricted by considerations of

social or economic status, personal attributes, or the nature of health problems.

2. The nurse's primary commitment is to the patient, whether an individual, family, group, or community.

3. The nurse promotes, advocates for, and strives to protect the health, safety, and rights of the patient.

4. The nurse is responsible and accountable for individual nursing practice and determines the appropriate delegation of tasks consistent with the nurse's obligation to provide optimum patient care.

5. The nurse owes the same duties to self as to others, including the responsibility to preserve integrity and safety, to maintain competence, and to continue personal and professional growth.

6. The nurse participates in establishing, maintaining, and improving healthcare environments and conditions of employment conducive to the provision of quality health care and consistent with the values of the profession through individual and collective action.

COUNT I WHISTLEBLOWER STATUTE

24. The averments of paragraphs 1 through 23, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

25. Clearfield Hospital received Medicaid funds and was otherwise funded in any amount by the Commonwealth of Pennsylvania and its political subdivisions and qualified as a "public body" within the meaning of the Whistleblower Law, 43 P.S. §1422.

26. The Plaintiffs, Dawn L. Retorick and Frances L. Selvage, were at all relevant times employed by Clearfield Hospital as charge nurse and relief charge nurse, respectively, in the ICU and meet the definition of an employee performing services for wages for a public body under the Whistleblower Law, 43 P.S. §1422.

27. The Defendants, Lois Eisenman, Jackie Stone and Thelma Stratton, were persons who supervised the Plaintiffs or supervisors of Plaintiffs' supervisors under the Whistleblower Law, 43 P.S. §1422.

28. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick, believed in good faith that they were verbally and in writing reporting wrongdoing and waste to their superiors as well as other appropriate agencies such as the Pennsylvania Department of Health and the Pennsylvania Nurses Association which had jurisdiction over regulatory violations waste, professional conduct, ethics and wrongdoing such as they were reporting.

29. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick, were threatened and discriminated and retaliated against in their compensation, terms, conditions, locations and privileges of employment because they made good faith reports and were about to report, verbally and in writing, the above enumerated instances of wrongdoing and waste in violation of the Whistleblower Law, 43 P.S. §1422. It is specifically alleged that the Defendants were well aware of the pending and actual passage of the MCARE Act, 40 P.S. §1303.101 and wanted to force the Plaintiffs to leave their employment so as to hide the wrongdoing and waste and serious events and incidents that would be reportable under the Act and that were being reported to them by the Plaintiffs, i.e., that the Defendants wanted to cover up the dangerous and deplorable conditions in the ICU Unit and the risk to patients they were creating so that it would not come to light under the MCARE Act by making the Plaintiffs' working conditions intolerable and thereby forcing them to leave the employment of Clearfield Hospital ICU.

30. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick, were constructively discharged and forced to leave their positions in the Clearfield Hospital ICU, positions they had held for a total of approximately twenty-five of their thirty years at Clearfield Hospital and to

seek employment at a distant location, because of their reports of waste and wrongdoing, 43 P.S. §1423(a), and are entitled to damages as outlined in Counts VII and VIII of this Complaint.

COUNT II
MEDICAL CARE AVAILABILITY AND REDUCTION OF ERROR (MCARE) ACT
40 P.S. §1303.101

31. The averments of paragraphs 1 through 30, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

32. The MCARE Act, 40 P.S. §1303.101 at §1303.308 requires health care workers such as the Plaintiffs herein to report serious events and incidents that they reasonably believe to have occurred within covered facilities such as Clearfield Hospital.

33. The incidents described in this Complaint were reported not only in writing, (examples are attached hereto as Exhibits 1 through 13) but were also reported to Dr. James Davidson, after he was appointed as the Clearfield Hospital's Patient Safety Officer under the MCARE Act. It is specifically alleged that written reports were made after the effective date of the MCARE Act and continued up to November of 2002 when the Defendants succeeded in forcing the Plaintiffs to leave the Clearfield Hospital ICU by creating a hostile work environment.

34. The MCARE Act, 40 P.S. §1303.308(e) specifically provides that a healthcare worker who reports the occurrence of a serious event or incident shall not be subject to any retaliatory action for making such a report and shall have the protections and remedies set forth in the Whistleblower Law, 43 P.S. §1422.

35. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick, are also entitled to invoke the Whistleblower Law under the provisions of the MCARE Act and are entitled to damages as outlined in Counts VII and VIII of this Complaint.

**COUNT III
CONSTRUCTIVE DISCHARGE IN
VIOLATION OF PUBLIC POLICY**

36. The averments of paragraphs 1 through 35, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

37. The Commonwealth of Pennsylvania has a strong public policy encouraging medical professionals including Registered Nurses to report waste and wrongdoing to appropriate authorities for corrective action. This policy is reflected in the Whistleblower Law, 43 P.S. §1421 et seq.; the MCARE Act, 40 P.S. §1303.307 et seq.; The Professional Nursing Law, 63 P.S. §212 et seq.; *The Professional and Vocational Standards* promulgated by the State Board of Nursing, 40 Pennsylvania Code §21.18(a) and (b); and *The Nurses Code of Ethics* all discussed earlier in this Complaint.

38. The conduct of the Plaintiffs was in conformity with the strong public policy represented by the above-cited Statutes, Regulations and various Codes of Ethics which, as a matter of public health, safety, morals and welfare, require Registered Nurses to speak out when patients in their charge are being threatened by the actions of hospital managers and administrators such as the Defendants.

39. The Defendants retaliated against the Plaintiffs for attempting to adhere to the above-cited public policies. The nature and extent of this relationship is outlined in the preceding incorporated paragraphs, particularly paragraphs 17(a)-(n).

40. The Plaintiffs, Frances L. Selvage and Dawn L. Retorick were constructively discharged by the Defendants actions in retaliating and creating a hostile work environment under which a reasonable nurse adhering to law and ethics could not work entitling the Plaintiffs to damages as outlined in Counts VII and VIII of this Complaint.

**COUNT IV
DEFAMATION**

41. The averments of paragraphs 1 through 40, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

42. The named individual Defendants were all acting within the scope of their authority and on behalf of the Defendant, Clearfield Hospital, when they uttered and promulgated the following untruthful allegations against the Plaintiffs:

- a. telling the Plaintiffs' coworkers that they were troublemakers who could not be trusted;
- b. telling Plaintiffs' coworkers to "watch them" and that they are difficult to work with;
- c. telling Plaintiffs' coworkers that they were untruthful and "liars";
- d. telling Plaintiffs' coworkers that management disagrees with the Plaintiffs and that they were going to be fired or otherwise disciplined;
- e. telling Plaintiffs' coworkers that they were the reason the ICU could not be staffed properly because no one wanted to or could work with them;
- f. telling Plaintiffs' coworkers that certain named ICU employees left the ICU because of the way the Plaintiffs treated them; and
- g. calling in new employees and telling them that the Plaintiffs were "difficult personalities", that people working with Plaintiffs needed "to be strong" and directing them that if they had any trouble to report it to management.
- h. These defamatory and untrue statements were uttered by the Defendants with the specific intent to undermine and destroy the professional reputations of the Plaintiffs in

the eyes of their co-workers, patients and the community and these statements foreseeably made their way into the general community of Clearfield and were uttered as part of an intentional plan by the Defendants to create a hostile work environment that was intolerable to a reasonable nurse and thereby force the Plaintiffs to leave the Clearfield Hospital ICU through constructive discharge.

43. The above statements were defamatory and were understood by the hearers as applying to the Plaintiffs.

44. The above statements were uttered by the Defendants intentionally, were not privileged and caused harm to the Plaintiffs in that they created and added to a hostile work environment which resulted in the Plaintiffs being constructively discharged by their long-time employer.

45. The above statements were intended and calculated to harm the Plaintiffs in their profession as Licensed Registered Nurses and did, in fact, so harm the Plaintiffs resulting in both of the Plaintiffs having to seek work elsewhere at great expense and inconvenience and resulting in their separation from their families for extended lengths of time and other damages outlined in Counts VII and VIII of this Complaint.

**COUNT V
INVASION OF PRIVACY/FALSE LIGHT**

46. The averments of paragraphs 1 through 45, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

47. The Defendants' utterings and publications of the aforementioned statements, representations of fact, inferences and innuendo placed the Plaintiffs in a false light in the public

eye and in the eyes of their coworkers which would be highly offensive to a reasonable person, and which was, in fact, highly offensive to the Plaintiffs.

48. As a direct and proximate result of the publication of the Defendants' comments, the Plaintiffs suffered injury and damages for which they are entitled to compensation and punitive damage as set forth in Counts VII and VIII of this Complaint.

**COUNT VI
INTENTIONAL INFLICTION OF
EMOTION HARM AND PUNITIVE DAMAGES**

49. The averments of paragraphs 1 through 48, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

50. Because of the actions of the Defendants, the Plaintiffs have suffered emotional harm necessitating treatment and medication.

51. In their violation of the Whistleblower Statute, the MCARE Act, the Constructive Discharge Violation of Public Policy, the Defamation of the Plaintiffs, and the placing of Plaintiffs in a false light, the Defendants and each of the has acted in an extreme and outrageous manner towards the Plaintiffs.

52. As a direct and proximate result of the Defendants' conduct, the Plaintiffs have suffered severe emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, irritability and other alterations of their personalities all of which injuries are of a continuous nature.

53. The severe emotional stress suffered by the Plaintiffs as a result of the intentional and outrageous actions of the Defendants was a reasonable and foreseeable reaction by the

Plaintiffs under all the circumstances entitling them to damages as outlined in Counts VII and VIII of this Complaint.

**COUNT VII
PUNITIVE DAMAGES**

54. The averments of paragraphs 1 through 53, and their subparts, are incorporated herein by reference as if fully set forth in this Count.

55. The conduct of the Defendants as outlined in Counts I through VI has been outrageous so that Plaintiffs are entitled to an award of punitive damages adequate to insure that these Defendants do not engage in any type of similar conduct in the future.

**COUNT VIII
DAMAGES**

56. The averments of paragraphs 1 through 56, and their subparts, are incorporated herein by reference as if fully set forth herein.

57. The Plaintiffs are entitled to and claim as damages front pay, expenses of finding and engaging in other employment, an amount for emotional harm, pain and suffering, medical

expenses, damages for loss of reputation, attorneys fees and costs, and such other amounts and relief as this Court would deem proper under the circumstances.

Respectfully Submitted,

WEST LONG LLC

A handwritten signature in black ink, appearing to read "James J. West", written over a horizontal line.

James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

Dated: November 7, 2003

Counsel for Plaintiffs

VERIFICATION

I, Dawn L. Retorick, hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

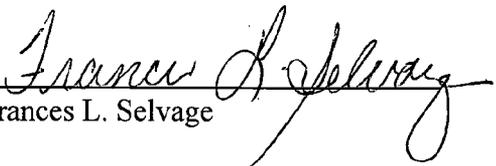
Date: 11-10-03


Dawn L. Retorick

VERIFICATION

I, Frances L. Selvage, hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 11-10-03



Frances L. Selvage

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of **November, 2003**, a true and correct copy of the foregoing Amended Complaint was served upon the party named below by depositing same in the United States Mail, Certified, Return Receipt Requested, addressed as follows:

Eric T. Smith, Esquire
S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

November 30, 1999

Mrs. Stone

In the past, it has always been required that a nurse in ICU or ER has to meet certain criteria to qualify for a job in these units. These criteria have been at least one-year med-surg. experience, ACLS, a critical care course and an arrhythmia course. These are basic skills needed to function safely and effectively. This is in the best interest of the patients. Occasionally, life-threatening situations arise when the nurse must act quickly and individually. Due to this fact, we do not feel that these standards should be lowered.

We are writing this letter to make everyone aware of our concern with the lack of qualifications and experience of Tammy Charles RN. She lacks med-surg. experience, knowledge base and critical thinking skills to meet the standard of care required for an intensive care unit nurse. Many of these concerns are directly related to the lack of fundamental nursing care and knowledge that could and should have been obtained in a med-surg. and/or medical telemetry setting. Strengthening these concerns is the lack of education for arrhythmia, ACLS and critical care. This is not directed at Tammy as a person, she tries to do her best, our main concern is for the patient's safety. The fact that Tammy has no med-surg. experience, no critical care course and no ACLS, compromises pt safety and is unfair to Tammy herself. She needs more med-surg. knowledge so she can be

self-assured when situations arise. ICU is not the place to gain basic nursing experience. You cannot replace a life or undo something that occurred because the knowledge was not there to prevent it.

Due to the above, we the undersigned do not feel it is in the best interests of the hospital to allow this nurse to function in a critical care unit without basic knowledge and experience. Furthermore, we do not feel comfortable accepting responsibility as shift charge nurses being ultimately accountable for her actions and/or patient care.

Sincerely,
Dawn Kitoruck RN, CCRN
Sharon Haylett RN
Fran J. J. RN

Cc: Sharon Rainey
Tom Conlin
Jane Woolridge

ALERT FORM

Bridgett Jacobson
We Dawn Retorick, Kevin Holland
Clearfield Hospital

registered nurses employed by

(Institution/Agency)

having completed the PRE-ALERT process, hereby register my concern regarding the following condition(s) of nursing practice:

A - **Assessment** Assess the problem. Be specific.

9pts in ICU, 2 of which are pediatric, 1 is a 2 mths old ^{bronchitis} r/o RSU
second is 9yr. new onset seizure, ?OD. other pts ~~are~~ include 1 septic on vent, 1
in isolation for VRE, another sepsis & polynephritis, 2 fresh post-op. & 2 unresponsive pts.

L - **List** Write a concise list of your concern(s) pertinent to this issue.

Staffed & 3 ICU RN's. after much complaining brought RN from OB who
is not qualified to read monitors or chart on ICU chart. Not oriented to ICU
procedures. Float not allowed to be assigned.

E - **Evaluation** Identify the factor(s) and relevant information necessary to evaluate this concern.

R - **Recommendations** Suggest a plan to prevent this problem from recurring in the future.

Adequately staff ICU & qualified personnel, who
can function if an emergency arises.

T - **Target Action** Describe action(s) taken and results of your intervention.

called Debbie Miller for additional help. No ICU help obtained.
Denny Charles RN volunteered to work 11-7 but was told no.
Instead is going to be replaced by an OB nurse RN or LPN who
again is unable to read monitors. With staffing the way it is
currently, septic patients cannot be kept separate from surgical or peds pts.

Date form completed 3/26/99 By D Retorick
(Signature)

Response to nurse by _____ on _____
(Signature) (Date)

CLEARFIELD HOSPITAL
PROBLEM FORM

TYPE OF PROBLEM: Interdepartmental/Interpersonal Problem
 Incident Investigation (Incident # _____)

TODAY'S DATE: _____ TIME: _____

PERSON COMPLETING THIS FORM: _____ DEPT: _____

NATURE OF PROBLEM	IF MEDICATION INCIDENT. CHECK CATEGORY
<input type="checkbox"/> Equipment Malfunction/Availability	<input type="checkbox"/> Category A (Event had the capacity to cause error)
<input type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Error occurred, but med did not reach Pt)
<input checked="" type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Med reached Pt but did not cause Pt harm)
<input type="checkbox"/> Charges/Billing Problem	<input type="checkbox"/> Category D (Error resulted in need for increased monitoring but no Pt harm)
<input type="checkbox"/> Supplies Inadequate/Inferior	<input type="checkbox"/> Category E (Error resulted in need for treatment or intervention and caused temporary harm)
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Error resulted in initial or prolonged hospitalization and caused temporary harm)
<input type="checkbox"/> Waiting/Delay Problem	<input type="checkbox"/> Category G (Error resulted in permanent Pt harm)
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Error resulted in near-death event)
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Error resulted in Pt death)
<input type="checkbox"/> Lost Item	
<input type="checkbox"/> Other _____	

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT/CIRCUMSTANCES/PERSONS INVOLVED:

On 12-29-00 regular ICU staff member was told at start of shift that she would be the float. She was replaced by med/surg RN with no ICU experience. In ICU was a patient on the vent, a GI bleed which had been transfused with 17 units PRBC's + 7 FFP since admission but currently stable, a post-op nephrectomy with stent; stomy. present on (R), an acute MI which is confused.

Although this nurse was very willing to help out, she was very much overwhelmed by the ICU setting. She was unfamiliar with ICU routine, charting, location of supplies + dirty utility. Was not aware that she had to give her own meds. During report she was specifically told to do hourly urines on the fresh post-op by both Kevin + myself.

~~SEND THIS FORM TO YOUR MANAGER~~ (continued)

When doing vitals, she was again ~~not~~ instructed to empty entire Foley bag at 4pm & 8pm and to empty urimeter every hour. I watched her document the first hourly output and then instructed her where the next one would be put. Since she is working as staff & not being oriented I did not feel it was necessary to read & check her nurses notes hourly. If she is here to orient than she should be co assigned with the charge nurse & not given an assignment. If she is to take an assignment then she should be able to function independently. Since she is not able to float due to lack of ED experience, then how can she staff ED with no IDL experience? We are compromising patient care & jeopardizing their safety with lack of experienced people who know how to respond in an emergency.

Dawn Stetnick RUCER

Karen Holland RUCER

November 20,2001

Dear Mrs. Stone,

I am writing this letter in response to the warning notice that I received on 11/15/01. As we have discussed previously both in person and in written communication, the practice of hiring untrained ICU nurses to fill vacancies in the unit is an accident waiting to happen for our staff and imminent danger to our patients. Administration continues to hire nurses with no critical care experience, no ACLS, no arrhythmia course and has not been providing these for the new employees in a timely matter. The new nurse involved in this incident has been in ICU for 4-5 months and has just yesterday received the arrhythmia course. She still has not received ACLS or the critical care course. She was recently scheduled to take ACLS but due to the lack of an arrhythmia course, she was cancelled. It is totally unrealistic to expect a nurse with no ICU knowledge base to safely and effectively care for critical care patients.

For proper teaching and orientation of a new nurse in any setting to occur, there should be a patient assignment with a skilled nurse, one with the experience necessary to orient that person properly. Even prior to this night, the orientee had been given her own patient care assignment and the person orienting her had a different assignment. She has been considered regular staff on several different occasions throughout this orientation period. For instance, on 11/7/01 when six admissions were received on the 3-11 shift. This evening there was, as usual, no clerk to stamp the chart, assemble the chart or take orders off. I was already assigned to two other critical care patients and she had a ventilator patient and got a new admission. There was no way that the orientee could be properly mentored when the two other staff members were doing their own admissions, taking off orders and searching the hospital for drugs since the pharmacy was also closed. It is impossible to properly orient an inexperienced RN under these conditions. I feel this disciplinary action was inappropriate, that the true problem is due to the negligence of administration and not due to my ability to properly mentor the orientee. I am requesting that you place a copy of this letter in my file with my disciplinary letter.

Sincerely

Dawn L Retorick, RN ,CCRN
ICU Charge nurse

Cc: Thelma Stratton
Kent Hess
Dan Burfield
Jane Woolridge

CLEARFIELD HOSPITAL
PROBLEM FORM

TYPE OF PROBLEM: Interdepartmental/Interpersonal Problem
 Incident Investigation (Incident # _____)

TODAY'S DATE: 1-31-02/2-1-02 TIME: 3P

PERSON COMPLETING THIS FORM: Dawn Retorick RUCrew DEPT: ICU

<u>NATURE OF PROBLEM</u>	<u>IF MEDICATION INCIDENT, CHECK CATEGORY</u>
<input type="checkbox"/> Equipment Malfunction/Availability	<input type="checkbox"/> Category A (Event had the capacity to cause error)
<input checked="" type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Error occurred, but med did not reach Pt)
<input type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Med reached Pt but did not cause Pt harm)
<input type="checkbox"/> Charges/Billing Problem	<input type="checkbox"/> Category D (Error resulted in need for increased monitoring, but no Pt harm)
<input type="checkbox"/> Supplies Inadequate/Inferior	<input type="checkbox"/> Category E (Error resulted in need for treatment or intervention and caused temporary harm)
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Error resulted in initial or prolonged hospitalization and caused temporary harm)
<input type="checkbox"/> Waiting/Delay Problem	<input type="checkbox"/> Category G (Error resulted in permanent Pt harm)
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Error resulted in near-death event)
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Error resulted in Pt death)
<input type="checkbox"/> Lost Item	
<input type="checkbox"/> Other _____	

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT/CIRCUMSTANCES/PERSONS INVOLVED:

LPN falling asleep during report several days in a row. Also leaves floor to study for nursing exam in am. without notifying charge nurse or other RN.

SEND THIS FORM TO YOUR MANAGER

PENNSYLVANIA NURSES ASSOCIATION
OPEIU, Local 112
STAFFING ALERT REPORT

I, DAWN Retorick, a Registered Nurse employed at Clearfield Hospital
on 3-11³⁰ (Name) ICU (Hospital, Agency)
(Shift) (Unit) hereby object to the assignment as:

- charge nurse
 primary nurse
 team leader
 team member/patient care assignment

made to me by Thelma Stratton at 3p on 2-1-02 for the
(Supervisor/person in charge) (time) (date)

following reasons.

- | | |
|--|--|
| <input type="checkbox"/> not oriented to unit | <input checked="" type="checkbox"/> lack of adequate staff for acuity
(Check appropriate description) |
| <input type="checkbox"/> not trained or experienced in area assigned | <input type="checkbox"/> staffed with excessive registry personnel |
| <input type="checkbox"/> given an assignment which posed a serious threat to my health or safety | <input type="checkbox"/> staffed with unqualified registry personnel |
| <input type="checkbox"/> given an assignment outside my current job description | <input type="checkbox"/> staffed with excessive number unlicensed personnel |
| <input checked="" type="checkbox"/> case load assignment is excessive and interferes with delivery of adequate patient care (Community Health) | <input type="checkbox"/> short staffed |
| <input type="checkbox"/> given an assignment for which I have not had orientation, education or in-service | <input checked="" type="checkbox"/> not provided with unit clerk |
| | <input type="checkbox"/> transferred or admitted new patient (s) to unit without adequate staff |
| | <input type="checkbox"/> other: _____
(Please specify) |

This assignment is accepted because I have been instructed to do so, under protest, despite my objections.

STAFFING COUNT on date of objection:

	Regular	Float/Casual/Pool	Registry	Staff currently employed on unit
RN	<u>2 (2-3-11p STAFF + 1 working days / evenings)</u>			
LPN	<u>2</u>			<u>1</u>
AIDE				

one OB Nurse

CLERK yes _____ no

CENSUS (on date of objection) Acuity: high average low Unit capacity: 12 currently 11

Brief statement of problem: Unit very busy & acutely ill pts. Unit staffed & 2 (3-11) reg. staff & 1 RN doing a double shift, 7 LPN on orientation & 1 OB LPN. RNs had to take 3-4 patients each. Several pts receiving bid products, one on Nipride one on Dopamine. One disoriented crawling COB & screaming. Unstable post-op. Pyxis also broken requiring one LPN to run for drugs frequently. LPN's are limited to doing Vitals, turning patients & answering bells. Patient care suffered due to workload. Neither LPN experienced in ICU.

ACTIONS TAKEN BY NURSE:

Notified Supervisor John Lucas Date/Time 2-1-02 5pm
Notified Nursing Administrator _____ Date/Time _____
Notified: PNA Service Representative _____ Date/Time _____

Copy #1: to Nursing Supervisor
Copy #2: Pennsylvania Nurses Association
Copy #3: retained by Nurse
Copy #4: JCAH, DOH
5000 Tilghman Street, Suite 248
Allentown, PA 18104



CLEARFIELD HOSPITAL
PROBLEM FORM

TYPE OF PROBLEM: Interdepartmental/Interpersonal Problem
 Incident Investigation (Incident # _____)

TODAY'S DATE: 2-1-02 TIME: 3pm

PERSON COMPLETING THIS FORM: Dawn Retorick RNCCRD DEPT: IU

<u>NATURE OF PROBLEM</u>	<u>IF MEDICATION INCIDENT, CHECK CATEGORY</u>
<input type="checkbox"/> Equipment Malfunction/Availability	<input type="checkbox"/> Category A (Event had the capacity to cause error)
<input checked="" type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Error occurred, but med did not reach Pt)
<input type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Med reached Pt but did not cause Pt harm)
<input type="checkbox"/> Charges/Billing Problem	<input type="checkbox"/> Category D (Error resulted in need for increased monitoring, but no Pt harm)
<input type="checkbox"/> Supplies Inadequate/Inferior	<input type="checkbox"/> Category E (Error resulted in need for treatment or intervention and caused temporary harm)
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Error resulted in initial or prolonged hospitalization and caused temporary harm)
<input type="checkbox"/> Waiting/Delay Problem	<input type="checkbox"/> Category G (Error resulted in permanent Pt harm)
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Error resulted in near-death event)
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Error resulted in Pt death)
<input type="checkbox"/> Lost Item	
<input type="checkbox"/> Other _____	

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT/CIRCUMSTANCES/PERSONS INVOLVED:

Given LPN from OB to assist c̄ busy IU. LPN is not trained in critical care. Refuses to assist clean up patients. When asked to assist Lori Strunk c̄ post-mortem care, states "I don't want to."

When asked to change bed because of drainage from NG on bed, did change bed but later when I was rounding with Dr. Conrad she came rushing into room and loudly announced. "What are you doing checking up on me."

SEND THIS FORM TO YOUR MANAGER

**PENNSYLVANIA NURSES ASSOCIATION
OPEIU, Local 112
STAFFING ALERT REPORT**

I, Dawn Retorick, a Registered Nurse employed at Clearfield Hospital,
(Name) (Hospital, Agency)
on 3-11, ICU, hereby object to the assignment as:
(Shift) (Unit)

- charge nurse team leader
 primary nurse team member/patient care assignment

made to me by Todd Lucas at 2-12-02 6p on 2-12-02 for the
(Supervisor/person in charge) (time) (date)
following reasons.

- | | |
|---|--|
| <input type="checkbox"/> not oriented to unit | <input checked="" type="checkbox"/> lack of adequate staff for acuity
(Check appropriate description) |
| <input type="checkbox"/> not trained or experienced in area assigned | <input type="checkbox"/> staffed with excessive registry personnel |
| <input type="checkbox"/> given an assignment which posed a serious threat to my health or safety | <input type="checkbox"/> staffed with unqualified registry personnel |
| <input type="checkbox"/> given an assignment outside my current job description | <input type="checkbox"/> staffed with excessive number unlicensed personnel |
| <input checked="" type="checkbox"/> case load assignment is excessive and interferes with delivery of adequate patient care (<u>Community Health</u>) | <input type="checkbox"/> short staffed |
| <input type="checkbox"/> given an assignment for which I have not had orientation, education or in-service | <input checked="" type="checkbox"/> not provided with unit clerk |
| | <input checked="" type="checkbox"/> transferred or admitted new patient (s) to unit without adequate staff. |
| | <input checked="" type="checkbox"/> other: <u>hemorrhaging patient & distraught family members crying.</u>
(Please specify) |

This assignment is accepted because I have been instructed to do so, under protest, despite my objections.

STAFFING COUNT on date of objection:

	Regular	Float/Casual/Pool	Registry	Staff currently employed on unit
RN	3			
LPN				
AIDE				

CLERK yes _____ no X

CENSUS (on date of objection) 7 Acuity: high average low Unit capacity: 12

Brief statement of problem: Had pt admitted w tracheal hemorrhage, pt ended up bleeding profusely from nose, mouth & trach requiring 2 nurses to keep airway suctioned. Receiving bld rapidly. Had paralyzed pt with trach who required frequent tracheal & orally suctioning. Restless pt on vent crawling COB. Received new admission. Dying pt in another room having seizures. New post-op crawling wOB & pulling surgical dressing off. New MI transferred into ICU. One nurse left on floor to do orders & care for other patient's while 2 nurses attending hemorrhaging pt. Float had to be in ER because they had no unit clerk.

ACTIONS TAKEN BY NURSE:

Notified Supervisor 6pm 8¹⁵pm 10p Todd Lucas Date/Time 2/12/02 - told to manage 1st time
Notified Nursing Administrator _____ Date/Time said he called unit manager 2nd time
Notified: PNA Service Representative _____ Date/Time "she would not come in"
Copy #1: to Nursing Supervisor Copy #2: Pennsylvania Nurses Association 3rd time states "Well she ER
Copy #3: retained by Nurse 5000 Tilghman Street, Suite 248 doesn't have a clerk either."
Copy #4: JCAH, DOH Allentown, PA 18104

Don't forget ER staff nurse

during this time

PENNSYLVANIA NURSES ASSOCIATION
OPEIU, Local 112
STAFFING ALERT REPORT

I, Fran Selvage, a Registered Nurse employed at Clearfield Hospital
(Name) (Hospital, Agency)
on 3-11, ICU, hereby object to the assignment as:
(Shift) (Unit)

- charge nurse team leader
 primary nurse team member/patient care assignment

made to me by _____ at _____ on 4/16/02 for the
(Supervisor/person in charge) (time) (date)

following reasons.

- | | |
|--|--|
| <input type="checkbox"/> not oriented to unit | <input type="checkbox"/> lack of adequate staff for acuity |
| <input type="checkbox"/> not trained or experienced in area assigned | (Check appropriate description) |
| <input type="checkbox"/> given an assignment which posed a serious threat to my health or safety | <input type="checkbox"/> staffed with excessive registry personnel |
| <input type="checkbox"/> given an assignment outside my current job description | <input type="checkbox"/> staffed with unqualified registry personnel |
| <input checked="" type="checkbox"/> case load assignment is excessive and interferes with delivery of adequate patient care (Community Health) | <input type="checkbox"/> staffed with excessive number unlicensed personnel |
| <input type="checkbox"/> given an assignment for which I have not had orientation, education or in-service | <input type="checkbox"/> short staffed |
| | <input checked="" type="checkbox"/> not provided with unit clerk |
| | <input checked="" type="checkbox"/> transferred or admitted new patient (s) to unit without adequate staff |
| | <input checked="" type="checkbox"/> other: <u>LPN's & critical</u> |

(Please specify)
CARE COURSE

This assignment is accepted because I have been instructed to do so, under protest, despite my objections.

STAFFING COUNT on date of objection:

	Regular	Float/Casual/Pool	Registry	Staff currently employed on unit
RN	3			
LPN	1			
AIDE				

CLERK yes _____ no X

CENSUS (on date of objection) 10 Acuity: high average low Unit capacity: 12

Brief statement of problem: RN's tied up & code LPN left on floor, she could not mix drips, had critical pts. (one on insulin) & another dobutamine CH. 4 admissions, LPN's assignment, is not able to function alone (independently) due to high acuity.
RN's tied up & code 7:25 - 9:56pm called supervisor for help sent 2 LPN's from OB, one who was on orientation (held 3 wks ago)

ACTIONS TAKEN BY NURSE:

Notified Supervisor _____ Date/Time _____
Notified Nursing Administrator _____ Date/Time _____
Notified: PNA Service Representative _____ Date/Time _____
Copy #1: to Nursing Supervisor
Copy #3: retained by Nurse
Copy #4: JCAH, DOH

Copy #2: Pennsylvania Nurses Association
5000 Tilghman Street, Suite 248
Allentown, PA 18104



April 16, 2002
3-11 shift ICU

- 411a new admit uncont A-fib
- 412 pneumonia A-fib HNV since 12noon LPN assigned to this patient . Cathed by RN for 650cc at 0030
- 413 transfer from 1st floor, intubated, coded on transfer to bed in ICU. Amiodorone bolus, then an Amiodorone gtt, lidocaine gtt, dobutamine gtt, central line placed, a-line placed, shocked , 5 times, dobutamine had to ER's defibrillator (Dr. Cardamone wanted a biphasic and we did not have one and the one we had failed 4 times. 3 RN's and 2 physicians tied up in room two and one-half hours.
- 414 new admit CHF, bradycardia, with increased B/P in ER, heartrate in the 30's had atropine, pt vague, old cva.
- 415 COPD, pneumonia, complete care, confused. On dobutamine gtt. for decreased B/P's.
- 417B new admit. DKA, hyperkalemia. Was unresponsive in the ER, vomiting, Potassium 7.3, came up to the unit on insulin gtt, Bld sugar >700
- 418 PAF, increased B/P LPN assigned this patient
- 419 Fresh post op right inguinal hernia. NG tube,
- 420 new admit chest pain.

ICU staffed with 2 RN's and 1 LPN. When informed of admissions, RN from day shift stayed. Initially LPN had an assignment and I had none. Management ordered staff to give LPN assignments or be considered insubordinate. Also threatened to charge RN for abandonment of patients if she refused to oversee LPN. LPN with no Critical Course was given an assignment as demanded by management. Charge nurse was tied up and unable to closely monitor LPN. Patient's safety was jeopardized. Supervisor notified of critical situation in ICU and responded with 2 more LPN's to watch the floor! These LPN's were from OB, one of which was orienting (hired 3 weeks ago). There were plenty of people working but only 3 that were qualified. Unable to delegate duties to LPN's, who are not familiar with ICU. The LPN's were used to pass meds, do vitals, and accuchecks.

3-11 shift has no unit clerk and therefore must do all there own orders and admissions. The pharmacy is not here and we have to obtain what we need from our pyxis or run to the other floors to obtain necessary meds. We had 12 different sets of orders to do ourselves (a unit clerk did come up for one hour to assist) There were seven physicians making rounds on our shift. None of the RN's had breaks, the LPN's did.

CLEARFIELD HOSPITAL
PROBLEM FORM

TYPE OF PROBLEM: Interdepartmental/Interpersonal Problem
 Incident Investigation (Incident # _____)

TODAY'S DATE: 4/25/02 TIME: 11:30p

PERSON COMPLETING THIS FORM: D. Retorick, RN, CCRW DEPT: ICU

<u>NATURE OF PROBLEM</u>	<u>IF MEDICATION INCIDENT, CHECK CATEGORY</u>
<input type="checkbox"/> Equipment Malfunction/Availability	<input type="checkbox"/> Category A (Event had the capacity to cause error)
<input type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Error occurred, but med did not reach Pt)
<input type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Med reached Pt but did not cause Pt harm)
<input type="checkbox"/> Charges/Billing Problem	<input type="checkbox"/> Category D (Error resulted in need for increased monitoring but no Pt harm)
<input type="checkbox"/> Supplies Inadequate/Inferior	<input type="checkbox"/> Category E (Error resulted in need for treatment or intervention and caused temporary harm)
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Error resulted in initial or prolonged hospitalization and caused temporary harm)
<input type="checkbox"/> Waiting/Delay Problem	<input type="checkbox"/> Category G (Error resulted in permanent Pt harm)
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Error resulted in near-death event)
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Error resulted in Pt death)
<input type="checkbox"/> Lost Item	
<input type="checkbox"/> Other _____	

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT/CIRCUMSTANCES/PERSONS INVOLVED:

LPN assigned to patient on titrated drips of Dopamine + Dobutamine
and in AV dissociation. Also assigned pt with Epidural
and A-line. I am concerned that this may not be
in her scope of practice as an LPN

SEND THIS FORM TO YOUR MANAGER

INVESTIGATION & RESOLUTION:

The LPN provides skills, technical nursing care to patients according to a plan of care established by a Registered nurse, in accordance with recognized nursing techniques, procedures, established standards and administrative policies of Cleerfield Hospital. It is the charge nurses responsibility to make or change patient assignments, assess the staffing needs throughout the shift. Lori is not responsible to manage titrated drugs, epidurals, or A lines. Lori's responsibility would be to collect and document data on assigned patient and assist the RN in the evaluation of the effectiveness of care given.

RESOLUTION:

Without Merit

Level I _____ No Action Taken

With Merit - Action Taken:

Level II _____ Discussed with Individual/Staff involved

Level III _____ Written or Verbal Action

Level IV _____ Policy/Procedure/Practice Change

Level V _____ Trend Identified (Serial in Nature)

Level VI _____ Process Improvement Initiated

Level VII _____ Disciplinary Action Taken

The RN assigned to this pt would develop a plan of care for this patient x LPN JF Stratton

Date _____ Signature _____

SEND COMPLETED FORM TO YOUR SENIOR MANAGER

PROBLEMS ONLY - SECOND LEVEL REVIEW (Credentials or Service Excellence Committee):

RESOLUTION: I _____ II _____ III _____ IV _____ V _____ VI _____ VII _____

Date _____ Comments: _____

CLEARFIELD HOSPITAL
PROBLEM FORM

TYPE OF PROBLEM: Interdepartmental/Interpersonal Problem
 Incident Investigation (Incident # _____)

TODAY'S DATE: 4/25/02 TIME: 11:30p

PERSON COMPLETING THIS FORM: DRetorick RN, CCRN DEPT: IU

<u>NATURE OF PROBLEM</u>	<u>IF MEDICATION INCIDENT, CHECK CATEGORY</u>
<input type="checkbox"/> Equipment Malfunction/Availability	<input type="checkbox"/> Category A (Event had the capacity to cause error)
<input type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Error occurred, but med did not reach Pt)
<input type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Med reached Pt but did not cause Pt harm)
<input type="checkbox"/> Charges/Billing Problem	<input type="checkbox"/> Category D (Error resulted in need for increased monitoring, but no Pt harm)
<input type="checkbox"/> Supplies Inadequate/Inferior	<input type="checkbox"/> Category E (Error resulted in need for treatment or intervention and caused temporary harm)
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Error resulted in initial or prolonged hospitalization and caused temporary harm)
<input type="checkbox"/> Waiting/Delay Problem	<input type="checkbox"/> Category G (Error resulted in permanent Pt harm)
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Error resulted in near-death event)
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Error resulted in Pt death)
<input type="checkbox"/> Lost Item	
<input type="checkbox"/> Other _____	

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT/CIRCUMSTANCES/PERSONS INVOLVED:

Lori continues to doze off when getting report.
She is responsible for complete report on the patients
she is taking care of. Also on this night, I gave live
report because I was too busy to tape. When I came
out of the back room at 11:15, she was leaving the unit
to go home & did not notify myself, Fran or Dianna
who were here. She was assigned two patients

SEND THIS FORM TO YOUR MANAGER

INVESTIGATION & RESOLUTION:

If Lori is falling asleep during report, ^{or leaving early,} it is the responsibility of the charge nurse to resolve this issue at the time of occurrence. One of the responsibilities of a charge nurse is to demonstrate problem solving skills and decision making abilities. This should have been addressed & resolved at the time it took place, not waiting until sometime 5 days later. If the charge nurse is unable to address and resolve, the nos or dept manager should be notified at the time incident took place. Lori did not leave the unit to go home at 11¹⁵ pm, but was going to 2nd floor to work the 11-730 shift and needed to receive report.

RESOLUTION:

Without Merit

Level I _____ No Action Taken

With Merit - Action Taken:

Level II _____ Discussed with Individual/Staff involved

Level III _____ Written or Verbal Action

Level IV _____ Policy/Procedure/Practice Change

Level V _____ Trend Identified (Serial in Nature)

Level VI _____ Process Improvement Initiated

Level VII _____ Disciplinary Action Taken

Date _____ Signature _____

SEND COMPLETED FORM TO YOUR SENIOR MANAGER

PROBLEMS ONLY - SECOND LEVEL REVIEW (Credentials or Service Excellence Committee):

RESOLUTION: I _____ II _____ III _____ IV _____ V _____ VI _____ VII _____

Date _____ Comments: _____



ALL-STATE® LEGAL 800/222-0510 EDR11 RECYCLED

CLEARFIELD HOSPITAL PROBLEM FORM

TYPE OF PROBLEM: _____ Intersubjectual / Interpersonal Problem Name: _____
 Incident Investigation Medical Record #: _____
 TODAY'S DATE: 8-31-02 TIME: 10:45
 PERSON COMPLETING FORM: Dana & Patricia Rice DEPT: _____

NATURE OF PROBLEM	IF INCIDENT CHECK CATEGORY	
<input type="checkbox"/> Equipment Malfunction / Availability	<input checked="" type="checkbox"/> Category A (Circumstance had the capacity to cause error)	A Not reportable
<input type="checkbox"/> Staffing Difficulty	<input type="checkbox"/> Category B (Event occurred, but did not reach Pt)	B,C,D Reportable to PSA
<input checked="" type="checkbox"/> Staff Performance Problem	<input type="checkbox"/> Category C (Event reached Pt, but did not cause Pt harm)	
<input type="checkbox"/> Charges / Billing Problem	<input type="checkbox"/> Category D (Event resulted in need for increased monitoring, but no Pt harm)	
<input type="checkbox"/> Supplies Inadequate / Inferior	<input type="checkbox"/> Category E (Event resulted in need for treatment or intervention and caused temporary harm)	E,F,G, H,I Reportable to both PSA & DOH
<input type="checkbox"/> Interdepartmental Misunderstanding	<input type="checkbox"/> Category F (Event resulted in initial or prolonged hospitalization and caused temporary harm)	
<input type="checkbox"/> Waiting / Delay Problem	<input type="checkbox"/> Category G (Event resulted in permanent Pt harm)	
<input type="checkbox"/> Communication Breakdown	<input type="checkbox"/> Category H (Event resulted in near-death event)	
<input type="checkbox"/> Medical Staff Related Problem (Dr. _____)	<input type="checkbox"/> Category I (Event resulted in Pt death)	
<input type="checkbox"/> Lost Item		
<input type="checkbox"/> Infrastructure Failure		
<input type="checkbox"/> Other _____		

OTHER DEPARTMENT(S) INVOLVED (if applicable) _____

BRIEF EXPLANATION OF EVENT / CIRCUMSTANCES / PERSONS INVOLVED:
Persons being assigned to float are not oriented to recovery, or starting PCA. This could become a safety issue when ICU staff is busy & not able to assist them. When there are two ICU staff members, one is not always available to assist & orient the person floating.

INVESTIGATION & RESOLUTION: (What do you think could prevent this event from occurring in the future?)
Persons being assigned to float position need proper orientation to all the float duties.

RESOLUTION: Without Merit _____		PROBLEMS ONLY - SECOND LEVEL REVIEW (Credentials or Service Excellence Committee): RESOLUTION: I _____ II _____ III _____ IV _____ V _____ VI _____ VII _____ Date: _____ Comments: _____
Level I _____	No Action Taken	
Level II _____	Discussed with Individual / Staff Involved	
Level III _____	Written or Verbal Action	
Level IV _____	Policy / Procedure / Practice Change	
Level V _____	Tread Identified (Serial in Nature)	
Level VI _____	Process Improvement Initiated	
Level VII _____	Disciplinary Action Taken	

Date: _____ Signature: _____
**SEND COMPLETED FORM TO YOUR MANAGER / SUPERVISOR
 IF INCIDENT, FAX FORM TO PATIENT SAFETY OFFICER AT 2376**

Faxed: Date _____ Time: _____
 R&Y 1093, 604, 377, 109, 399, 700, 702



ALL-STATE LEGAL 800-229-4510 EDR11 RECYCLED

LOCAL UNIT NUMBER

708

Pennsylvania Nurses Association
Grievance Form

NUMBER

PNA Office Use Only

GENERAL INFORMATION:

Name of Grievant CLASS ACTION Grievant Signature _____
 Home Address _____ City _____
 Telephone _____ ZIP _____ Home Phone _____ Work Phone _____
 Grievant's Job Title or Classification RN
 Employer Name Clearfield Hospital
 Employer Address PO Bx 992 Clearfield, Pa 16830

STATEMENT OF GRIEVANCE:

Position of ICU/ER float is being filled by RN w no med/surg experience. No ACLS certification, No ER orientation. Has NOT taken critical care course. This nurse has approximately 90 days experience.

Job Qualifications state: 1yr Med/surg experience, ACLS verified & Critical Care Course within last 5 years.

BASIS OF GRIEVANCE:

____ Violation of contract article(s)/section(s) _____
 and all other applicable article(s)/section(s).
 ____ Violation of established practice _____ Violation of applicable law or regulation
 ____ Violation of rule/policy/procedure _____ Other (specify) _____

REMEDY DESIRED:

Fill vacancy with qualified staff member.

STEP I Submitted to _____ Name _____ Date _____ Response _____ Name _____ Date _____
 STEP II Submitted to _____ Name _____ Date _____ Response _____ Name _____ Date _____
 STEP III Submitted to _____ Name _____ Date _____ Response _____ Name _____ Date _____

Date Resolved _____
 Local Unit Representative _____ Date _____
 PNA Staff Labor Representative _____ Date _____
 This grievance has been resolved to my satisfaction _____ Name _____ Date _____

Date of Posting: 11/12 - 11/19/99 5 PM

JOB VACANCY

The following Registered Nurse Position is vacant:

PART-TIME TEMPORARY CRITICAL CARE FLOAT 7:00PM - 7:00AM

Rotating Weekends and rotating holidays.
* option for twelve (12) hour shifts.

Job Summary:

A staff nurse is a professional registered nurse who provides quality nursing care to patients in accordance with recognized nursing techniques, procedures established standards, and administrative policies of Clearfield Hospital and Nursing Division.

Essential Qualifications:

Graduate of an approved school of nursing.
Current licensure by the Pennsylvania State Board of Nursing.
1 year Med/Surg experience.
ACLS verified and Critical Care Course within last 5 years required (if greater than 5 years Successful Completion of Critical Care Challenge Exam)

This posting is a summary only and is subject to the full job description which can be reviewed in the Human Resources Department.

FILED

W. 1:25 PM 100-5-0000
NOV 12 2003 *2003*

William A. Shaw
Prothonotary

CA

FILED

DEC 01 2003

William A. Shaw
Prothonotary

Eric T. Smith (PA Id. No. 70491)
S. Elaine Diedrich (PA Id. No. 87044)
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

FRANCES L. SELVAGE and)
DAWN L. RETORICK)
Plaintiffs,)
)
vs.)
)
CLEARFIELD HOSPITAL,)
LOIS EISENMAN, Director of Nursing,)
JACKIE STONE, Vice President of Nursing,)
THELMA STRATTON, ICU Unit Manager)
Defendants.)

IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

No. 03-393-CD

Civil Action - Law

PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

AND NOW come Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and
Thelma Stratton (collectively, "Defendants"), by and through their undersigned counsel and
file the within Preliminary Objections and in support thereof state as follows:

STATEMENT OF FACTS

A. Procedural Background

1. Plaintiffs Dawn L. Retorick ("Retorick") and Frances L. Selvage ("Selvage")
commenced this action by Writ of Summons on or about March 20, 2003.
2. On September 17, 2003, Plaintiffs filed their Complaint ("Complaint").
Defendants were served on or around September 19, 2003.

3. On October 20, 2003, Defendants filed Preliminary Objections to Plaintiffs Complaint.

4. On November 10, 2003, Plaintiffs filed their Amended Complaint.

B. Plaintiffs' Claims

5. Plaintiffs' Complaint alleges eight (8) causes of action: Whistleblower Statute (Count I), Medical Care Availability and Reduction of Error (MCARE) Act (Count II), Constructive Discharge in Violation of Public Policy (Count III), Defamation (Count IV), Invasion of Privacy/False Light (V), Intentional Infliction of Emotional Distress (VI), Punitive Damages (Count VII) and Damages (Count VIII).

C. The Allegations of Plaintiffs' Complaint

6. Plaintiffs were employed by Defendant Clearfield Hospital as Intensive Care Unit ("ICU") nurses. *See* Complaint ¶ 9.

7. According to Plaintiffs' Complaint, in November of 2002, both Plaintiffs quit their jobs. *Id.* at ¶ 13.

8. Plaintiffs allege that, in their opinion, the staffing of the ICU was inadequate. *Id.* at ¶¶ 11 and 14. Plaintiffs further allege that they advised the Pennsylvania Nurses Association, OPEIU, and Local 112 of their concerns. *Id.* at ¶¶ 14a, e, g, h, and l.

9. Plaintiffs also allege that they informed Defendants in writing of their opinions on various occasions from March of 1999 to August of 2002. *Id.* at ¶¶ 14b, c, d, f, i, j and k, Exhibits 1, 2, 7, 10, 11 and 12.

10. Plaintiffs allege that on March 26, 1999, Plaintiff Retorick submitted an "Alert Form" on which she indicated her belief that staffing the ICU with three (3) ICU Registered Nurses ("RN's") and one nurse from another unit was not sufficient, *Id.* at ¶14b and Exhibit 2.

11. Plaintiffs allege that on November 30, 1999, Plaintiffs submitted a letter to Defendant Jackie Stone in which she indicated her belief that Tammy Charles, RN, was not qualified to work in the ICU, *Id.* at ¶14a and Exhibit 1.

12. Two years later, on November 20, 2001, Plaintiff Retorick wrote a letter to Defendant Stone regarding the staffing of the ICU, *Id.* at ¶ 14c and Exhibit 4. One year later, on January 31, 2002, Plaintiff Retorick submitted a Problem Form regarding the performance of an LPN, *Id.* at ¶ 14c and Exhibit 5.

13. On February 1, 2002, Plaintiff Retorick submitted a “Problem Form” on which she indicated her belief that an LPN from another unit was not performing properly, *Id.* at ¶ 14f and Exhibit 7.

14. On April 25, 2002, Plaintiff Retorick submitted a “Problem Form” on which she indicated her concern that an LPN assigned to the ICU was performing duties which “may not be in her scope of practice as an LPN.”

15. Defendant Thelma Stratton investigated Retorick’s complaint and advised, *inter alia*, that it was without merit, observing that “it is the charge nurses responsibility to make or change patient assignments, assess the staffing needs throughout the shift.” *Id.* at ¶14i and Exhibit 10.

16. According to the Complaint, Plaintiff Retorick complained again about the performance of an LPN on April 25, 2002, alleging that the LPN “continued to doze off” and left the unit to go home without informing anyone. Defendant Thelma Stratton investigated this allegation as well and stated, *inter alia*, that “it is the responsibility of the charge nurse to resolve [issues] at the time of occurrence. One of the responsibilities of a charge nurse is to demonstrate problem solving skills and decision making abilities. This should have been addressed and

resolved at the time it took place, not waiting until sometime 5 days later.” *Id.* at ¶ 14j and Exhibit 11.

17. Four (4) months later, on August 31, 2002, Plaintiff Retorick submitted a “Problem Form” and stated her belief that nurses assigned to float duties were not being provided proper orientation which “could become a safety issue.” *Id.* at ¶ 14k and Exhibit 12.

Plaintiffs allege that Defendants retaliated against them for these reports and cause them emotional distress. Plaintiffs seek punitive damages as well as many other forms of relief.

ARGUMENT

I. Count VII of the Amended Complaint Must Be Dismissed and Paragraphs 30 and 35 Must Be Stricken.

A. Punitive Damages are not recoverable under the Pennsylvania Whistleblower Law or the MCARE Act.

18. Plaintiffs seek punitive damages under the Whistleblower Law and MCARE Act.

19. However, the Pennsylvania Supreme Court has recognized that punitive damages are not available under the Pennsylvania Whistleblower law. *See O’Rourke v. Commonwealth of Pennsylvania*, 778 A.2d 1194 (Pa. 2001) (citing 43 P.S. § 1425); *See also Freese v. Centennial School Dist.*, 1999 U.S. Dist. Lexis 11710, *3-4 (E.D. Pa. 1999) (holding plaintiff not entitled to punitive damages under Pennsylvania Whistleblower Law); *Miller v. Northern Tier Career Center*, 49 Pa. D. & C. 4th 413, 416-17 (Bradford County, 2000) (holding punitive damages are not an available remedy under the Whistleblower Law) (citing *Rankin v. City of Philadelphia*, 963 F.Supp. 463 (E.D. Pa. 1997) (same)).

20. This is equally applicable to the MCARE Act which limits its remedies to those permitted under the Whistleblower Law. The MCARE Act specifically states that a health care

worker who reports an occurrence or serious event under the MCARE Act *shall have the protections and remedies set forth in the Whistleblower Law.* 40 P.S. § 1303.308 (emphasis added).

21. As such, under Pennsylvania law, Plaintiffs cannot recover punitive damages under Count I (the Whistleblower Law) or Count II (the MCARE Act), requiring that paragraphs 30 and 35 be stricken and Count VII be dismissed.

B. Count VII must be dismissed as Pennsylvania law does not recognize an independent cause of action for punitive damages.

22. Plaintiffs have brought as a separate count (Count VII), a claim for Punitive Damages.

23. In Pennsylvania, punitive damages are an element of damages arising out of an initial cause of action for compensatory damages. *Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800, 802 (Pa. 1989) (citing *Hilbert v. Roth*, 149 A.2d 648 (Pa. 1959)). The Pennsylvania Supreme Court has stated that damages are not an independent cause of action but rather, “[t]he right to punitive damages is a mere incident to a cause of action...and not the subject of an action itself.” *Feingold v. Southeastern Pa. Transp. Auth.* 512 Pa. 567 (Pa. 1986) (quoting *Hilbert v. Roth*, 359 Pa. 270 (Pa. 1959)). *See also Rhoads v. Heberling*, 451 A.2d 1378 (Pa.Super. 1982); *Laniecki v. Polish Army Veterans Assoc.*, 480 A.2d 1101 (Pa.Super. 1984). Thus, if no underlying cause of action exists, there is no independent action for a claim for punitive damages. *Kirkbride*, 555 A.2d at 802.

24. As set forth in *Kryeski v. Schott*, 9 Pa. D.&C. 4th 399, 409-10 (Lackawanna County, 1991):

Plaintiff also seeks punitive damages and separately sets forth a cause of action for such in count VIII. A demand for punitive damages in a separate count with no cause of action stated in the count violates Pa.R.C.P. 1020(a). Rule 1020(a) provides 'each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief.' Count VIII does incorporate by reference all preceding paragraphs of the complaint. However, the appropriate method in seeking punitive damages is to request such damages in each separate count of the complaint in accordance with Pa.R.C.P. 1020(a).

25. In *Lulu Mae Nix v. Temple University*, 21 Phila. 459 (1990), the Common Pleas Court dismissed plaintiff's claim for punitive damages where the claim was alleged in a separate count. The court determined that since plaintiff's complaint stated no cause of action upon which she could recover, she was precluded from recovering punitive damages. *Id.*

26. Accordingly, Count VII of the Amended Complaint must be dismissed.

II. Paragraph 20-23 and all subparagraphs contained therein as well as Paragraph 28 must be Stricken.

27. The Pennsylvania Whistleblower Law, 43 Pa.C.S.A. 1423, ("Whistleblower Law") provides that:

No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee ... makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.

43 P.S. § 1423(a) (emphasis added).

28. The Whistleblower Law defines "wrongdoing" as:

a violation which is not merely technical or minimal in nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

43 P.S. § 1422.

29. In support of their claim for “wrongdoing,” Plaintiffs refer to the Pennsylvania Professional Nursing Law, 63 P.S. § 212 (sections dealing with refusal, suspension, and revocation of a Registered Nurse’s license), The Professional and Vocational Standards promulgated by the State Board of Nursing, 49 Pa. Code § 21.18(a) and the American Nursing Association Code of Ethics. *See* Complaint ¶¶ 20 – 23. As a matter of law, this is insufficient to come within the purview of the Whistleblower Law.

30. The Pennsylvania Superior Court held in *Riggio v. Burns*, 711 A.2d 497, 501 (Pa.Super. 1998), that *state licensing statutes, codes of conduct and codes of ethics do not fall within the purview of the term “wrongdoing,” as defined by the Whistleblower Law.*

31. The *Riggio* Court further stated:

The statutes merely consist of the legislature’s guidelines for the regulation of the healthcare industry. Each statute delegates to an independent entity the power to investigate and evaluate whether the individual in question has complied with these general standards. They then provide that certain consequences may be imposed if the entity determines that the standards have not been met. The statutes are utterly silent with respect to specific conduct.

Id. at 502.

32. Plaintiffs have only identified licensing statutes and codes of conduct and codes of ethics which govern nurses. Similar to the statutes at issue in *Riggio*, these statutes cannot constitute “wrongdoing” as defined by the Whistleblower Law.

33. Accordingly, paragraphs 20 – 23 and 33 must be stricken.

CONCLUSION

For the foregoing reasons, Defendants Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton respectfully request that this honorable Court enter the attached order.

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS, LLP

By:  _____

Eric T. Smith

Pa. Id. # 70491

S. Elaine Diedrich

Pa. Id. #84077

120 Fifth Avenue, Suite 2700

Pittsburgh, PA 15222

(412) 577-5200

Attorneys for Defendants, Clearfield Hospital, Lois
Eisenman, Jackie Stone and Thelma Stratton

CERTIFICATE OF SERVICE

I hereby certify that on November 21st, 2003, true and correct copies of the foregoing **Preliminary Objections To Amended Complaint** were sent, via U.S. Mail, first class postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich (PA Id. No. 84077)

FILED

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DEC 0 1 2003

William A. Shaw
Prothonotary

CA

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

FRANCES L. SELVAGE and
DAWN L. RETORICK

vs.

:
:
:
: No. 03-393-CD
:
:

CLEARFIELD HOSPITAL, LOIS
EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON,
ICU Unit Manager

FILED

JAN 08 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

NOW, this 7 day of January, 2004, upon consideration of

Defendants' Preliminary Objections to Amended Complaint, a Rule is hereby
issued upon Plaintiff to Appear and Show Cause why the Preliminary Objections
to Amended Complaint should not be granted. Rule Returnable is scheduled the

19 day of February, 2004, at 10:00 A.M. in Courtroom
No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



Judge

FILED

01/11/04
JAN 08 2004

William A. Shaw
Prothonotary/Clerk of Courts

2 cc w/ Memo re: responsibility
to serve rule on all parties

to Alye Dierich

WAS

William A. Shaw
Prothonotary/Clerk of Courts

~~NO~~
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JAN 14 2004

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CP

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

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

v.

: No. 03-393-CD

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

: Civil Action - Law

ORDER OF COURT

AND NOW, to wit, this ____ day of February, 2004, upon due consideration of the Preliminary Objections to the Amended Complaint and the Plaintiffs' Answer thereto, it is ORDERED, ADJUDGED and DECREED that said Preliminary Objections are overruled and that the Defendants are directed to answer as required by the Pennsylvania Rules of Civil Procedure.

BY THE COURT:

J.

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

:

:

: No. 03-393-CD

:

: Civil Action - Law

:

:

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**ANSWER TO DEFENDANTS' PRELIMINARY OBJECTIONS
TO AMENDED COMPLAINT**

AND NOW, come the Plaintiffs, Frances L. Selvage and Dawn L. Retorick, by and through their counsel, James J. West, Esquire, and, pursuant to the Rule to Show Cause served on the Plaintiffs by the Defendants on January 12, 2004, and Rule 206.7, Pa.R.Civ.P., files the following Answer to the Defendant's Preliminary Objections to Amended Complaint in the above-captioned case.

A. Procedural Background

1-4. The allegations of paragraphs 1 through 4 of the Defendants' Preliminary Objections are admitted.

FILED

FEB 03 2004

William A. Shaw
Prothonotary/Clerk of Courts

B. Plaintiffs' Claim

5. The allegations of paragraph 5 of the Defendants' Preliminary Objections to Amended Complaint are admitted as correctly enumerating the eight counts contained within the Plaintiffs' Complaint.

C. The allegations of Plaintiffs' Complaint

6. The allegation of paragraph 6 of the Defendants' Preliminary Objections to the Amended Complaint to the effect that the Plaintiffs were employed by Defendant, Clearfield Hospital as ICU nurses is correct but leaves out and obfuscates the facts that the Plaintiffs had over thirty years accumulated experience at Clearfield Hospital as exemplary employees as set forth in Plaintiffs' Complaint at paragraphs 9 and 10.

7. The allegations in paragraph 7 of the Defendant's Preliminary Objections to the Amended Complaint to the effect that Plaintiffs' Amended Complaint (§13) charges that in November of 2002 both Plaintiffs quit their jobs is inaccurate and misleading. When paragraphs 12 and 13 of Plaintiffs' Amended Complaint are read together, it is clear that the Plaintiffs are alleging constructive discharge in that the Defendants "began systematically punishing the Plaintiffs for making such reports by humiliating them in front of their co-workers, subjecting them to different treatment than other employees, systematically ignoring their complaints and ultimately initiated a defamatory whispering campaign whereby they would intentionally humiliate, belittle and discredit the Plaintiffs and ultimately forced them to leave the Clearfield Hospital by exposing them to treatment that would cause a reasonable nurse, under the circumstances, to resign, i.e., constructive discharge." (§12 of Plaintiffs' Amended Complaint) See, *Highhouse v. Avery Transportation*, 443 Pa.Super. 120, 660 A.2d 1374 (1995). In this

regard, the allegation of paragraph 7 of the Defendants' Preliminary Objections to the Amended Complaint is incomplete and misleading.

8. The allegations of paragraph 8 of the Defendants' Preliminary Objections to the Amended Complaint are likewise an inadequate summary of paragraphs 11 through 14 of the Plaintiffs' Amended Complaint and are, accordingly, misleading. In paragraphs 11 through 14 of the Plaintiffs' Amended Complaint the Plaintiffs' specifically alleged that "the hospital management intentionally began cutting back and diluting the quality of care being administered by the ICU and putting the patients admitted to that unit at risk of serious injury or even death." The Plaintiffs go on to specifically set forth numerous reports of these life-threatening deficiencies through hospital documents called alert forms, problem forms, staffing alert reports and letters and complaints to the Pennsylvania Nurses Association's grievance form and the Complaint specifically indicates that these "enumerated written reports [14a-14m] are merely examples of reports made between 1999 and November, 2002 ***. Plaintiffs made numerous additional oral and written reports of wrongdoing and waste based upon serious events and incidents *** after the effective date of the Medical Care Availability and Reduction of Error Act (MCARE Act), 40 P.S. §1303.101." Paragraphs 11 through 14 and their subparts of the Plaintiffs' Amended Complaint speak for themselves and are clearly not adequately summarized in paragraph 8 of the Defendants' Preliminary Objections to Amended Complaint.

9-17. In paragraphs 9 through 17 of the Defendant's Preliminary Objections to the Plaintiffs' Amended Complaint, the Defendants' attempts to summarize the Plaintiffs' Amended Complaint are inadequate and misleading and are denied as not being a true and accurate summary of either the Plaintiffs' Amended Complaint or the allegations therein because of their

lack of specificity and the deletion of material facts.¹ The Plaintiffs respectfully submit that the factual allegations of their complaint supported by the attached written exhibits speak for themselves and are not adequately summarized in paragraphs 9 through 17 of the Defendants' Preliminary Objections to Amended Complaint.

Argument

I. Count VII of the Amended Complaint Does Not Need to be Stricken.

A. The Damages are not Recoverable Under the Pennsylvania Whistleblower Law or the MCARE Act. (¶¶18-21)

18.21 The Defendants agree that punitive damages are not recoverable under the Whistleblower Law or the MCARE Act. but see, *Villela v. Philadelphia*, 1995 U.S. Dist. Lexis 6308 (1995) attached hereto as Exhibit A (District Court Opinion at Section F). Punitive damages are allowable, though, in the other counts of the Complaint involving wrongful discharge (Count III), defamation (Count IV), invasion of privacy/false lights (Count V) and intentional infliction of emotional harm (Count VI) and the *** fact that the whistleblower statute was violation would be admissible evidence in assessing the amount of punitive damages

¹ The Defendants totally ignore the allegations of paragraph 14a (Exhibit 2) nurse assigned to ICU who couldn't read monitors; paragraph 14b (Exhibit 3) nurse assigned to ICU totally unfamiliar with ICU routine and jeopardized patient safety; paragraph 14d (Exhibit 5) nurse sleeping on duty and left without notice to charge nurse; paragraph 14e (Exhibit 6) excessive assignments lack of qualified staff patients "disoriented, crawling out of bed and screaming"; paragraph 14g (Exhibit 8) excessive assignments, lacked staff, unit clerk not assigned, patient hemorrhaging required two nurses leaving patient that died "not receiving adequate services"; paragraph 14h (Exhibit 9) LPN sent to unit still in orientation without adequate training ICU nurses ordered to assign untrained nurses or be disciplined as insubordinate; paragraph 14L (Exhibit 13) complaint to Pennsylvania Nurses Association showing copy to Department of Health, ICU nurses being used without proper experience, certifications and training; and paragraph 14m (Exhibit 14) Clearfield Hospital's qualifications for ICU nurse requiring "med-surg experience, ACLS critical care course within five years or successful completion of critical care exam.

even if the Whistleblower Act (Count I) and the MCARE Act (Count II) themselves could not be the basis for imposition of punitive damages.

The Defendants also ask to strike paragraphs 30 through 35 dealing mostly with the MCARE Act but make no argument in support thereof. The MCARE Act supports that a healthcare worker who makes a report of a serious event will have the benefits of the Whistleblower Law, see 40 P.S. §1303.308(e). This makes it crystal clear that it is the legislatures intent that the Whistleblower Statute be available to healthcare workers complaining about serious events and incidents. There can be no contention that the complaints in this case did not involve serious events and incidents and, accordingly, Count II clearly should not be stricken as it takes all ambiguity away from the application of the Whistleblower Statute to the facts *sub judice*.

B. Count VII Should Not Be Dismissed Because Pennsylvania Law Does Not Recognize an Independent Action for Punitive Damages. (¶¶23-26)

22-26. In Pennsylvania, punitive damages may be awarded for conduct that is outrageous including reckless indifference to the rights of others. *Feld v. Merriam*, 506 Pa. 383, 485 A.2d 742, 747 (1984), *Doe v. William and Shapiro, Esquire*, 852 F.Supp. 1246, 1255 (M.D. Pa. 1994). In assessing punitive damages the trier of fact should properly consider the character of the defendant's act, the nature and extent of the harm that the defendant caused or intended to cause and the wealth of the defendant. *Feld v. Merriam, supra., Doe v. Shapiro, supra., Polselli v. Nationwide Mutual Fire Insurance Co.*, 23 F.3d 747, 751 (3rd Cir. 1994). While one court has held that punitive damages are a separate cause of action so as to be barred by the statute of limitations if not initially pled in a tort case, *Bellefonte Area School District v. Modernfold*

Industries, 24 Pa. D&C.3d 303 (1981) (attached hereto as Exhibit A), we agree that other cases indicate that a count charging punitive damages is not a separate action. Insofar as the present contention is concerned, we respectfully submit that the correct answer to this contention was given in the case of *Phar-Mor, Inc. v. Coopers & Lybrand*, 1992 U.S. Dist. Lexis 22163 (W.D. Pa. 1992) (attached hereto as Exhibit B) where District Judge Ziegler dismissed the exact same objection as being “hyper-technical and without merit.” *Id* at p.2 using the following language:

We agree with Phar-Mor that this objection is hyper-technical and without merit. Whether a punitive damages claim should be set forth in a prayer for relief in another substantive count, rather than a separate count, provides no basis for dismissing such a count. *Coopers & Lybrand* is simply not prejudiced by this type of pleading. As noted by Phar-Mor, Rule 1020(a) of the Pennsylvania Rules of Civil Procedure, under which this action was originally commenced, requires “each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief.” Moreover, we note that the appellate courts of Pennsylvania appear to permit a request for punitive damages to be set forth in a separate count. See, e.g., *Smith v. Brown*, 283 Pa.Super. 116, 423 A.2d 743 (1980) (dismissing separate punitive damages count for failure to plead sufficient facts). The motion to dismiss Count Three will be denied.

We would also point out that there are numerous cases that simply allow the complaint to be amended, *Murray v. Reneer Films*, 979 F.Supp. 1045 at 1050 (E.D. Pa. 1197), *Brennan v. National Telephone*, 850 F.Supp. 331 at 346 (E.D. Pa. 1994). In addition, one case has even indicated that a plaintiff would be entitled to punitive damages under the Pennsylvania Whistleblower Act when it was set forth in a separate count indicating that “this court will treat the fifth cause of action as merely the request for punitive damages available under the prior counts.” *Villella v. Philadelphia*, 1995 U.S. Dist. Lexis 6308 (1995) (attached hereto as Exhibit C, quote at p.9).

We respectfully submit that Judge Ziegler in the *Phar-Mor* case was correct in treating this issue as “hyper-technical and without merit” as was Judge Hutton in the *Villella* case (Exhibits B and C) and we would respectfully urge this court to follow those precedents. This is particularly true because each of the Counts III and VI incorporates the damage Counts VII and VIII by reference, see, e.g., paragraph 40 for Count III, paragraph 45 for Count IV, paragraph 48 for Count V, and paragraph 53 for Count VI all specifically stating they incorporate by reference Counts VII and VIII dealing with punitive and compensatory damages. Accordingly, the punitive damage claim in Count VII is incorporated into each Count to which it applies. ↗ Yes →
Def's own case
says that! attempt to strike it even more hyper-technical and without merit than it was *Villella* cases cited *supra*.

Finally, if any remedy is appropriate, it would be to simply re-plead _____ under the appropriate substantive counts, i.e., Counts III through VI.

II. The Statutory, Regulatory and Ethical Duties of a Registered Nurse Should Not Be Stricken from this Complaint. (§§27-33)

While the Whistleblower Statute is made applicable to this case clearly under the provisions of the MCARE Act, we also believe that the statutory, regulatory and ethical duties of a registered nurse set forth in paragraphs 20 through 23 of the Complaint are also applicable and should not be stricken.

The Whistleblower Statute, 25 P.S. §1422, defines wrongdoing as “a violation which is not of a nearly technical or minimal nature of a federal or state statute or regulation *** or of a code of conduct or ethics designed to protect the interest of the public or the employer.” That is exactly what the Professional Nursing Law, Professional and Vocation Standards for Nurses and

Code of Ethics for Nurses cited in paragraphs 20 through 23 of the Complaint are aimed at doing – “protect[ing] the interest of the public [and] the employer.” Can these Defendants really be contending that the Nursing Law Standards and Code of Ethics do not apply to them?

The Defendants’ reliance on *Riggio v. Burns*, 711 A.2d 497, 501 (Pa. Super. 1998) is totally misplaced. In that case, a nurse reported a doctor’s negligent conduct and the court held that wrongdoing as defined by the Whistleblower Law “does not encompass tort principals unless a statute, regulation or code of conduct or ethics is violated by the tortious act or admission.” The court went on to say that the licensing statutes do not help the appellant because they are too vague and lack specificity as to what acts are proscribed and represent merely guidelines for the regulation of the health care industry delegating to an independent entity the power to investigate and evaluate. *Riggio, supra.* at 502.

In the case *sub judice* the conduct by the hospital is not mere negligence subject to tort principals, AS IN THE *Riggio* case, *supra.*, but are actual standards that nurses are expected to abide by and when applied to the specific factual allegations and complaints in paragraph 14 and its subparts, they qualify the Plaintiffs as whistleblowers independent of the MCARE Act.

The quoted portions of the Pennsylvania Professional Nursing Law, 63 Pa. C.S.A. §212 *et seq.* at 224 (Complaint, ¶20), establish that a nurse’s license can be revoked if a nurse creates “an immediate and clear danger to the public health or safety or fails to conform to ethical or quality standards embraced by the professional community in Pennsylvania.” Likewise the Professional Vocational Standards of the State Board of Nursing, 49 Pa.Code §21.18(a), require registered nurses to only act under circumstances where the nurse possesses the “necessary knowledge, preparation, experience and competency to execute the practice, to safeguard the patient from the

incompetence, abuse or illegal practice of any individual and document and maintain accurate records.” The Professional Vocational Standards promulgated by the State Board of Nursing, 49 Pa.Code §21.18(b) also specifically forbid a registered nurse from aiding, abetting or assisting another person in violating or circumventing these regulations and from leaving a nursing assignment prior to reporting and notifying appropriate personnel. Finally, the American Nursing Association Code of Ethics for Nurses shows these Plaintiffs acted correctly in having a “primary commitment *** to the patient *** promot[ing], advocat[ing] or striv[ing] to protect the health, safety and rights of the patients, (being) responsible and accountable for individual nursing practice and *** the appropriate delegation of tasks, (and) ‘preserv[ing] integrity and safety, maintain[ing] competence and participat[ing] in establishing, maintaining and improving health care environments and conditions of employment conducive to the provision of quality health care.” These are standards that are applied every day and capable of clear determination by the courts. In fact, nurses have repeatedly lost their licenses and their careers for violating these standards and when these regulatory standards are juxtapositioned against the allegations of paragraph 14, it is clear that these are exactly the kind of discernable standards that the Whistleblower’s Act, specifically covers as being statutes, regulations, codes of conduct or ethics “designed to protect the interest of the public.”

Even a cursory review of the allegations of paragraph 14 shows the application of the cited regulatory and ethical scheme. The Plaintiffs’ initial complaint was that the hospital’s own job description for an ICU nurse was being violated and that individuals were being assigned without one year med-surg experience, ACLS critical care training or arrhythmia courses which are “basic skills needed (by an ICU nurse) to function safely and efficiently *** in the best

interest of the patients.” (§14, Exhibit 1) This is followed by a plethora of specific instances where unqualified nurses are assigned to the ICU who could not read ICU monitors and charts (§14a, Exhibit 2); where nurses unfamiliar with ICU routine and overwhelmed by it (§14b, Exhibit 3); where nurses were totally untrained for ICU work and represented “an accident waiting to happen for our staff and imminent danger to our patients” (§14c, Exhibit 4); where nurses were sleeping during reports and leaving the ICU without notifying the charge nurse (§14d, Exhibit 5)²; where nurses were not providing adequate staff to the point where ICU patients were “crawling out of bed and screaming” (§14e, Exhibit 6); where an LPN was not properly trained for the ICU Unit and refused to do her duties (§14f, Exhibit 7); where nurses staff lacked acuity, unit clerk not assigned, new patients admitted without adequate staff, hemorrhaging patients and dying ICU patients were not receiving adequate treatment (§14g, Exhibit 8); where ICU nurses were ordered to give assignments to unqualified LPN or to be declared insubordinate (§14h, Exhibit 9); where LPN assigned duties beyond the scope of her practice and competency in the ICU (§14i, Exhibit 10); where a nurse was sleeping during reports on patient status and left unit without notifying other nurses (§14j, Exhibit 11); where nurses assigned to ICU not properly trained or oriented and would not know what to do if ICU staff members became busy (§14j, Exhibit 12); where nurses were assigned to ICU without adequate experience, certification, emergency room training, required critical care courses and do not meet job qualifications (§§14L and m, Exhibits 13 and 14). These are merely some of the oral and written reports made between 1999 and 2002 (§14n) and clearly were reports, if made in good

² The State Board of Nursing Regulations, 49 Pa. Code §21.18(b) forbid a registered nurse from “leaving a nursing assignment prior to reporting and notifying appropriate personnel.”

faith, that would be covered by the Whistleblower Statute as reports of possible violations of “state statute or regulation *** or of a code of conduct or ethics designed to protect the interest of the public or the employer.” 25 P.S. §1422³ and would render the Defendants liable under the statute if they retaliated against the Plaintiffs for making such “good faith” reports.

This case is not like *Riggio* but is like the subsequent case of *Denton v. Silverstream Nursing*, 739 A.2d 571 (Pa.Super. 1999) where the nurse appellant was terminated under the following circumstances:

The termination was the culmination of a series of events that involved investigations by the Pennsylvania Department of Health and Human Services (DHHS) into allegations of theft of patients’ funds, faulty administrative records, possible theft of medical supplies, and the accidental death of a patient. Appellant had been carrying on a vigorous “clean-up” campaign with management and corporate officials for at least three months previously regarding the abuses and instances of wrongdoing she had recently discovered. On March 17, 1997, she spoke with DHHS investigators regarding the abuses she had observed. On March 28, 1997, she was asked by management to resign her position, but she refused to do so. She alleges that she was subsequently subjected to intense harassment designed to cause her to resign; the harassment instead caused such great emotional turmoil that she found herself seeking psychiatric treatment and being prescribed psychoactive medications. She was eventually discharged from her position on April 17, 1997.

Id at 573.

The court had no problem finding that the discharge was in violation of public policy and, as such, covered by the Whistleblower Statute holding as follows:

³ It should be noted that all the Whistleblower Statute requires is a good faith report of a violation of such a regulation or code of ethics or conduct and the defendants would be liable for retaliation whether or not the report has validity so long as it was made in good faith.

Turning next to appellant's claim for wrongful discharge, we find again that she has stated a valid cause of action. While it is true that Pennsylvania embraces the "at will" employment doctrine, our Supreme Court has recognized an exception where an employee is discharged in violation of public policy. *Geary v. United States Steel Corp.*, 456 Pa. 171, 319 A.2d 174 (Pa. 1974). An en banc panel of this Court subsequently determined that the public policy exception may be applied under narrowly limited circumstances where (1) an employer requires an employee to commit a crime, (2) an employer prevents an employee from complying with a statutory duty, or (3) a statute prohibits discharge. *Shick v. Shirey*, 456 Pa.Super. 668, 691 A.2d 511, 513 (Pa.Super. 1997).

Here we have a statute that clearly prohibits discharge – the afore-discussed Whistleblower Law. This law represents our Commonwealth's public policy, as clearly enunciated by the legislature, that persons who report waste or wrongdoing regarding public funds should not be penalized by losing their jobs. Appellant's discharge violated this directive; thus, the third scenario set forth under Schick has been met. (Footnote omitted)

The statute, regulations, and Code of Ethics cited in the Plaintiffs' brief when juxtapositioned against the allegations in paragraph 14, and its subparts a - n, clearly shows that the Plaintiffs made good faith complaints that meet the statutory definition of wrongdoing involving "a violation *** of a *** state statute or regulation *** or of a code of conduct or ethics designed to protect the interest of the public or the employer," and, because of this, the Whistleblower statute protects them from retaliation by their employer. ⁴

⁴ The Plaintiffs have alleged, under Count I covering the Whistleblower Statute, that they reported waste as well as wrong doing (§27). The Defendants apparently do not attack this prong of the Plaintiffs' Whistleblower allegation. Nor could they. The statute defines waste as "an employer's conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from the Commonwealth or political subdivision sources." It is also specifically charged in the Complaint that Clearfield Hospital received Medicaid funds and was otherwise funded by the Commonwealth of Pennsylvania and its political subdivisions and qualified as a "public body" within the meaning of the Whistleblower law, 43 P.S. §1422. (§25) See *Denton v. Silver Stream Nursing*, *supra.* at 576, "a hospital

(continued...)

Conclusion

For the foregoing reasons the Defendants' Preliminary Objections should be overruled.

Respectfully Submitted,

WEST LONG LLC



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Dated: February 2, 2004

Counsel for Plaintiffs

⁴(...continued)

receiving Medicaid funds is a public body for purposes of whistleblower statute.” Accordingly, the hospital is covered by the Whistleblower Statute based on the allegation of waste alone which is not challenged by the Defendants' Preliminary Objections.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of **February, 2004**, a true and correct copy of the foregoing Answer to Defendants' Preliminary Objections to Amended Complaint was served upon the party named below via UPS overnight delivery, addressed as follows:

Eric T. Smith, Esquire
S. Elaine Diedrich, Esquire
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Suite 2700, Fifth Avenue Place
120 Fifth Avenue
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Joanne M. Bennett
Paralegal

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Bellefonte Area School Dist. v. Modernfold Industries

no. 80-499

COMMON PLEAS COURT OF CENTRE COUNTY, PENNSYLVANIA

24 Pa. D. & C.3d 303; 1981 Pa. D. & C. LEXIS 516

September 4, 1981, Decided

PRIOR HISTORY: [**1] Petition to amend complaint.

HEADNOTES: *Civil Procedure -- Amendment of complaint -- Pa.R.C.P. 1033 -- Introduction of new cause of action -- Expiration of limitations period -- Amendment seeking award of punitive damages.*

1. The right to amend a pleading pursuant to Pa.R.C.P. 1033 is normally granted with liberality so as to secure the determination of cases on their merits whenever possible, but will be denied where the amendment seeks to introduce a new cause of action after the statute of limitations has run.

2. A complaint alleging negligence in the manufacture of a folding partition and seeking compensatory damages may not be amended to include a count for punitive damages arising from reckless or intentional misconduct after the statute of limitations has run.

COUNSEL: Richard C. Glazer and Richard L. Campbell, for plaintiff.

Arthur G. Stein and James Hines, for defendant.

JUDGES: BROWN, Jr., P.J.

OPINIONBY: BROWN, Jr.

OPINION: [*304] FACTUAL BACKGROUND

This matter comes before the court upon plaintiff's petition to amend the complaint.

Plaintiff brings this action to recover for damages resulting from a fire in plaintiff's senior high school building on or about March 13, 1978. Plaintiff's original complaint, filed February 27, 1980, consists of three

counts. Count I, in trespass, alleges defective manufacturing, supply and distribution of Soundmaster 160 folding partitions. Said count further asserts defendant's failure to warn plaintiff and other purchasers generally as to the flammability, combustibility, flame spread and other safety characteristics of the Soundmaster 160 folding partitions. Count II, also in trespass, asserts strict liability against defendant. Count III, in assumpsit, alleges the breach of implied and express warranties, in connection with the supply, sale and installation of the allegedly defective folding partitions.

[*305] On May 12, 1981, plaintiff filed a petition [**2] to amend the complaint. Plaintiff states that the "reason for the request is that during the course of discovery, plaintiff has discovered that defendant has intentionally misrepresented the flammability, combustibility, flame spread and other safety characteristics of its product, Soundmaster 160, which conduct constitutes a malicious, reckless, willful, wanton and intentional disregard for the safety of Plaintiff's property and the lives of the people who would occupy Plaintiff's building." The proposed amended complaint would add a separate count, Count IV, seeking punitive damages.

DISCUSSION

Pennsylvania Rule of Civil Procedure 1033 provides:

[HN] "A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading. The amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading, even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted."

24 Pa. D. & C.3d 303, *; 1981 Pa. D. & C. LEXIS 516, **

The problem created by the proposed amendment, as conceded by plaintiff, [**3] is that the statute of limitations for a trespass action expired on March 14, 1980. [HN] The right to amend pleadings is normally granted with liberality so as to secure the determination of cases on their merits whenever possible: *Saracina v. Cotoia*, 417 Pa. 80, 208 A.2d 764 (1965). However, an amendment which seeks to introduce a new cause of action after the statute of limitations has run is prejudicial to a defendant and [**306] is not permitted: *Kuisis v. Baldwin* ___ Lima ___ *Hamilton Corp.*, 457 Pa. 321, 319 A.2d 914 (1974). The question then is whether or not the proposed amendment sub-judice constitutes a new cause of action.

No Pennsylvania appellate court has specifically addressed the issue of whether a complaint alleging negligence and seeking compensatory damages may be amended to include a count for punitive damages arising from reckless or intentional misconduct after the statute of limitations has run. The common pleas courts which have dealt with this issue are split. Plaintiff cites *Schneider et ux. v. Chalfonte Builders, Inc.*, 11 Bucks 122 (1961), in support of its position that the proposed amendment is merely a change in [**4] the amount of damages claimed. Defendant cites *Fanelli et al. v. Philadelphia Electric Co.*, 93 Montgomery Co. L.R. 175 (1970); *Dierolf v. Fioritto*, 42D. & C.2d 689(1967); and *Arlia v. Philadelphia Transportation Co.*, 77 D. & C. 21 (1950), for the proposition that the proposed amendment would create a new cause of action and would be barred by the statute of limitations. Our research has further disclosed a more recent case which, by way of dicta, supports defendant's position: *Jackson v. Waddle*, 11 D. & C. 3d 61 (1979).

We feel that defendant's argument is more compelling in the case sub-judice. Although punitive damages may be a mere incident to a cause of action as was pointed out in *Hilbert v. Roth*, 395 Pa. 270, 149 A.2d 648 (1959), (the decision upon which *Schneider, supra*, relies) we are not dealing with a simple amendment to an ad damnum clause. What we are dealing with in this case is the amendment of the complaint in order to add the necessary factual averments which would permit the recovery of [**307] punitive damages for intentional misrepresentation. The averments which would result from the proposed amendment [**5] read as follows:

"18. At all times material herein, Defendant had actual knowledge that the use of Soundmaster 160 folding partitions in Plaintiff's High School created an extreme fire hazard and an unreasonable risk to persons and property.

19. Despite such actual knowledge, Defendant

Modernfold willfully, wantonly and in reckless disregard for Plaintiff and others similarly situated, not only concealed its knowledge of such fire hazards, but made no attempt to warn or inform Plaintiff of said dangers and hazards, and continued to promote, advertise and sell its products as being suitable and safe for the purposes intended.

20. The aforescribed conduct by Modernfold constitutes a malicious, reckless, willful, wanton and intentional disregard for the safety of Plaintiff's property, and the lives of the people who would occupy Plaintiff's High School.

21. As a direct result of Modernfold's willful, wanton, and intentional misrepresentations and conduct, Plaintiff believes and therefore avers that it is entitled to punitive and/or exemplary damages against Modernfold Industries, in a total amount of TEN MILLION DOLLARS (\$ 10,000,000.00)"

Plaintiff argues that [**6] defendant was put on notice of the conduct for which punitive damages were sought by the averments in paragraphs 6 (a) through 6 (g), and 9 (a) and 9 (b). Those paragraphs read as follows:

"6. The occurrence referred to in paragraph 4 hereof and the consequent damage to plaintiff's property was caused by the negligence, carelessness [**308] and negligent omissions of defendant Modernfold in:

(a) defectively manufacturing and developing said Soundmaster partitions for use in plaintiff's High School when it knew, or in the ordinary exercise of care should have known, that said Soundmaster partitions were extremely hazardous and unreasonably dangerous in that they were highly combustible and flammable when exposed to heat or flame;

(b) selling and distributing said Soundmaster partitions in a defective condition which defendant knew or should have known subjected plaintiff's property to an unreasonable risk of harm;

(c) failing to properly and adequately conduct tests reasonably related to determining the true properties and characteristics of said Soundmaster partitions with regard to their flammability, combustibility, flame spread and other safety characteristics, [**7] thereby subjecting plaintiff's property to an unreasonable risk of harm;

(d) failing to properly and adequately warn plaintiff and the public in general as to the flammability, combustibility, flame spread and other safety characteristics of said Soundmaster partitions, thereby subjecting plaintiff property to an unreasonable risk of harm;

24 Pa. D. & C.3d 303, *; 1981 Pa. D. & C. LEXIS 516, **

(e) continuing to make improper references to certain tests regarding the flammability, combustibility, flame spread and other safety characteristics of said Soundmaster partitions when defendant knew or should have known that the tests referred to were misleading and misrepresented the true characteristics of Soundmaster partitions in an actual fire situation, thereby subjecting plaintiff's property to an unreasonable risk of harm;

[*309] (f) utilizing tests developed under the auspices of Underwriters Laboratory (UL) and the American Society for Testing and Materials (ASTM) to improperly mislead plaintiff and other consumers regarding the true characteristics of said Soundmaster partitions and to misrepresent the flammability, combustibility, flame spread and other safety characteristics of said Soundmaster partitions, thereby [*8] subjecting plaintiff's property to an unreasonable risk of harm; and

(g) otherwise failing to exercise proper and adequate care under the circumstances."

* * *

"9. The occurrence referred to in paragraph 4 hereof and the consequent damage to plaintiff's property was caused by the actions of defendant Modernfold in:

(a) supplying defectively manufactured products which it knew or should have known subjected the property of plaintiff to an unreasonable risk of harm; and

(b) selling the aforesaid Soundmaster partitions in a defective condition unreasonably dangerous to the plaintiff and its property."

From a comparison of the averments which actually appear in the complaint with those which are sought to be added by the proposed amendment, it is clear that no allegations of willful, wanton and intentional misconduct or misrepresentations appear in the complaint as filed. It

is also clear that [HN] negligence and wanton misconduct are not one and the same. As the Pennsylvania Supreme Court stated in *Stewart v. Pittsburgh Railways Co.*, 379 Pa. 260, 108 A.2d 767 (1954), "Wanton misconduct is something different from negligence however [*310] gross [*9] -- different not merely in degree but in kind, and evincing a different state of mind on the part of the tortfeasor. It exists where the danger to the plaintiff, though realized, is so recklessly disregarded that, even though there be no actual intent, there is at least a willingness to inflict injury, a conscious indifference to the perpetration of the wrong." *Stewart, supra*, 379 Pa. at 363, 108 A.2d at 768. We feel that the quoted material demonstrates that the proposed amendment herein would constitute a new cause of action based on facts and allegations not previously appearing in the complaint and cannot be considered as a simple amplification of facts which have already been plead.

Plaintiff's final argument is that the law is not clear that punitive damages may not be sought in some contract actions. We disagree. At least one court of common pleas has held that [HN] punitive damages may not be recovered in an action for breach of warranty: *Krebs-Stengel Co., v. Gora*, 70 York 207 (1957). Moreover, [HN] the general rule in this Commonwealth has always precluded recovery for punitive damages in actions in assumpsit: *Hoy v. Grenoble*, 34 Pa. 9 (1859); *Batka v. Liberty Mutual Insurance Co.*, 486 F. Supp. 582 (E.D. Pa. 1980); [*10] *Gurnick v. Government Employees Insurance Co.*, 278 Pa. Superior Ct. 437, 420 A.2d 620 (1980); *Wood v. Hahnemann Medical College*, 1 D. & C. 3d 674 (1976).

ORDER

And now, September 4, 1981, upon consideration of plaintiff's petition to amend the complaint, said petition is hereby denied.

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PHAR-MOR, INC., Plaintiff, v. COOPERS & LYBRAND, Defendant.

Civil Action No. 92-2108 Consolidated with C.A. Nos. 92-1938, 92-2131, 92-2193

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

1992 U.S. Dist. LEXIS 22163

December 21, 1992, Decided

LexisNexis (TM) HEADNOTES - Core Concepts:**JUDGES:** [*1] Ziegler**OPINIONBY:** DONALD E. ZIEGLER**OPINION:**

OPINION

ZIEGLER, District Judge.

Pending before the court is the motion of defendant, Coopers & Lybrand, to dismiss Counts Three, Four and Five of plaintiff's complaint for failure to state a claim upon which relief can be granted pursuant to *Fed.R.Civ.P. 12(b)(6)*. Plaintiff, Phar-Mor, Inc., commenced this civil action in the Court of Common Pleas of Allegheny County, Pennsylvania, on August 17, 1992. Later that day, Phar-Mor filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Ohio.

Coopers & Lybrand filed a notice and petition of removal pursuant to 28 U.S.C. § 1452(a) n1 with this court on October 16, 1992. Bankruptcy Rule 9027(a)(2)(A) permits a notice of removal to be filed within 90 days of entry of an order for relief n2 in a case under the Bankruptcy Code. Cf. 28 U.S.C. § § 1441 and 1446(b) (permitting removal generally within 30 days of defendant's receipt of initial pleading). Thus, the notice of removal was timely. The claims asserted by Phar-Mor are related to its bankruptcy [*2] proceeding. See *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3rd Cir. 1984) ("test for determining whether a civil proceeding is related to bankruptcy is whether the outcome that proceeding could conceivably have any effect on the estate being administered in bankruptcy.") (emphasis in original). As

such, jurisdiction is extant over these claims pursuant to 28 U.S.C. § 1334(b) and we find that their removal was proper. Coopers & Lybrand filed the present motion to dismiss Counts Three, Four and Five of the complaint. For the reasons set forth below, the motion will be granted in part and denied in part.

n1 § 1452. Removal of claims related to bankruptcy cases

(a) A party may remove any claim or cause of action in a civil action .

. . . to the district court where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of this title.

28 U.S.C.A. § 1452(a)(West Supp. 1992).

n2 "In a voluntary case the filing of the petition under section 301 [of the Code] commences the voluntary case and is itself entry of the order for relief from which time periods are to be measured." 2 Collier on Bankruptcy P 102.07 (15th Ed. 1992). Thus, the "order for relief" referenced in Bankruptcy Rule 9027(a)(2)(A) was entered on August 17, 1992.

[*3]

We must construe all factual allegations in the complaint in the light most favorable to Phar-Mor and we cannot dismiss the complaint unless it is beyond doubt that plaintiff could prove no set of facts in support of its claims which would entitle it to relief. *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957). Phar-Mor alleges that Coopers & Lybrand negligently, recklessly or intentionally failed to uncover a massive fraud perpetrated upon Phar-Mor and seeks damages

1992 U.S. Dist. LEXIS 22163, *

under three legal theories. Count One is a straightforward negligence/ professional malpractice claim. Count Two asserts a claim for intentional or negligent misrepresentation. Count Four alleges that Coopers & Lybrand breached a contract. Defendant moves to dismiss this breach of contract claim. In addition to the legal claims, Phar-Mor contends in Count Three that Coopers & Lybrand's alleged misconduct entitles it to punitive damages. In Count Five, Phar-Mor seeks a judgment declaring that Coopers & Lybrand is liable for any recovery against Phar-Mor in any civil actions that have been, and will be, brought by purchasers of Phar-Mor [*4] securities and its creditors. Coopers & Lybrand also moves to dismiss these counts.

BREACH OF CONTRACT CLAIM

Coopers & Lybrand contends that the allegations set forth in the complaint are legally insufficient to state a claim for breach of contract under Pennsylvania law. It contends allegations that the failure of an accountant to meet a standard of care imposed by law does not, without more, state a claim for breach of contract. Rather, such allegations state a claim sounding only in tort, according to Coopers & Lybrand. Coopers & Lybrand relies on *Hoyer v. Frazee*, 323 Pa. Super. 421, 470 A.2d 990 (1984), *Sherman Indus., Inc. v. Goldhammer*, 683 F. Supp. 502 (E.D. Pa. 1988) and *Official Comm. of Unsecured Creditors of Corell Steel v. Fishbein and Co.*, C.A. No. 91-4919, 1992 WL 196768 (E.D. Pa. August 10, 1992) for the proposition that a plaintiff must allege that the defendant breached a specific contractual provision, failed to follow plaintiff's specific instructions, or made a specific promise upon which plaintiff reasonably relied to its detriment in order to state a claim for breach of contract. [*5] This, Coopers & Lybrand argues, Phar-Mor has failed to do. We disagree.

Although we agree with Cooper's reading of these authorities, we hold that Phar-Mor has sufficiently alleged facts which, if established at trial, would support a claim for breach of contract. While a plaintiff need only allege a breach of a general duty of care to properly plead a tort claim, as Phar-Mor has done, a contract claim must contain allegations of a breach of a specific promise. Here, Phar-Mor has satisfied this requirement by the allegations in paragraphs 19 and 20 of the complaint. In essence, plaintiff has alleged that Coopers & Lybrand specifically indicated to Phar-Mor that it would devote a substantial percentage of its audit to what Coopers labelled "high risk areas" areas such as inventories, accounts receivable, and vendor and procurement income. Complaint at P 19. Moreover, Phar-Mor has alleged that the Board of Directors and, beginning in 1990, its Audit Committee, agreed that these areas should be the primary focus for the audit. Id. at P 20. Because such allegations sufficiently plead a claim for breach of contract to withstand a motion to dismiss,

Coopers & Lybrand's motion to dismiss [*6] Count Four will be denied.

PUNITIVE DAMAGES CLAIM

In Count Three, Phar-Mor seeks punitive damages for Coopers & Lybrand's alleged outrageous, intentional or reckless conduct pursuant to *Section 908 of the Restatement (Second) of Torts* and the law of Pennsylvania. Complaint at PP 40-42. Coopers & Lybrand contends that this count should be dismissed because it does not set forth an independent, legally cognizable claim under Pennsylvania law. It argues that an allegation of "outrageous conduct" is relevant only insofar as it is a required element of proof where a plaintiff is seeking punitive damages on a recognized cause of action.

We agree with Phar-Mor that this objection is hyper-technical and without merit. Whether a punitive damages claim should be set forth in a prayer for relief in another substantive count, rather than a separate count, provides no basis for dismissing such a count. Coopers & Lybrand is simply not prejudiced by this type of pleading. As noted by Phar-Mor, Rule 1020(a) of the Pennsylvania Rules of Civil Procedure, under which this action was originally commenced, requires "each cause of action and any special damage related thereto shall be stated in a separate [*7] count containing a demand for relief." Moreover, we note that the appellate courts of Pennsylvania appear to permit a request for punitive damages to be set forth in a separate count. See, e.g., *Smith v. Brown*, 283 Pa. Super. 116, 423 A.2d 743 (1980) (dismissing separate punitive damages count for failure to plead sufficient facts). The motion to dismiss Count Three will be denied.

CLAIM FOR DECLARATORY RELIEF AND INDEMNITY

Coopers & Lybrand has also moved to dismiss Count Five in which Phar-Mor alleges that Coopers is primarily liable for any recovery in the civil actions against Phar-Mor by its investors and creditors. Count Five also requests a declaratory judgment, pursuant to [the Declaratory Judgments Act], 42 Pa.C.S.A. § § 7531-41, that Coopers & Lybrand will be liable for any recovery in any action that has been or will be brought against Phar-Mor and that Coopers & Lybrand should be ordered to defend and indemnify plaintiff for any liability in such actions. Coopers & Lybrand contends that this count should be dismissed because the claim is premature because the right to indemnification does not arise until the indemnitee has [*8] actually paid damages to a third party. Here, Coopers & Lybrand relies on *F.J. Schindler Equip. Co. v. Raymond Co.*, 274 Pa. Super. 530, 418 A.2d 533 (1980).

Phar-Mor argues that the claim for indemnification should be determined under the federal Declaratory

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Judgments Act, 28 U.S.C. § § 2201-02, and, regardless of the choice of law, the indemnity claim is ripe for determination. Under either the Pennsylvania or federal declaratory judgments acts, the court is given broad discretion in such actions. *Step-Saver Data Systems, Inc. v. Wyse Technology*, 912 F.2d 643, 647 (3rd Cir. 1990)(court must be "satisfied that an actual controversy, or the ripening seeds of one, exists between parties, all of whom are sui juris and before the Court, and that the declaration will be a practical help in ending the controversy.")(quoting *Kariher's Petition*, 284 Pa. 455, 471, 131 A. 265, 271 (1925)); *American Council of Life Ins. v. Foster*, 134 Pa. Commw. 634, 639, 580 A.2d 448, 450 (1990) (declaratory [*9] relief is inappropriate "to determine rights in anticipation of events that may never happen" or in the absence of "antagonistic claims indicating inevitable litigation").

Even if the indemnity claim is legally ripe, Coopers & Lybrand counters that because Phar-Mor has filed a voluntary petition for reorganization under the Bankruptcy Code, all pending and future litigation against Phar-Mor has been stayed. Hence, the imminent threat of any claim for which Phar-Mor seeks indemnity has been removed and declaratory relief is inappropriate.

We hold that the contention of Coopers & Lybrand that a common law claim for indemnity does not accrue until the payment of a judgment or settlement to a third party is dispositive. *F.J. Schindler Equip. Co.*, 418 A.2d at 534; *McClure v. Deerland Corp.*, 401 Pa. Super. 226, 585 A.2d 19 (1991). Phar-Mor cannot utilize a declaratory judgment action to circumvent this requirement. We will dismiss this portion of Count Five without prejudice. Coopers & Lybrand also argues that

there is no legal basis, contractual or otherwise, for Phar-Mor's request that Coopers [*10] & Lybrand defend Phar-Mor in these other actions. We agree and we will therefore dismiss this portion of Count Five with prejudice.

A written order will follow.

DATED: DECEMBER 21, 1992

Donald E. Ziegler

United States District Judge

ORDER

AND NOW, this 21st day of December 1992, after consideration of the submissions of the parties,

IT IS ORDERED that the motion of defendant, Coopers & Lybrand, to dismiss Counts Three and Four of plaintiff's complaint be and hereby is denied.

IT IS FURTHER ORDERED that the motion of defendant to dismiss Count Five be and hereby is granted; however, Count Five is dismissed without prejudice to the extent plaintiff seeks indemnification from defendant and with prejudice to the extent plaintiff seeks an order to defend.

IT IS FURTHER ORDERED that defendant shall file an answer on or before January 22, 1993.

Donald E. Ziegler

United States District Judge

Exhibit C

LEXSEE 1995 U.S. DIST LEXIS 6308

R. DAVID VILLELA v. CITY OF PHILADELPHIA and ANDRES PEREZ, JR., in his individual and official capacity

CIVIL ACTION NO. 95-1313

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

1995 U.S. Dist. LEXIS 6308

**May 9, 1995, Decided
May 10, 1995, Filed**

LexisNexis (TM) HEADNOTES - Core Concepts:

COUNSEL: [*1] For R. DAVID VILLELA, PLAINTIFF: CHARLES J. CUNNINGHAM, STACK & GALLAGHER, P.C., PHILA, PA.

For CITY OF PHILADELPHIA, ANDRES PEREZ, Individually and as Commissioner of the Department of Public Property of the City of Philadelphia, DEFENDANTS: E. JANE HIX, ASST. CITY SOLICITOR, PHILA, PA.

JUDGES: HERBERT J. HUTTON, J.

OPINIONBY: HERBERT J. HUTTON

OPINION:

MEMORANDUM AND ORDER

HUTTON, J.

May 9, 1995

Presently before the Court are Defendants' Motion to Dismiss Portions of the Complaint and Plaintiff's opposition thereto.

I. BACKGROUND

On September 9, 1994, plaintiff, R. David Villela ("Villela"), was demoted from his position as Director of Architecture and Engineering (Public Property Department) to Design and Construction Project Manager. The City based its decision to demote Villela on poor job performance and failure to improve after repeated warnings. In February, 1992, May, 1993, and February, 1994, Villela had received Annual or Special

Performance reports noting his unsatisfactory conduct. In August, 1994, the City provided Villela with notice of his impending demotion and the reasons for the demotion. Villela took advantage of his opportunity to respond in [*2] writing to the notice of intention to demote. The City received Villela's response and decided to demote him anyway, effective September 9, 1994.

On March 6, 1995, Villela filed this civil rights and state tort claims action against the City of Philadelphia and the Commissioner of the Public Property Department.

I. DISCUSSION

A. Standard for Motion to Dismiss

Defendant has moved to dismiss the complaint pursuant to *Federal Rule of Civil Procedure 12(b)(6)*. When considering a motion to dismiss, this Court shall take all allegations contained in the complaint as true and construe them in the light most favorable to the plaintiff. *H.J. Inc. v. Northwest Bell Tel. Co.*, 492 U.S. 229, 249-50, 106 L. Ed. 2d 195, 109 S. Ct. 2893 (1989). The complaint shall only be dismissed if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Id.* (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73, 81 L. Ed. 2d 59, 104 S. Ct. 2229 (1984)); *Conley v. Gibson*, 355 U.S. 41, 45-46, 2 L. Ed. 2d 80, 78 S. Ct. 99 (1957)).

B. Statute of Limitations

The parties agree that the § 1983 claims are subject to Pennsylvania's two-year statute of limitations for personal injury actions. 42 [*3] *Pa. Cons. Stat. Ann. § 5524*; *Bougher v. University of Pittsburgh*, 882 F.2d 74, 78 (3d Cir. 1989); see *Wilson v. Garcia*, 471 U.S. 261, 266-67, 85 L. Ed. 2d 254, 105 S. Ct. 1938 (1985). The

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statute of limitations begins to run when the plaintiff knows or should know of the injury which is the basis of the § 1983 action. *Genty v. Resolution Trust Corp.*, 937 F.2d 899, 919 (3d Cir. 1991).

In the instant case, plaintiff filed his action on March 6, 1995. Thus, according to defendants, any actions that occurred prior to March 6, 1993 fall outside the limitations period and should not be permitted as a basis for the First and Second Causes of Action. This argument misperceives the accrual time for the personal injury statute of limitations. First, the accrual time for an action is measured not by the date on which the case is filed, as the defendants argue, but rather by the date on which the plaintiff knew or should have known of the injury.

Next, Villela could not have known of the injury prior to being demoted because the demotion itself was the injury which is the basis of the § 1983 action. The unsatisfactory Performance Reports were not identifiable as retaliatory acts until the alleged retaliation--demotion--actually [*4] occurred. The statute of limitations began to run on September 9, 1994, the date on which demotion became effective.

Villela has therefore filed this action well within the applicable limitations period and has permissibly alleged events leading up to the injury.

C. Due Process Claim

Plaintiff's Second Cause of Action alleges a violation of his due process rights under the Fourteenth Amendment to the United States Constitution. Specifically, he claims both a liberty and property interest in his job, a right to a pre-demotion hearing, the expectation to remain in his job because he is a career public servant, and that his reputation was harmed.

1. Property Interest

Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Board of Regents v. Roth, 408 U.S. 564, 577, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972). The Civil Service Regulations for the City of Philadelphia and the Philadelphia Home Rule Charter [*5] provide the basis for the asserted property right here. The regulations state that "any dismissal or demotion after the completion of the required probationary period of service, or suspension of any employee in the Civil Service shall be

for just cause only." Civil Service Regulations § 17.01.

To have a property interest in a benefit that is protected by procedural due process, "a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it."

Robb v. City of Philadelphia, 733 F.2d 286, 292 (3d Cir. 1984) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972)). In Pennsylvania, a civil servant has a limited right to continued employment--entitlement to continued employment in a given class. *Id.* at 292-93. Loss of salary or civil service demotion may constitute deprivation of a property interest. See *id.* at 295 ("We have determined that for due process considerations Robb has not been deprived of any property interest because he has not suffered a salary loss or civil service demotion.").

In the instant case, plaintiff [*6] has adequately alleged a violation of a protected property interest. Citing the Philadelphia Civil regulations, which provide the basis for the property interest, plaintiff has at least stated a cause of action.

2. Liberty Interest

To succeed on a claim for denial of liberty, a plaintiff must establish two things: first, that there is a liberty interest; and second, that defamatory statements have been published. *Bishop v. Wood*, 426 U.S. 341, 48 L. Ed. 2d 684, 96 S. Ct. 2074 (1976); *Board of Regents v. Roth*, 408 U.S. 564, 33 L. Ed. 2d 548, 92 S. Ct. 2701 (1972); *Cooley v. Pennsylvania House Fin. Agency*, 830 F.2d 469 (3d Cir. 1987); *Hadi v. City of Philadelphia*, 1994 U.S. Dist. LEXIS 14403, 1994 WL 551577 (E.D. Pa. Oct. 5, 1994).

An employment action implicates a fourteenth amendment liberty interest only if it (1) is based on a "charge against [the individual] that might seriously damage his standing and associations in the community . . . , for example, that he had been guilty of dishonesty or immorality" or (2) "imposes on him a stigma of other disability that forecloses his freedom to take advantage of other employment opportunities. *Roth*, 408 U.S. at 573 Stigma to reputation alone, absent some accompanying deprivation of present [*7] or future employment, is not a liberty interest protected by the fourteenth amendment.

1995 U.S. Dist. LEXIS 6308, *

Robb, 733 F.2d at 294.

To succeed on a claim based on a liberty interest in reputation, a plaintiff "must produce evidence that the reason for his termination was made public." *Copeland v. Philadelphia Police Dept.*, 840 F.2d 1139, 1148 (3d Cir. 1988), cert. denied, 490 U.S. 1004, 104 L. Ed. 2d 153, 109 S. Ct. 1636 (1989). A communication not made public cannot properly form the basis for a claim that a petitioner's good name was impaired. *Bishop*, 426 U.S. at 348. It is only once the plaintiff has established a liberty interest and produced evidence that defamatory statements were made public that he is entitled to a hearing. See *Freeman v. McKellar*, 795 F. Supp. 733, 738 (E.D. Pa. 1992). "A discharged employee must allege that he timely requested a hearing to clear his name and that the request was denied." *Id.* at 739. Finally, "there must be some factual dispute between an employer and a discharged employee which has some significant bearing on the employee's reputation." *Codd v. Velger*, 429 U.S. 624, 627, 51 L. Ed. 2d 92, 97 S. Ct. 882 (1977).

Here, Villela has not alleged that defamatory statements were made public, nor has [*8] he established that he had a liberty interest at all. He has not alleged that defendants accused him of dishonesty or immorality or that their action imposed a stigma that foreclosed his freedom to take advantage of other employment opportunities. In addition, Villela fails to allege that he has been denied the opportunity to clear his name. Indeed, he does not even allege that he requested such an opportunity.

Accordingly, Villela fails to state a claim for deprivation of liberty interest under the Fourteenth Amendment.

3. Procedural Due Process

Villela's claim that there should have been a hearing prior to his demotion is apparently patterned on "pre-termination hearings," to which public employees who cannot be dismissed except for just cause are entitled. *Edmundson v. Borough of Kennett Square*, 4 F.3d 186 (3d Cir. 1993); *Gniotek v. City of Philadelphia*, 808 F.2d 241 (3d Cir. 1986), cert. denied, 481 U.S. 1050, 95 L. Ed. 2d 839, 107 S. Ct. 2183 (1987). Nothing in the United States Constitution, the Philadelphia Home Rule Charter or case law in this circuit guarantees a "pre-demotion hearing" to a civil servant. The defendants provided Villela with all the process due him under the Home Rule [*9] Charter and the Constitution: he was notified of the intent to demote him; the reasons for the demotion were specific and enabled Villela to respond to them with particularity; and Villela was given the opportunity to respond to the notification.

As for post-demotion due process, Villela has

available and is pursuing appeals to the Philadelphia Civil Service Commission. A plaintiff must exhaust state or regulatory remedies before a Fourteenth Amendment due process claim is ripe. *Williamson County Planning Commission v. Hamilton Bank*, 473 U.S. 172, 197-200, 87 L. Ed. 2d 126, 105 S. Ct. 3108 (1985). Villela does not allege that he was denied the opportunity to appeal the demotion through the established Civil Service Commission appeals process. Thus, he fails to state a claim for violation of procedural due process.

D. Whistleblower Act

The Pennsylvania Whistleblower Act, 43 P.S. § 1421 et seq., prohibits an employer from retaliating against an employee for reporting wrongdoing or waste. Anyone who alleges a violation of this act must file the civil action within 180 days of the occurrence of the alleged violation. 43 P.S. § 1424(a).

Plaintiff filed this action within 180 days of the effective [*10] date of his demotion. As with the two-year statute of limitations discussed above, the events leading up to this alleged injury are not precluded by this 180-day limit.

In addition, plaintiff is not precluded from bringing this Whistleblower action even though he has not yet exhausted his regulatory remedies. While no court has ruled specifically on the issue of whether the § 1983 exhaustion requirement preempts the Whistleblower limitation period, Title VII cases are instructive. In *Plemmons v. Pennsylvania Mfgs. Ass'n Ins. Co.*, 1991 U.S. Dist. LEXIS 5176, 1991 WL 61128 (E.D. Pa. Apr. 13, 1991), for example, the court held that a plaintiff could simultaneously pursue a Whistleblower and a Title VII action:

The statute of limitations for whistleblower claims dictates that a plaintiff who has both a whistleblower and a Title VII claim arising from the same facts, must simultaneously pursue the state claim in state court, and the Title VII claim before the EEOC, in order to preserve the state cause of action. The interests of judicial economy would perhaps be better served, if a plaintiff is allowed to wait on the state claim and consolidate it with his Title VII claim in federal court, if the EEOC [*11] action fails. Nevertheless, a single equitable concern cannot override the clear provisions of a statute.

Id. at * 2.

The same holds true here. To comply with the statute, Villela had to file his Whistleblower claim within

the 180-day limitation period, regardless of the pendency of his regulatory appeal. Accordingly, the Third Cause of Action will not be dismissed.

E. Intentional Infliction of Emotional Distress

Defendant argues, and Villela agrees, that there is no cause of action for intentional infliction of emotional distress against the City of Philadelphia. The Fourth Cause of Action, therefore, is dismissed as to defendant City of Philadelphia.

Villela also asserts a claim for intentional infliction of emotional distress against defendant Commissioner Perez in his individual capacity.

In Pennsylvania,

to prevail on a claim of intentional infliction of emotional distress, the plaintiff must prove that defendant, by extreme and outrageous conduct, intentionally or recklessly caused the plaintiff severe emotional distress. . . . Liability will be found only where the conduct has been so outrageous in character, and so extreme in degree, [*12] as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. . . . Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!" The extreme and outrageous character of conduct may arise from an abuse by a person in a position of actual or apparent authority over another, or by one with the power to affect the other's interests.

Hackney v. Woodring, 424 Pa. Super. 96, 622 A.2d 286, 288 (Pa. Super. Ct. 1993), rev'd on other grounds, 652 A.2d 291 (Pa. 1994). The court must determine "whether the actor's conduct can reasonably be regarded as so extreme and outrageous as to permit recovery," *Clay v. Advanced Computer Applications*, 370 Pa. Super. 497, 536 A.2d 1375, 1385 (Pa. Super. Ct. 1988), rev'd in part, 522 Pa. 86, 559 A.2d 917 (Pa. 1989), and can do so on a motion to dismiss. *Aiken v. Bucks Ass'n for Retarded Citizens, Inc.*, 1991 U.S. Dist. LEXIS 16670, 1991 WL 243537 (E.D. Pa. Nov. 15, 1991). Pennsylvania courts have applied the law "cautiously." *Andrews v. City of*

Philadelphia, 895 F.2d 1469, 1486 (3d Cir. 1990). The Third Circuit [*13] has noted that "it is extremely rare to find conduct in the employment context that will rise to the level of outrageousness necessary to provide a basis for recovery for the tort of intentional infliction of emotional distress." *Id.* at 1487. "The act of terminating an employee does not provide a basis for maintaining an intentional infliction of emotional distress claim." *Walker v. Rohm & Haas Delaware Valley, Inc.*, 1994 U.S. Dist. LEXIS 6492, 1994 WL 197162, * 5 (E.D. Pa. May 18, 1994).

Even taking everything pled as true, as this Court must on a motion to dismiss, plaintiff here fails to state a claim upon which relief can be granted. If termination of an employee does not support a claim for intentional infliction of emotional distress, it follows a fortiori that demotion, a less severe action than termination, cannot support such a claim. Demotion of an employee in accordance with the policies and procedures established by the City of Philadelphia cannot be said to constitute "outrageous" behavior. Thus, the Fourth Cause of Action is dismissed for failure to state a claim.

F. Punitive Damages

Plaintiff, if successful in this action, is entitled to punitive damages under both [*14] § 1983 and the Pennsylvania Whistleblower Act. Thus, although it is not necessary to seek punitive damages as a separate cause of action, this Court will treat the Fifth Cause of Action as merely the request for punitive damages available under the prior counts.

An appropriate Order follows.

ORDER

AND NOW, this 9th day of May, 1995, upon consideration of Defendants' Motion to Dismiss Portions of the Complaint and Plaintiff's opposition thereto, IT IS HEREBY ORDERED that Defendants' Motion is **GRANTED** in part and **DENIED** in part.

IT IS FURTHER ORDERED that:

(1) the Second Cause of Action is **DISMISSED** only insofar as it purports to state a claim for violation of liberty interest and violation of procedural due process; and

(2) the Fourth Cause of Action is **DISMISSED**.

BY THE COURT:

HERBERT J. HUTTON, J.

10/13/04

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BY
ATTY West

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CIVIL DIVISION

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL, LOIS
EISENMAN, DIRECTOR OF NURSING,
JACKIE STONE, VICE PRESIDENT OF
NURSING, THELMA STRATTON, ICU
UNIT MANAGER,
Defendants.

No. 03-393-CD

FILED

MAR 18 2004

William A. Shaw
Prothonotary

ORDER

AND NOW this 17 day of March, 2004 following oral argument, it is the ORDER of this Court as follows:

1. In regard to Defendants' Preliminary Objections to Plaintiffs' claim under Pennsylvania's Whistleblower Law, 43 P.S. § 1422 *et.seq.*, contained in paragraphs 20-23 and 28 of the Amended Complaint, it is the ORDER of this Court that Defendants' Preliminary Objections are hereby DENIED.

2. Defendants' Preliminary Objections to Plaintiffs' claim for punitive damages under the provisions of Pennsylvania's Whistleblower Law and the Medical Care Availability and Reduction of Error Act (MCARE) is GRANTED. In making its decision, the Court notes that at oral argument counsel for Plaintiffs acknowledged that punitive damages were not recoverable under either the Whistleblower Law or MCARE.

3. Defendants' Preliminary Objections to Plaintiffs' claim for punitive damages as set out in Count VII of the Amended Complaint is DENIED in regard to Plaintiffs' claim for

punitive damages in reference to Counts III through VI of the Amended Complaint (i.e. those Counts not dealing with obtaining punitive damages under either the Whistleblower Law or MCARE). Only a hyper-technical application of the rules of civil procedure would require striking Count VII. While Plaintiffs' method of presenting their claim for punitive damages is unconventional and disfavored, it did not affect Defendants' substantive rights, as they were put on sufficient notice as to Plaintiffs' intent in regard to their claim for punitive damages. Pa.R.C.P. 1020; Dauphin Deposit Bank and Trust v. Pifer, 556 A.2d 904, 906 (Pa.Super.1989).

By the Court:


President Judge

FILED

03:52 1 cc *Prty* *Game of West* *Mont St* *Suite 205* *Harrisburg PA 17101*
MAR 18 2004 *cc* *Eric Smick Esq.* *Suite 3700* *Zupplow Place*

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Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit Manager,
Defendants.

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

No. 03-393-CD

Civil Action - Law

NOTICE TO PLEAD

**TO: Frances L. Selvage and Dawn L. Retorick
c/o James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
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FILED
APR 28 2004
m/w:451w
William A. Shaw
Prothonotary/Clerk of Courts
1 sent to Att

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

SCHNADER HARRISON SEGAL & LEWIS, LLP

By: 

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Attorneys for Defendants

FRANCES L. SELVAGE and)	IN THE COURT OF COMMON
DAWN L. RETORICK,)	PLEAS OF CLEARFIELD COUNTY,
Plaintiffs,	)	PENNSYLVANIA
)	
vs.)	
)	
CLEARFIELD HOSPITAL,	)	No. 03-393-CD
LOIS EISENMAN, Director of Nursing,)	
JACKIE STONE, Vice President of Nursing,	)	Civil Action - Law
THELMA STRATTON, ICU Unit Manager,)	
Defendants.)	

**ANSWER AND NEW MATTER
TO AMENDED COMPLAINT**

AND NOW come Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton (collectively, "Defendants"), by and through their undersigned counsel and file the within Answer to Amended Complaint, and in support thereof state as follows:

ANSWER

1. Defendants are without knowledge, information and belief sufficient to form a belief as to the truth or falsity of the averments of paragraph 1.
2. Defendants are without knowledge, information and belief sufficient to form a belief as to the truth or falsity of the averments of paragraph 2
3. The averments of paragraph 3 are admitted.

4. The averments of paragraph 4 are admitted.

5. The averments of paragraph 5 are admitted.

6. The averments of paragraph 6 are admitted.

7. The averments of paragraph 7 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 7 are admitted.

8. The averments of paragraph 8 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 8 are admitted.

9. The averments of paragraph 9 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading may be required, it is admitted that plaintiffs were two nurses in the Intensive Care Unit ("ICU") of Clearfield Hospital and have brought this suit against Clearfield Hospital. It is denied that it is brought against three of its employees who were managers and supervisors in the ICU. By way of further response, Ms. Stone is the Vice President of Nursing and Ms. Eisenman is the Director of Nursing and has held that position since April of 2002. Ms. Stratton has held the position of ICU Unit Manager since October of 2001. To the extent that the averments of paragraph 9 may be construed as factual assertions other than Amended Complaint that has been brought by plaintiffs, such assertions are denied. By way of further response, plaintiffs' Amended Complaint is a writing that speaks for itself.

10. The averments of paragraph 10 are admitted in part and denied in part. It is admitted that plaintiffs were both registered nurses who worked at Clearfield Hospital. It is denied that the plaintiffs had a combined thirty (30) years working in the ICU of Clearfield

Hospital. To the extent that plaintiffs imply that Clearfield Hospital staffed its ICU with nurses that did not have a high degree of training and skill, said averments are denied. The remaining averments of paragraph 10 are denied.

11. The averments of paragraph 11 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 11 are denied. It is specifically denied that in 1999 hospital management was intentionally cutting back and diluting the quality of care being administered by the ICU and putting the patients admitted to that unit at risk of serious injury or death. Further, Defendants are without knowledge, information or belief as to why plaintiffs began complaining about the care in the ICU. To the extent that the averments of paragraph 12 refer to writing documents, such documents speak for themselves. The remaining averments of paragraph 12 are specifically denied.

12. The averments of paragraph 12 contain conclusions of law to which no responsive pleading is required. To the extent averments are made that do not contain conclusions of law, such averments are specifically denied.

13. The averments of paragraph 13 are admitted in part. It is admitted that both plaintiffs resigned their employment with Clearfield Hospital in November of 2002. Plaintiffs' action has been brought in the Amended Complaint, which is a written document and speaks for itself. To the extent that the averments of paragraph 13 may be construed as factual assertions other than that contained in the Amended Complaint, such assertions are denied.

14. It is denied that Exhibit 1 appended to plaintiffs' Amended Complaint is a full and complete copy of said document. Rather, it is a 1 page document that appears to continue in Exhibit 2. By way of further response, plaintiffs refer to Exhibit 1 which is a written document

and speaks for itself. To the extent that the averments of paragraph 14 may be construed as factual assertions other than that contained in Exhibit 1, such assertions are denied. The remaining averments of paragraph 14 are specifically denied.

(a) It is denied that attached to plaintiffs' Amended Complaint as Exhibit 3 is an "Alert Form" dated March 26, 1999. By way of further response, there is an "Alert Form" dated March 26, 1999, that is attached with additional documents at Exhibit 3. The "Alert Form" dated March 26, 1999, is a written document and speaks for itself. To the extent that the averments of paragraph 14(a) may be construed as factual assertions other than that contained in said "Alert Form," such assertions are denied.

(b) It is denied that attached to plaintiffs' Amended Complaint as Exhibit 3 is an "Problem Form" dated December 29, 2000. By way of further response, there is a "Problem Form" which refers to events of December 29, 2000, but that is itself undated. Said "Problem Form" is a written document and speaks for itself. To the extent that the averments of paragraph 14(b) may be construed as factual assertions other than that contained in said document, such assertions are denied.

(c) The averments of paragraph 14(c) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(c) may be construed as factual assertions other than that contained in the attached document, such assertions are denied. By way of further response, Exhibit 4 attached to plaintiffs' Amended Complaint is a response to a warning notice received by Ms. Retorick.

(d) The averments of paragraph 14(d) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(d) may be construed as factual assertions other than that contained in the attached document, such assertions are denied.

(e) The averments of paragraph 14(e) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(e) may be construed as factual assertions other than that contained in the attached document, such assertions are denied.

(f) The averments of paragraph 14(f) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(f) may be construed as factual assertions other than that contained in the attached document, such assertions are denied.

(g) The averments of paragraph 14(g) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(g) may be construed as factual assertions other than that contained in the attached document, such assertions are denied.

(h) The averments of paragraph 14(h) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(h) may be construed as factual assertions other than that contained in the attached document, such assertions are denied.

(i) The averments of paragraph 14(i) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(i) may be construed as factual assertions other than that contained in the attached document, such assertions are denied.

(j) The averments of paragraph 14(j) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(j) may be construed as factual assertions other than that contained in the attached document, such assertions are denied.

(k) The averments of paragraph 14(h) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(h) may be construed as factual assertions other than that contained in the attached document, such assertions are denied.

(l) The averments of paragraph 14(l) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(l) may be construed as factual

assertions other than that contained in the attached document, such assertions are denied. By way of further response, said grievance form does not provide that it is on behalf of either of the plaintiffs.

(m) The averments of paragraph 14(m) refer to a written document which speaks for itself. To the extent that the averments of paragraph 14(m) may be construed as factual assertions other than that contained in the attached document, such assertions are denied. By way of further response, Exhibit 14 to plaintiffs' Amended Complaint is a part-time temporary critical care float job vacancy posting and it is denied that said document represents a written complaint, as alleged in paragraph 14(m).

(n) The averments of paragraph 14(n) contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading may be required, the averments of paragraph 14(n) are denied. It is specifically denied that plaintiffs made additional oral and written reports of "wrongdoing" and "waste" based upon serious events and incidents to the Defendants after the effective date of the MCARE Act. It is further specifically denied that Defendants intentionally forced plaintiffs to leave their jobs or that Defendants implemented a hostile work environment at any time. By way of further response, Defendants incorporate herein by reference their responses to paragraph 14 and its subparagraphs (a) through (m).

15. The averments of paragraph 15 are denied. It is specifically denied that oral reports were made by Plaintiffs of alleged dangers that patients were being exposed to and it is further denied that the ICU had untrained and inexperienced personnel assigned to care for specific patients in the ICU. The remaining averments are specifically denied.

16. The averments of paragraph 16 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 16 are specifically denied.

17. The averments of paragraph 17 and its subparagraph (a) through (n) contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 17 and its subparagraphs (a) through (n) are specifically denied.

18. The averments of paragraph 18 are denied. It is specifically denied that the Defendants and those allegedly acting in concert with them began a campaign intentionally designed to turn Plaintiffs' peers and other hospital employees against Plaintiffs, humiliate and isolate Plaintiffs or cause such harm and difficulty that Plaintiffs would leave their positions as nurses in the ICU.

19. The averments of paragraph 19 and its subparagraph (a) through (g) contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 17 and its subparagraphs (a) through (g) are specifically denied.

20. The averments of paragraph 20 contain conclusions of law to which no responsive pleading is required. To the extent said averment is inconsistent with said statute, such averments are denied.

21. The averments of paragraph 21 contain conclusions of law to which no responsive pleading is required. To the extent said averment is inconsistent with said statute, such averments are denied.

22. The averments of paragraph 22 contain conclusions of law to which no responsive pleading is required. To the extent said averment is inconsistent with said statute, such averments are denied.

23. The averments of paragraph 23 contain conclusions of law to which no responsive pleading is required. To the extent said averment is inconsistent with said cotes of ethics, such averments are denied.

COUNT I

24. The averments of paragraphs 1 through 23 above are incorporated by reference as if fully set forth herein.

25. The averments of paragraph 25 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 25 are denied.

26. The averments of paragraph 26 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 26 are admitted in part and denied in part. It is admitted that the plaintiffs were employed by Clearfield Hospital as a charge nurse and a relief charge nurse in the ICU. The remaining averments are denied.

27. The averments of paragraph 27 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 27 are denied.

28. The averments of paragraph 28 are denied. The Defendants lack knowledge, information or belief sufficient to form an opinion as to the averments of paragraph 28 that the Plaintiffs “believed in good faith” that they were verbally and in writing reporting wrongdoing

and waste to their superiors as well as other appropriate agencies such as the Pennsylvania Department of Health and the Pennsylvania Nurses Association and, as such, said averments are denied. By way of further response, upon information and belief, it is denied that Plaintiffs complained to the Pennsylvania Department of Health. Further, the averments of paragraph 28 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading may be required, the averments of paragraph 28 are denied.

29. The averments of paragraph 29 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 29 are denied. It is specifically denied that the defendants wanted to force the plaintiffs to leave their employment so as to hide wrongdoing and waste and serious events and incidents, the existence of which are all denied. It is specifically denied that any such wrongdoing, waste serious events, or incidents occurred. It is further denied that the allegedly “dangerous and deplorable conditions in the ICU” existed at Clearfield Hospital. The remaining averments are denied.

30. The averments of paragraph 30 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 30 are denied. It is specifically denied that the plaintiffs were constructively discharged and forced to leave their positions at Clearfield Hospital ICU. It is further denied that plaintiffs were forced to leave their positions at Clearfield Hospital or to seek employment at a distant location. It is further specifically denied that plaintiffs made reports of waste and wrongdoing as outlined in the Pennsylvania Whistleblower Law, or that the plaintiffs are entitled to damages as set forth in their Complaint. Defendants incorporate herein by reference their responses to the averments of paragraphs 54 through 57. The remaining averments are denied.

COUNT II

31. The averments of paragraphs 1 through 30 above are incorporated by reference as if fully set forth herein.

32. The averments of paragraph 32 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 32 are denied to the extent they infer that the plaintiffs reported “serious events and incidents” that they reasonably believed to have occurred within Clearfield Hospital. To the extent said averment is inconsistent with said statute, such averments are denied.

33. The averments of paragraph 33 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 33 are denied. Defendants incorporate herein by reference their responses to paragraphs 14 and its subparagraphs (a) through (n). It is specifically denied that plaintiffs issued written or oral reports at any time after the effective date of the MCARE Act or that the defendants forced plaintiffs to leave the Clearfield Hospital ICU by creating a hostile work environment. The remaining averments are denied.

34. The averments of paragraph 34 contain conclusions of law to which no responsive pleading is required. To the extent said averment is inconsistent with said statute, such averments are denied.

35. The averments of paragraph 35 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 35 are denied. Defendants incorporate herein by reference their responses to paragraphs 54 through 57. The existence and extent of plaintiffs’ claimed damages are denied.

COUNT III

36. The averments of paragraphs 1 through 35 above are incorporated by reference as if fully set forth herein.

37. The averments of paragraph 37 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, said averments are denied. By way of further response, plaintiffs incorporate herein by reference their Preliminary Objections filed in this matter. The remaining averments are denied.

38. The averments of paragraph 38 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 38 are denied. Defendants incorporate herein by reference their response to paragraph 37 and their Preliminary Objections filed in this matter.

39. The averments of paragraph 39 are specifically denied. It is specifically denied that defendants retaliated against plaintiffs at any time. Defendants incorporate herein by reference their responses to paragraphs 17 and its subparagraphs (a) through (n).

40. The averments of paragraph 40 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 40 are denied. It is specifically denied that the plaintiffs were constructively discharged by the defendants. It is further specifically denied that the defendants retaliated against the plaintiffs or created a hostile work environment for the plaintiffs. Defendants incorporate herein by reference their responses to paragraphs 54 through 57. The existence and extent of plaintiffs' claimed damages is denied.

COUNT IV

41. The averments of paragraphs 1 through 40 above are incorporated by reference as if fully set forth herein.

42. The averments of paragraph 42 and its subparagraphs (a) through (h) contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 42 and its subparagraphs (a) through (h) are specifically denied. It is specifically denied that the alleged statements were made by any of the defendants.

43. The averments of paragraph 43 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 43 are denied. Defendants incorporate herein by reference its responses to paragraph 42 and its subparagraphs (a) through (h) above.

44. The averments of paragraph 44 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 44 are denied. Defendants incorporate herein by reference its responses to paragraph 42 and its subparagraphs (a) through (h) above.

45. The averments of paragraph 45 are denied. Defendants incorporate herein by reference their responses to paragraph 42 and its subparagraphs (a) through (h) above, and its responses to paragraphs 54 through 57. The existence and extent of plaintiffs' claimed damages is denied.

COUNT V

46. The averments of paragraphs 1 through 40 above are incorporated by reference as if fully set forth herein.

47. The averments of paragraph 47 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 47 are denied. Defendants incorporate herein by reference their responses to paragraph 42 and its subparagraphs (a) through (h) above.

48. The averments of paragraph 48 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 48 are denied. By way of further response, defendants incorporate herein by reference their responses to paragraphs 54 through 57. The existence and extent of plaintiffs' claimed damages is denied.

COUNT VI

49. The averments of paragraphs 1 through 48 above are incorporated by reference as if fully set forth herein.

50. The averments of paragraph 50 are denied. Defendants incorporate herein by reference their responses to paragraphs 1 through 49 above. The existence and extent of plaintiffs' claimed damages is denied.

51. The averments of paragraph 51 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 51 are denied. By way of further response, defendants incorporate herein by reference their responses to paragraphs 1 through 50 above and its New Matter attached hereto.

52. The averments of paragraph 52 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 52 are denied. The existence and extent of plaintiffs' claimed damages is denied.

53. The averments of paragraph 53 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 53 are denied. By way of further response, defendants incorporate herein by reference their responses to paragraphs 54 through 57. The existence and extent of plaintiffs' claimed damages is denied.

COUNT VII

54. The averments of paragraphs 1 through 53 above are incorporated by reference as if fully set forth herein.

55. The averments of paragraph 55 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 55 are specifically denied. By way of further response, defendants incorporate herein by reference their responses to paragraph 1 through 54 above and their New Matter attached hereto.

COUNT VIII

56. The averments of paragraphs 1 through 55 above are incorporated by reference as if fully set forth herein.

57. The averments of paragraph 57 contain conclusions of law to which no responsive pleading is required. To the extent a responsive pleading is required, the averments of paragraph 57 are denied. The existence and extent of plaintiffs' claimed damages is denied.

WHEREFORE, the defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton, request that judgment be entered in their favor and award the defendants their costs and such further relief as is just and proper.

NEW MATTER

58. The averments of paragraphs 1 through 57 above are incorporated by reference as if fully set forth herein.

59. Plaintiffs' claims fail to state a cause of action upon which relief can be granted.

60. Plaintiffs' actions are barred, in whole or in part, by the applicable statute of limitations.

61. Any recovery by the plaintiffs against the defendants is barred by the doctrine of laches inasmuch as the delay in plaintiffs' bringing of their claims was unreasonable and, as a result of said delay, defendants suffered prejudice.

62. Plaintiffs' claims are barred, in whole or in part, by plaintiffs' failure to mitigate damages.

63. Plaintiffs' claims are barred, in whole or in part, by the doctrine of unclean hands.

64. Plaintiffs voluntarily resigned their employment with the defendant, Clearfield Hospital.

65. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver and estoppel.

66. Punitive damages are not recoverable under the Whistleblower Law or the MCARE Act.

67. Plaintiffs did not make a good faith report, verbally or in writing, to their employer or an appropriate authority of an instance of wrongdoing or waste.

68. The statutes, codes of conduct and codes of ethics cited by plaintiffs do not fall within the purview of the term "wrongdoing" or "waste" as defined by the Whistleblower Law.

69. The defendant, Clearfield Hospital, did not discharge, threaten or otherwise discriminate against the plaintiffs regarding their compensation, terms, conditions, location or privileges of employment.

70. The plaintiffs never made a good faith report, verbally or in writing, to their employer or an appropriate authority of an instance of wrongdoing or waste.

71. Plaintiffs' claims fail, in whole or in part, because their complaints regarding the staffing of the ICU did not lead to their resignation.

72. Plaintiffs' claims fail, in whole or in part, because plaintiffs did not report a "serious event" or "incident" according to the Safety Plan of Clearfield Hospital, as required for recovery under the MCARE Act.

73. Plaintiffs' claims fail, in whole or in part, because they did not report a "serious event" or "incident" or otherwise comply with the requirements of the MCARE Act following its effective date.

74. Plaintiffs' claims are barred, in whole or in part, because all alleged reports preceded the effective date of the MCARE Act.

75. Plaintiffs are barred, in whole or in part, from recovering damages under the MCARE Act for reports made prior to the effective date of the MCARE Act.

76. Plaintiffs' claims fail, in whole or in part, because the defendants did not make working conditions so intolerable that the plaintiffs were forced to resign.

77. The plaintiffs were both at-will employees.

78. Plaintiffs' claims are barred, in whole or in part, because there is no general public policy protecting whistleblowers in the private sector.

79. Plaintiffs' claims are barred, in whole or in part, because a "clear mandate" of public policy has not been violated.

80. Plaintiffs' claims fail, in whole or in part, because none of the defendants made a defamatory communication about the plaintiffs that was published to a third party who understood the defamatory nature of the communication about the plaintiffs.

81. Plaintiffs' claims fail, in whole or in part, because plaintiffs have not suffered a special harm as a result of the alleged communications.

82. Plaintiffs' claims fail, in whole or in part, because the alleged defamatory communications, which communications are specifically denied, do not tend to harm the reputation of the plaintiffs, did not lower them in the estimation of the community, or deter third persons from associating with the plaintiffs.

83. Plaintiffs' claims are barred, in whole or in part, because there has been no publicity given to private facts, which would be highly offensive to a reasonable person and which are not of a legitimate concern to the public.

84. Plaintiffs' claims are barred, in whole or in part, because defendants did not engage in extreme and outrageous conduct or intentionally or recklessly causing severe emotional distress to the plaintiffs.

85. Plaintiffs are not entitled to punitive damages.

86. Plaintiffs' claims are barred, in whole or in part, pursuant to the Whistleblower Law statute of limitations and, more specifically, because plaintiffs' claims were not brought within 180 days after the occurrence of any alleged violation.

87. The alleged actions by the defendants, which are specifically denied, occurred for separate and legitimate reasons, which are not merely pretextual.

88. The defendants did not retaliate against the plaintiffs in any manner during the course of their employment.

89. All actions taken by defendants were based on separate and legitimate business reasons.

90. Plaintiffs were not terminated, but could have been terminated, for the following legitimate reasons:

- (a) Plaintiffs failed to follow Clearfield Hospital's policies and procedures and were disciplined for same;
- (b) Plaintiffs were insubordinate; and
- (c) Plaintiffs' behavior was disruptive and inappropriate.

91. Plaintiffs suffered no damages due to any conduct by any of the defendants.

92. Any damages suffered by the plaintiffs were caused by their own actions or inaction.

93. Plaintiffs' claims are barred because the alleged communications and/or statements by defendants, the making of which is specifically denied, were and are true and are therefore subject to the defense of truth.

94. Plaintiffs' claims are barred, in whole or in part, due to arbitration and award and said arbitration award controls all or part of plaintiffs' alleged causes of action and serve as a bar thereto.

95. Plaintiffs' claims are barred, in whole or in part, based upon the defense of fair comment.

96. By virtue of the doctrine of immunity, defendants are immune from suit and plaintiffs' Amended Complaint is barred.

WHEREFORE, the defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton, request that judgment be entered in their favor and award the defendants their costs and such further relief as is just and proper.

SCHNADER HARRISON SEGAL & LEWIS, LLP

By: 

Eric T. Smith (PA Id. # 70491)
S. Elaine Diedrich (PA Id. #84077)
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

VERIFICATION

I, LOIS EISENMAN, Director of Nursing, Clearfield Hospital, have read the foregoing Answer to Amended Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Date: 4/27/04



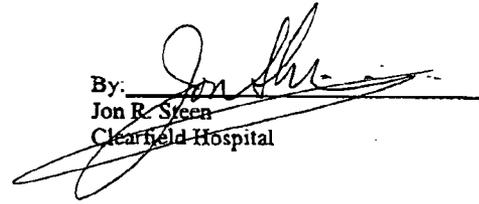
Lois Eisenman
Director of Nursing
Clearfield Hospital

VERIFICATION

I, Jon R. Steen, Vice President of Human Resources, Clearfield Hospital, have read the foregoing Answer to Amended Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Date: 4/26/04

By: 
Jon R. Steen
Clearfield Hospital

VERIFICATION

I, JACKIE STONE, Vice President of Nursing, Clearfield Hospital, have read the foregoing Answer to Amended Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Date: 4/26/04

Jackie Stone
Jackie Stone
Vice President of Nursing
Clearfield Hospital

VERIFICATION

I, THELMA STRATTON, ICU Manager, Clearfield Hospital, have read the foregoing Answer to Amended Complaint. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

Date: 04-27-2004


Thelma Stratton
ICU Manager
Clearfield Hospital

CERTIFICATE OF SERVICE

I hereby certify that on APRIL 27, 2004, a true and correct copy of the foregoing **Answer and New Matter to Amended Complaint** was sent, via U.S. Mail, first class postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FILED

MAY 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

ANSWER TO NEW MATTER

AND NOW, come the Plaintiffs, Frances L. Selvage and Dawn L. Retorick, by and through their counsel, James J. West, Esquire, and file the following Answer to New Matter filed in the Defendants' Answer to Plaintiffs' Complaint.

58. This is an incorporation paragraph to which no answer is required.

59. This paragraph states a legal conclusion to which no answer is required.

60. This paragraph states a legal conclusion to which no answer is required. Insofar as it may be considered a factual averment, it is denied. Plaintiffs' action was commenced by a Writ of Summons and filed in a timely manner.

61. This paragraph is a legal conclusion to which no answer is required. Insofar as it may be considered a factual allegation, it is denied. Plaintiffs' action was filed in a timely manner and without any undo delay.

62. This paragraph states a legal conclusion to which no answer is required. Insofar as it may be considered a factual allegation, it is denied. Plaintiffs have, in fact, attempted to mitigate their damages by successfully seeking other employment as nurses in an Intensive Care Unit.

63. This paragraph states a legal conclusion to which no answer is required.

64. Denied. The Plaintiffs were constructively discharged by the Defendant, Clearfield Hospital, as outlined in the Complaint the Plaintiffs were harassed, humiliated and abused by and at the direction of the individual Defendants so as to be literally driven from their positions as intensive care nurses.

65. This paragraph states a legal conclusion to which no answer is required.

66. Admitted. The Plaintiffs have admitted that punitive damages are not recoverable under the Whistleblower Law or the MCARE Act and the Court has so ruled.

67. Denied. As outlined in the Plaintiffs' Complaint and attached exhibits the Plaintiffs made numerous oral and written reports to appropriate authorities of wrongdoing and waste under the Whistleblower Law.

68. This paragraph states a legal conclusion to which no answer is required. To the contrary, Plaintiffs respectfully submit that violations of well established codes of conduct and ethics can clearly provide the predicate wrongdoing and waste required under the Whistleblower Law, 43 P.S. §1422 *et seq.*

69. Denied. As set forth in the Plaintiffs' Complaint the Defendant, Clearfield Hospital, and the other Defendants clearly constructively discharged the Plaintiffs and made their

professional lives so unbearable that any reasonable nurse would have left employment under the facts and circumstances of this case.

70. Denied. To the contrary, the Plaintiffs in their Complaint and attached exhibits have set forth numerous written and oral reports of wrongdoing and waste.

71. Denied. To the contrary, it was Plaintiffs' complaints about incompetent and inadequate staffing of the Intensive Care Unit that directly led to their superiors harassing and humiliating them to the point where they were constructively discharged from employment.

72. This paragraph states a legal conclusion to which no answer is required. Insofar as it may be considered a factual allegation it is denied because the Plaintiffs did report serious events and incidents so as to comply with the MCARE Act.

73. This paragraph states a legal conclusion to which no response is required. Insofar as it may be considered a factual allegation it is denied because the Plaintiffs did report serious events and incidents and comply with the MCARE Act.

74. Denied. The Plaintiffs' Complaint speaks for itself and numerous acts and events, both oral and written, occurred after the effective date of the MCARE Act and the events prior to the effective date of the MCARE Act clearly show the intent of the Defendants to violate the Act once it took effect.

75. This paragraph states a legal conclusion to which no answer is required. By way of further answer, the Plaintiffs are clearly entitled to recover damages for those events, including their constructive discharge, which occurred after the effective date of the MCARE Act and the other causes of action set forth in the Plaintiffs' Complaint would apply to pre-MCARE Act

events, i.e., whistleblower action (Count I); constructive discharge (Count III); defamation (Count IV); false light (Count V); and intentional infliction of emotion harm (Count VI).

76. Denied. To the contrary, as set forth in Plaintiffs' Complaint, the Defendants tormented, harassed and humiliated the Plaintiffs and caused others to do so and made working conditions intolerable for a reasonable nurse similarly situated thereby constructively discharging the Plaintiffs.

77. Denied. It is denied that the Plaintiffs are at-will employees. The Plaintiffs are members of a Union known as the Pennsylvania Nurses Association Local 708 thereby changing their at-will status.

78. This paragraph states a legal conclusion to which no response is required. By way of further answer, the Defendants are not in the private sector under established Pennsylvania case law, Clearfield Hospital solicits and accepts both federal and state Medicare/Medicaid funds, grants and other means of support thereby making all Defendants responsible under the Whistleblower Law as employers covered by such statute, 43 P.S. §1422 *et seq.*

79. This paragraph states a legal conclusion to which no answer is required. By way of further answer, Plaintiffs rely on the allegations of the Complaint that a clear mandate of public policy has been violated by the Defendants in systematically understaffing the Intensive Care Unit, ignoring Plaintiffs' repeated complaints about staff competency, and constructively discharging the Defendants for complaining about unqualified nurses and a dangerous staffing condition.

80. This paragraph states a legal conclusion to which no answer is required. By way of further answer, the Defendants' defamatory communications were in fact published to third

parties who understood the defamatory nature of the communication about the Plaintiffs, i.e., the Clearfield Hospital general community.

81. Denied. The Plaintiffs have suffered specific and special harm and continue to do so up to the present time, i.e., Plaintiffs have been forced to find new positions as intensive care nurses in the city of Carlisle, thereby removing them for long periods of time from their families, friends, activities, and normal pleasures of life in Clearfield County for the sole purpose of being able to practice their profession in a safe and professional fashion free from harassment, humiliation and intentional torment.

82. This paragraph states a legal conclusion to which no answer is required. Insofar as the paragraph may be considered to contain factual allegations, they are denied. The Defendants' statements and conduct clearly harmed the reputation of Plaintiffs and tend to lower that reputation in the community and to deter other persons, nurses and employees from associating with the Plaintiffs especially in the work environment.

83. This paragraph states a legal conclusion to which no answer is required. Insofar as they are factual in nature, they are denied. Matters were publicized both within the hospital and general community to matters that were highly offensive to any reasonable person and such statements were made with malice and with specific intent to harm the Plaintiffs in their present and future employment as Intensive Care Unit nurses and drive them from their employment at Clearfield Hospital.

84. This paragraph states a legal conclusion to which no answer is required. Insofar as the paragraph may be considered to contain factual allegations, it is denied and it is specifically alleged that the conduct set forth in the Plaintiffs' Complaint and to be produced at

trial will be outrageous, extreme, intentional and done with such reckless disregard, and for the purpose of causing emotional distress, that it will entitle the Plaintiffs to both damages for intentional infliction of emotional harm as well as punitive damages.

85. This paragraph states a legal conclusion to which no answer is required. To the contrary, Plaintiffs are entitled to punitive damages in that the Defendants' conduct was outrageous. (See answer to paragraph 84 above.)

86. Denied. This action was commenced in a timely fashion by Writ of Summons which was filed long before the 180 day time period set forth in the Whistleblower Law had elapsed. All other alleged causes of action are clearly within the applicable statute of limitations.

87. This paragraph states a legal conclusion to which no answer is required. Insofar as the paragraph may be considered to contain factual allegations, they are denied and strict proof thereof will be required.

88. This paragraph states a legal conclusion to which no answer is required. Insofar as they are of a factual nature, they are denied. Based on the allegations of Plaintiffs' Complaint, the Defendants did retaliate against the Plaintiffs during the course of their employment.

89. This paragraph states a legal conclusion to which no answer is required. Insofar as an answer is required, the allegations are denied. The reasons that the Defendants took action against the Plaintiffs were because the Plaintiffs complained about unprofessional and dangerous staffing in the Intensive Care Unit, and under the Whistleblower Law, MCARE Act and common law principles these well-founded complaints could not and should not have resulted in the Plaintiffs being harmed in their employment as alleged in Plaintiffs' Complaint.

90. The allegations of paragraph 90, and its subparts, are denied. To the contrary, the Plaintiffs followed Clearfield Hospital's policies and procedures, they were disciplined because they complained about unsafe staffing conditions at the hospital, they were disciplined in a way that was discriminatory and totally different than the discipline imposed on other nurses similarly situated, they were never insubordinate but were threatened with being charged with insubordination because of their legitimate complaints, and their behavior was not disruptive or inappropriate, but rather, it was the Defendants' behavior that was unprofessional, disruptive, inappropriate and in violation of the various canons of ethics and codes of conduct applicable to nurses and hospitals.

91. Denied. The damages are set forth in Plaintiffs' Complaint. The Plaintiffs have been forced to seek new employment in Carlisle, Pennsylvania, to commute great distances and were separated from their job, family, friends and normal social activities for great periods of time based on the Defendants' wrongdoing and conduct.

92. Denied. The damage suffered by the Plaintiffs was caused by the failure of the Defendants to take appropriate corrective action and, rather than providing the patients of Clearfield Hospital with a safe and properly staffed Intensive Care Unit, the Defendants chose to retaliate against the Plaintiffs for calling the shortcomings of the Intensive Care Unit to their attention and systematically drive them from their employment at Clearfield Hospital.

93. This paragraph states a legal conclusion to which no answer is required. Insofar as they may be considered of a factual nature they are denied and strict proof is required.

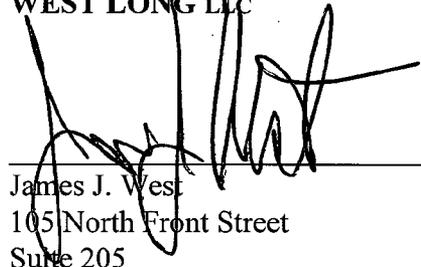
94. The allegations of paragraph 94 are legal conclusions to which no answer is required. Moreover, those allegations are denied by the Plaintiffs on the basis that no arbitration or award has occurred in this case.

95. The allegations of paragraph 95 are legal conclusions to which no answer is required.

96. The allegations of paragraph 96 are legal conclusions to which no answer is required.

Respectfully Submitted,

WEST LONG LLC



James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

Dated: May 19, 2004

Counsel for Plaintiffs

VERIFICATION

I, Dawn L. Retorick, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 5-18-04


Dawn L. Retorick

VERIFICATION

I, Frances L. Selvage, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

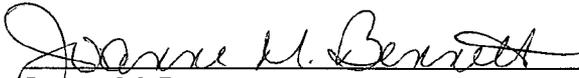
Date: 5/18/04

Frances L. Selvage
Frances L. Selvage

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of **May, 2004**, a true and correct copy of the foregoing Plaintiffs' Answer to New Matter was served upon the party named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

Eric T. Smith, Esquire
S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

FILED

11:22 AM
MAY 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

No
000
KED

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

:
:
: No. 03-393-CD

:
: Civil Action - Law

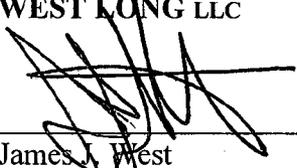
**CERTIFICATE PREREQUISITE TO
SERVE SUBPOENA PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiffs, Frances L. Selvage and Dawn L. Retorick, certify that:

1. A Notice of Intent to Serve the Subpoena with a copy of the subpoena attached thereto was mailed to each party at least twenty (20) days prior to the date on which the subpoena was sought to be served.
2. A copy of the Notice of Intent, including the proposed subpoena is attached to this certificate.
3. No objections to the subpoena have been received.
4. The subpoena which will be served is identical to the subpoena which is attached to the Notice of Intent.

Respectfully Submitted,

WEST LONG LLC


James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

^{EGK}
FILED ^{NO CC}
M/14/04
DEC 06 2004

William A. Shaw
Prothonotary/Clerk of Courts

Dated: December 1, 2004

Counsel for Plaintiffs

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and : IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs :
v. :
CLEARFIELD HOSPITAL, : Civil Action - Law
LOIS EISENMAN, Director of Nursing, :
JACKIE STONE, Vice President of :
Nursing, THELMA STRATTON, ICU Unit :
Manager, :
Defendants :

**NOTICE OF INTENT TO SERVE A SUBPOENA
TO PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.21**

TO: S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Plaintiffs, Frances L. Selvage and Dawn L. Retorick, intend to serve a subpoena identical to the one attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Respectfully Submitted,

WEST LONG LLC



James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

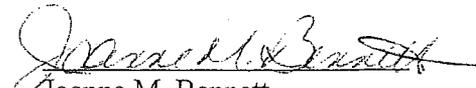
Dated: November 3, 2004

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of **November, 2004**, a true and correct copy of the foregoing Notice of Intent to Serve a Subpoena was served upon the party named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

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

v.

: No. 03-393-CD

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,

: Civil Action - Law

Defendants

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22**

TO: Pennsylvania Department of Health, Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce
the following documents or things:

See attached addendum.

at 105 North Front Street, Suite 205, Harrisburg, PA 17101

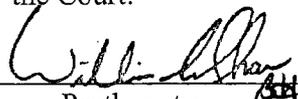
You may deliver or mail legible copies of the documents or produce things requested by this
subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek, in advance, the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena, within twenty (20) days
after its service, the party serving this subpoena may seek a court order compelling you to comply
with it.

James J. West
Attorney Id. 00331
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
Counsel for Plaintiffs

Date: *November 1, 2004*

By the Court:



WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA Deputy

Addendum to Subpoena

All documents, including, but not limited to, correspondence, electronic mail, witness interview notes, computerized records or databases, memoranda, minutes of meetings, intra and interoffice communications, studies, summaries, analysis, results of investigations, reviews, recommendations, critiques, notices, messages, instructions, notes, notebooks, tape recordings, partial or complete reports of telephone conversations, newspaper or other media releases, public and governmental filings, opinions, and any other writings or documents incident to the survey, investigation, evaluation and/or inspection conducted at the Clearfield Hospital in 2004 including, but not limited to, aspects of the survey dealing with nursing and staffing issues and the ICU Unit.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of **December, 2004**, a true and correct copy of the foregoing document was served upon the party named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

and Subpoena to Produce Documents or Things For Discovery Pursuant to Rule 4009.22 directed to the Pennsylvania Department of Health, Deputy Secretary for Quality Assurance Division of Acute and Ambulatory Care (“Department of Health”). True and correct copies of the Notice and Subpoena are attached hereto as Exhibit “A.”

2. The Subpoena identifies a broad range of documents requested from the Department of Health:

All documents, including, but not limited to, correspondence, electronic mail, witness interview notes, computerized records or databases, memoranda, minutes of meetings, intra and interoffice communications, studies, summaries, analysis, results of investigations, reviews, recommendations, critiques, notices, messages, instructions, notes, notebooks, tape recordings, partial or complete reports of telephone conversations, newspaper or other media releases, public and governmental filings, opinions, and any other writings or documents incident to the survey, investigation, evaluation and/or inspection conducted at the Clearfield Hospital in 2004, including but not limited to, aspects of the survey dealing with nursing and staffing issues and the ICU Unit.

See Exhibit “A.”

3. Defendants bring this Motion for Protective Order to prohibit this discovery or, in the alternative, to limit its broad scope.

4. The discovery of any relevant information in preparation of trial is permissible pursuant to Pa.R.C.P. 4003.1, however, a party’s right to discovery is not absolute and the limitations are set out in Pa.R.C.P. 4011 and 4003.1 through 4003.6. *Taylor v. West Penn Hospital*, 48 Pa. D. & C.3d 178, 181 (1987).

5. Pennsylvania Rule of Civil Procedure defines the scope of discovery generally as follows:

[A] party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party . . .

Pa. R.C.P. 4003.1(a).

6. Pennsylvania Rule of Civil Procedure 4011(b) states, in relevant part, “[n]o discovery or deposition shall be permitted which would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent or any person or party.”

7. The information sought in the Subpoena is far outside the scope of the claims and defenses of any party in this matter as well as any relevant time period.

8. Plaintiffs’ Amended Complaint (“Amended Complaint”) alleges events that occurred between 1999 and November 2002. *See*, Amended Complaint ¶¶ 11 and 14. Indeed, both Plaintiffs had resigned their employment with Clearfield Hospital by mid-November 2002.

9. However, the Subpoena to Department of Health requests documents from a survey remote in time from Plaintiffs’ employment with Clearfield Hospital - a survey conducted by the Health Department in September/October 2004 (“September/October 2004 Survey”).

10. In addition, Plaintiffs’ complaint only addresses problems during their employment with nurses in the ICU not being sufficiently qualified to work in the ICU and with the ICU not having enough nurses on duty at a given time. It does not address any other issues in the hospital or with any other unit of the Hospital other than the ICU. *See* Amended Complaint.

11. For these reasons, on November 11, 2004, subsequent to the service of the Notice of Intent to Serve a Subpoena to Produce Documents and Things for Discovery Pursuant to Rule 4009.21, Defendants’ counsel contacted Plaintiffs’ counsel to discuss the Subpoena in an attempt to avoid bringing a discovery motion.

12. On December 13, 2004, after receiving the Subpoena that had been served on the Health Department, Defendants’ counsel contacted Plaintiffs’ counsel again to discuss the Subpoena in an attempt to avoid bringing a discovery motion. Plaintiffs’ counsel advised that he would not agree to revise the Subpoena. In a letter dated December 14, 2004, Defendants’

counsel advised Plaintiffs' counsel that a Motion for Protective Order would be filed. A true and correct copy of the December 14, 2004, letter is attached hereto as Exhibit "B."

13. The Subpoena directed to the Department of Health regarding the 2004 inspection, encompassed *all* records, regarding *all* units of the Hospital, and *all* aspects of the inspection. The overly broad request goes beyond any claims or defenses in this case.

14. Moreover, the Department of Health's inspection involved incidents that occurred in 2004, temporally remote from the allegations of Plaintiff's Amended Complaint – which involved events that ended in 2002.

15. Indeed, the inspection began almost 2 years after the Plaintiffs resigned their employment with the Clearfield Hospital and did not address any matters prior to 2004.

16. The Department of Health conducts several inspections per year at Clearfield Hospital. Between the end of Plaintiffs' employment in 2002 and the September/October 2004 Survey, the Department of Health had conducted **eight (8)** inspections or surveys of the Hospital and its satellite clinics. None of the deficiencies found in the September/October 2004 Survey are present in any of these surveys.

17. Moreover, the September/October 2004 Survey does not address any issues with respect to short-staffing or the qualification of nurses in the ICU, which form the basis of Plaintiffs' claims.

18. The request for documents in the subpoena is overbroad, is not relevant to any matter in this lawsuit and is not likely to lead to the discovery of admissible evidence. Moreover, pursuant Pennsylvania Rule of Civil Procedure 4011(b), it will cause unreasonable annoyance, embarrassment, and oppression for the Defendants and the patients of Clearfield Hospital.

19. Plaintiffs' subpoena will cause unreasonable annoyance, embarrassment, and oppression to the Defendants and patients of Clearfield Hospital primarily for two reasons:

- a. Plaintiffs request more than the Department of Health's final report, they are requesting all documents which may contain the Department of Health's preliminary impressions that did not make it into the final report; and
- b. in conducting the inspection, Defendants' patients' medical records were reviewed by the Health Department and are referred to in the final report. Patients have an expectation of privacy - particularly with the enactment of Health Insurance Portability and Accountability Act ("HIPPA").

20. Privacy of patient rights has long been protected by the courts in our country.

Both the United States and the Pennsylvania Supreme Courts recognized that the constitutional right of privacy extends to a "person's interest in avoiding disclosure of personal matters."

Whalen v. Roe, 429 U.S. 589, 599-600 (1977); *In re June 1979 Allegheny County Investigating Grand Jury*, 490 Pa. 143, 150-51, 415 A.2d 73, 77 (1980); *Denoncourt v. Commonwealth of Pennsylvania State Ethics Commission*, 504 Pa. 191, 197-98, 470 A.2d 945, 948 (1983). The Pennsylvania Superior Court held that the right of privacy extends to medical records. "[B]y allowing a plaintiff access to the medical records of other patients, the right of privacy of those other patients is violated." *Sanderson v. Bryan, M.D., Ltd.*, 361 Pa. Super. 491, 499, 522 A.2d 1138, 1142 (1987).

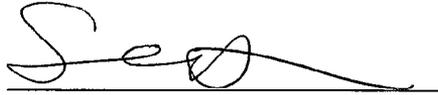
21. The Subpoena in and of itself should be prohibited in its entirety because it does not seek information that is relevant to any claim or defenses in this action, nor does it seek information that is likely to lead to the discovery of admissible evidence as it involves an inspection of the Hospital which took place almost two (2) years after any events involved in this action took place. Moreover, the final report does not address any matters that took place prior to 2004.

22. In the alternative, the Subpoena should be limited in scope. Plaintiffs' allegations arise from their employment in the ICU and relate only to short-staffing and qualifications of nurses in the ICU. Nothing in Plaintiffs' Amended Complaint involves any other department at Clearfield Hospital or any other matters. However, the Subpoena seeks the inspection findings for the entire hospital, not just the ICU, and seeks information regarding all aspects of the inspection, not just short-staffing and qualifications of nurses.

23. Thus, the request for documents in the subpoena is overbroad, is not relevant to any issues in this lawsuit and is not likely to lead to the discovery of admissible evidence. Moreover, pursuant Pennsylvania Rule of Civil Procedure 4011(b), it will cause unreasonable annoyance, embarrassment, and oppression for the Defendants and the patients of Clearfield Hospital.

WHEREFORE, Defendants respectfully request this Honorable Court to grant their Motion for Protective Order to prohibit Plaintiffs' Subpoena directed to the Pennsylvania Department of Health, or in the alternative, it is requested that this Court enter a protective order limiting the request to only materials that relate to nurse staffing issues in the ICU of Clearfield Hospital.

Respectfully submitted,

By: 
Eric T. Smith (PA Id. # 70491)
S. Elaine Diedrich (PA Id. #84077)
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants



West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jwest@west-long.com

December 1, 2004

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Sandra M. Knoble
Pennsylvania Department of Health
Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care
805 Health & Welfare Building
Harrisburg, PA 17108

RE: Clearfield Hospital

Dear Ms. Knoble:

Enclosed with this letter is a subpoena calling for the production of various documents in your possession and/or under your control concerning Clearfield Hospital. Please note that the subpoena directs you to produce these documents within twenty (20) days after service of this subpoena. Please contact me at the above telephone number if you cannot comply with the requested date to produce these records. Your cooperation in this regard is appreciated.

Please note that this subpoena requests any and all information, without limitation, pertaining to the above-referenced individual. If you choose to withhold any records, documents or information, you should so note your omissions on the enclosed Affidavit. This subpoena also requests all information, and there is no time limitation on any of these records.

It is not necessary that you actually appear for this records deposition provided that you forward copies of the records requested on the subpoena on or before the above date. If it is your preference to produce the information in person, we can proceed with your deposition as scheduled on the enclosed subpoena. Please be assured that this firm will reimburse you for the reasonable duplication expenses. If the cost of photocopying the requested information exceeds \$25.00, please contact my office.

Likewise, if any portion of the subpoena is burdensome, please give me a call as I am sure we can work out such problems in a reasonable manner.

DEC - 6 2004

Sandra M. Knoble
Pennsylvania Department of Health
Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care
Page 2
December 1, 2004

If you have any additional questions, please feel free to contact me at the above telephone number.

Sincerely,

WEST LONG LLC

~~COPY~~

James J. West

JJW/jmb
Enclosure

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

:
:
: No. 03-393-CD

:
: Civil Action - Law

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22**

TO: Pennsylvania Department of Health, Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce
the following documents or things:

See attached addendum.

at 105 North Front Street, Suite 205, Harrisburg, PA 17101

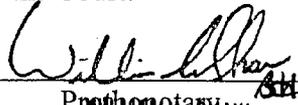
You may deliver or mail legible copies of the documents or produce things requested by this
subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek, in advance, the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena, within twenty (20) days
after its service, the party serving this subpoena may seek a court order compelling you to comply
with it.

James J. West
Attorney Id. 00331
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
Counsel for Plaintiffs

Date: *November 1, 2004*

By the Court:



WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA Deputy

Addendum to Subpoena

All documents, including, but not limited to, correspondence, electronic mail, witness interview notes, computerized records or databases, memoranda, minutes of meetings, intra and interoffice communications, studies, summaries, analysis, results of investigations, reviews, recommendations, critiques, notices, messages, instructions, notes, notebooks, tape recordings, partial or complete reports of telephone conversations, newspaper or other media releases, public and governmental filings, opinions, and any other writings or documents incident to the survey, investigation, evaluation and/or inspection conducted at the Clearfield Hospital in 2004 including, but not limited to, aspects of the survey dealing with nursing and staffing issues and the ICU Unit.

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

NOTICE OF RECORDS DEPOSITION

TO: Pennsylvania Department of Health
Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care
805 Health & Welfare Building
Harrisburg, PA 17108

PLEASE TAKE NOTICE that pursuant to Pennsylvania Rules of Civil Procedure, Plaintiffs Frances L. Selvage and Dawn L. Retorick, will take the deposition of the Records Custodian of the Deputy Secretary for Quality Assurance, Division of Acute and Ambulatory Care for the Pennsylvania Department of Health, at the offices of West Long LLC, on December 22, 2004, at 10:00 a.m. THIS DEPOSITION IS FOR THE PURPOSE OF THE PRODUCTION OF DOCUMENTS ONLY and it is expected that no attorneys will be present

YOU ARE FURTHER DIRECTED AND SUBPOENAED TO BRING WITH YOU AND PRODUCE THE FOLLOWING:

All documents, including, but not limited to, correspondence, electronic mail, witness interview notes, computerized records or databases, memoranda, minutes of meetings, intra and interoffice communications, studies, summaries, analysis, results of investigations, reviews, recommendations, critiques, notices, messages, instructions, notes, notebooks, tape recordings, partial or complete reports of telephone conversations, newspaper or other media releases, public and governmental filings, opinions, and any other writings or documents incident to the survey, investigation, evaluation and/or inspection conducted at the Clearfield Hospital in 2004 including, but not limited to, aspects of the survey dealing with nursing and staffing issues and the ICU Unit.

IN LIEU OF ACTUAL ATTENDANCE AT THIS DEPOSITION, YOU MAY SATISFY THE NOTICE OF RECORDS DEPOSITION AND ACCOMPANYING SUBPOENA BY FORWARDING TO THE UNDERSIGNED LEGIBLE PRODUCED COPIES OF THE REQUESTED MATERIAL, TOGETHER WITH A CERTIFICATION THAT THE MATERIALS SO PROVIDED ARE TRUE, ACCURATE AND COMPLETE COPIES OF THE RECORDS.

Respectfully Submitted,

WEST LONG LLC



James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

Dated: December 1, 2004

Counsel for Plaintiffs

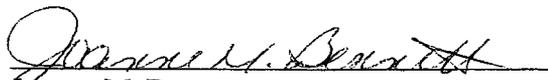
CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of **December, 2004**, a true and correct copy of the foregoing Notice of Records Deposition was served upon the parties named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

Sandra Knoble
Pennsylvania Department of Health
Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care
805 Health & Welfare Building
Harrisburg, PA 17108

and

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

DEPOSITION AFFIDAVIT OF THE RECORDS CUSTODIAN

I, the undersigned, being duly sworn according to law, depose and say that I am a duly authorized Records Custodian for the Pennsylvania Department of Health, Deputy Secretary for Quality Assurance, Division of Acute and Ambulatory Care, with the authority to certify said records, and I hereby certify to the following:

1. The records attached hereto are true and correct copies of the records in my custody requested by the Plaintiffs and further detailed in the Notice and Subpoena.

2. That, including this certification, all records which are in my custody have been photocopied at my office, in my presence, at my direction and under my supervision by _____.

3. That unless qualified in paragraph (5), all records produced in my presence were prepared in the ordinary course of business by authorized personnel at or near the time of the act, condition or event; and

4. A careful search has been made by me or at my direction for records pertaining to the above identified individual and the records produced constitute and are the records of the individual so identified.

5. Additional comments: _____

I declare that the foregoing facts as are within my personal knowledge are true and correct and the other facts contained herein are true and correct to the best of my knowledge, information and belief.

Executed:

Date

Location

Print or type name

Print or type title and position

Print or type name of organization

Signature

Sworn to and subscribed
before me this ____ day
of _____, 2004

Notary Public

My commission expires:

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and DAWN L. RETORICK Plaintiffs	:	IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY, PENNSYLVANIA
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL, LOIS EISENMAN, Director of Nursing, JACKIE STONE, Vice President of Nursing, THELMA STRATTON, ICU Unit Manager, Defendants	:	Civil Action - Law

**CERTIFICATE PREREQUISITE TO
SERVE SUBPOENA PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiffs, Frances L. Selvage and Dawn L. Retorick, certify that:

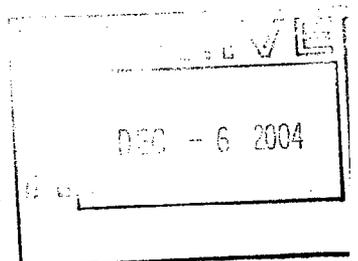
1. A Notice of Intent to Serve the Subpoena with a copy of the subpoena attached thereto was mailed to each party at least twenty (20) days prior to the date on which the subpoena was sought to be served.
2. A copy of the Notice of Intent, including the proposed subpoena is attached to this certificate.
3. No objections to the subpoena have been received.
4. The subpoena which will be served is identical to the subpoena which is attached to the Notice of Intent.

Respectfully Submitted,

WEST LONG LLC

~~COPY~~

James A. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax



Dated: December 1, 2004

Counsel for Plaintiffs

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and : IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs :
v. :
CLEARFIELD HOSPITAL, : Civil Action - Law
LOIS EISENMAN, Director of Nursing, :
JACKIE STONE, Vice President of :
Nursing, THELMA STRATTON, ICU Unit :
Manager, :
Defendants :

**NOTICE OF INTENT TO SERVE A SUBPOENA
TO PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.21**

TO: S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Plaintiffs, Frances L. Selvage and Dawn L. Retorick, intend to serve a subpoena identical to the one attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Respectfully Submitted,

WEST LONG LLC


James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

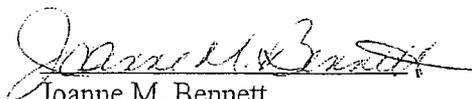
Dated: November 3, 2004

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of **November, 2004**, a true and correct copy of the foregoing Notice of Intent to Serve a Subpoena was served upon the party named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

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

v.

: No. 03-393-CD

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

: Civil Action - Law

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22**

TO: Pennsylvania Department of Health, Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce
the following documents or things:

See attached addendum.

at 105 North Front Street, Suite 205, Harrisburg, PA 17101

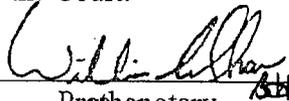
You may deliver or mail legible copies of the documents or produce things requested by this
subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek, in advance, the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena, within twenty (20) days
after its service, the party serving this subpoena may seek a court order compelling you to comply
with it.

James J. West
Attorney Id. 00331
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
Counsel for Plaintiffs

Date: *November 1, 2004*

By the Court:



PROTHONOTARY
WILLIAM A. SHAW
Prothonotary

My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

Deputy

Addendum to Subpoena

All documents, including, but not limited to, correspondence, electronic mail, witness interview notes, computerized records or databases, memoranda, minutes of meetings, intra and interoffice communications, studies, summaries, analysis, results of investigations, reviews, recommendations, critiques, notices, messages, instructions, notes, notebooks, tape recordings, partial or complete reports of telephone conversations, newspaper or other media releases, public and governmental filings, opinions, and any other writings or documents incident to the survey, investigation, evaluation and/or inspection conducted at the Clearfield Hospital in 2004 including, but not limited to, aspects of the survey dealing with nursing and staffing issues and the ICU Unit.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of **December, 2004**, a true and correct copy of the foregoing document was served upon the party named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jbennett@west-long.com

December 2, 2004

Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

**RE: Selvage and Retorick v. Clearfield Hospital
No. 03-393-CD**

Dear Sir or Madam:

Enclosed for filing in the above-referenced matter, please find the original and one copy of our Certificate Prerequisite to Serve Subpoena Pursuant to Rule 4009.22. Kindly file the within document and return to us, in the enclosed postage-paid envelope, our copy.

Thank you for your attention to this matter.

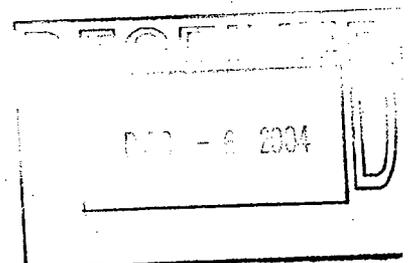
Sincerely,

WEST LONG LLC

Joanne M. Bennett
COPY

Joanne M. Bennett
Paralegal

Enclosure





December 14, 2004

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Mr. West:

As a follow-up to your letter of December 13, 2004 and our previous telephone discussions of November 11 and December 13, thank you for engaging in discussions with me regarding the various issues that we take with respect to the third-party subpoena that you served on the Pennsylvania Department of Health regarding its 2004 inspection of the Hospital. I wanted to let you know that I will be filing a motion for protective order to quash and/or to modify the subpoena within the next few days.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,



S. Elaine Diedrich

SED/mfh

cc: Sandra M. Knoble
Pennsylvania Department of Health
Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT'S MOTION FOR PROTECTIVE ORDER** was sent via UPS overnight mail on this 16th day of December, 2004, upon the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

GA

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

FRANCES L. SELVAGE and :
DAWN L. RETORICK :
 :
vs. : No. 03-393-CD
 :
CLEARFIELD HOSPITAL, LOIS :
EISENMAN, Director of Nursing, :
JACKIE STONE, Vice President of :
Nursing, THELMA STRATTON, :
ICU Unit Manager :

ORDER

NOW, this 20th day of December, 2004, upon consideration of Defendants' Motion for Protective Order, a Rule is hereby issued upon Plaintiffs to Appear and Show Cause why the Motion should not be granted. Rule Returnable is scheduled the 3rd day of January, 2005, at 2:30 P.M. in Courtroom No. 2, Clearfield County Courthouse,

*Down,
I did not make
any photocopies
Adm.*

THE COURT:

GA
FILL
*012:21/204 dCC & Memo
9:40 Re Selvage,
Teletype Smith*
DEC 21 2004

Paul E. Cherry
Paul E. Cherry
Judge

William A. Shaw
Prothonotary

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

:
:
:
: No. 03-393-CD

:
: Civil Action - Law

:
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:
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:

ORDER OF COURT

AND NOW, to wit, this _____ day of January, 2005, upon due consideration of the Answer to the Defendant's Motion for Protective Order, it is ORDERED, ADJUDGED and DECREED that the Motion be and the same hereby is DENIED.

BY THE COURT:

J.

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

:
:
: No. 03-393-CD

:
:
: Civil Action - Law

FILED
M 128 0A 300 to atty.

DEC 30 2004

William A. Shaw
Prothonotary

ANSWER TO DEFENDANTS' MOTION FOR PROTECTIVE ORDER

AND NOW, come the Plaintiffs, Frances L. Selvage and Dawn L. Retorick, by and through their counsel, James J. West, Esquire, and file the following Answer to the Defendants' Motion for Protective Order.

1. The allegations of paragraphs 1 and 2 are substantially correct and admitted. By way of further answer, it would be pointed out that the Plaintiffs scrupulously followed the provisions of Rule 4009.21 of the Pennsylvania Rules of Civil Procedure concerning third party subpoenas, i.e., Plaintiffs served a Notice of Intent to Serve Third Party Subpoena on the Defendants' counsel on November 3, 2004 (Exhibit A); when no response was received within the twenty (20) day period, the Plaintiffs waited one more week and on December 2, 2004 filed their Certificate Prerequisite to Service of a Subpoena pursuant to Rule 4009.22 with the Court (Exhibit B); and served the Department of State with the Subpoena at issue by certified mail (Exhibit C). The Defendants raised no objection as required by Rule 4009.21 nor has the

Department of State raised any objection. Under the Rule, these objections should have been raised prior to November 23, 2004, the date twenty (20) days after service of the Notice of Intent to Serve a Subpoena.

2. The allegations of paragraphs 3 through 23 are basically conclusions of law to which no response is required and/or arguments contending that the records are not relevant because the inspection occurred after the Plaintiffs left the employment of Clearfield Hospital and because the Department of Health inspection did not specifically address issues with respect to short term staffing of the ICU Unit.

3. We have attached hereto as Exhibit D excerpts from the Clearfield Hospital Health Inspection Licensure Survey which are published on the Internet on the Pennsylvania Department of Health's website. These results show the following:

a. "It was determined the facility failed to comply with applicable Commonwealth laws by failing to report serious events after June 21, 2004 which was the date for mandatory reporting according to the Medical Care Availability and Reduction of Error Act, Act 13 of 2002." (MCCARE Act) The report goes on and enumerates five incidents where serious events were not reported as required. (See Section on Licensure Functions, Page 1.)

b. "It was determined based on direct observation, review of staffing patterns and interviews with nursing and supervisory staff that the outpatient chemotherapy clinic was not staffed with sufficient number of registered professional nurses who were qualified to provide care rendered." (See Section on Licensure, Page 13.)

c. "Supervisors were in positions that failed to meet the minimum job requirements, expectations and responsibilities established by their job descriptions." (See Licensure Job Descriptions, Page 16.)

d. "The facility failed to ensure that the licensure requirements of personnel met the applicable state laws." (See Section Standard Licensure of Personnel, Page 29.)

These allegations mirror the allegations of the Plaintiffs' Complaint to the effect that the Plaintiffs' reported staffing and other deficiencies, were retaliated against and that numerous of the involved deficiencies involved individuals who were not properly licensed and did not meet the job description set forth for the particular position involved, i.e., intensive care nurse.

4. We respectfully submit that based on the information already published on the Internet, the additional subpoenaed information obviously is highly relevant to the issues raised in Plaintiffs' Complaint. (In addition, Plaintiffs believe that two of the three Defendants named in this case recently were terminated as a direct result of the findings of the Department of Health inspection, which findings mirror the allegations of the Plaintiffs' Complaint concerning understaffing, failure to report significant events and failure to have staff that met the minimum requirements of the positions involved.)

5. The Plaintiffs do not desire individual patient information or any information that would violate any patient's privacy. Obviously the facts of what the investigation uncovered relating to the failure to properly staff, the failure to properly report violations of the MCCARE Act, the failure to have individuals with qualifications matching their job descriptions and the failure of employees to have qualifications adequate for the job descriptions are all relevant matters that the subpoena is aimed at developing.

6. Plaintiffs' counsel has been informed by Sandra Knoble, the Director of the Division of Acute and Ambulatory Care, upon whom the subpoena in question was served, that the Department of Health does not include patient identifier information in their reports and, in

any event, Plaintiffs have no objection to such information being deleted either by the Department of Health or by Order of this Court.

7. The fact that the conditions outlined in Exhibit D were found two years after the Plaintiffs were forced out of their jobs and forced to resign their positions does not destroy or negate the relevancy of the Department of Health's findings and clearly strengthens the Plaintiffs' position that those same types of conditions existed at the time the Plaintiffs were forced from their jobs at the Clearfield Hospital.

WHEREFORE, it is respectfully requested that the Defendants' Motion for Protective Order be denied and that the Pennsylvania Department of Health be allowed to comply with the subpoena that has been served on them.

Respectfully Submitted,

WEST LONG LLC



James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

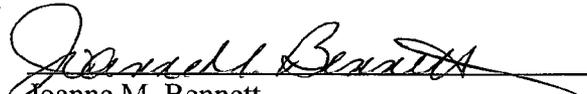
Dated: December 28, 2004

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this **28th** day of **December, 2004**, a true and correct copy of the foregoing document was served upon the party named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jwest@west-long.com

November 3, 2004

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

RE: Selvage and Retorick v. Clearfield Hospital, et al.

Dear Ms. Diedrich:

Pursuant to our conversation today, enclosed please find our Notice of Intent to Serve a Subpoena to Produce Documents addressed to the Department of State. Please note that I have requested these documents be produced on December 22, 2004. We will, upon request, provide copies of all documents received incident to this subpoena upon receipt of same.

Thank you for your attention to and courtesies in this matter.

Sincerely,

WEST LONG LLC
FILE

James J. West

JJW/jmb

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

:
:
: No. 03-393-CD

:
: Civil Action - Law

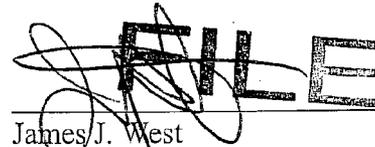
**NOTICE OF INTENT TO SERVE A SUBPOENA
TO PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.21**

TO: S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Plaintiffs, Frances L. Selvage and Dawn L. Retorick, intend to serve a subpoena identical to the one attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Respectfully Submitted,

WEST LONG LLC



James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

Dated: November 3, 2004

Counsel for Plaintiffs

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

: No. 03-393-CD

: Civil Action - Law

FILE

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22**

TO: Pennsylvania Department of Health, Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce
the following documents or things:

See attached addendum.

at 105 North Front Street, Suite 205, Harrisburg, PA 17101

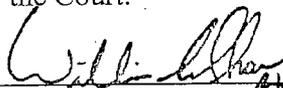
You may deliver or mail legible copies of the documents or produce things requested by this
subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek, in advance, the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena, within twenty (20) days
after its service, the party serving this subpoena may seek a court order compelling you to comply
with it.

James J. West
Attorney Id. 00331
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
Counsel for Plaintiffs

Date: *November 1, 2004*

By the Court:



PROTHONOTARY
WILLIAM A. SHAW
Prothonotary

My Commission Expires
1st Monday in Jan. 2006

Clearfield Co., Clearfield, PA Deputy

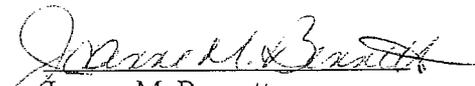
Addendum to Subpoena

All documents, including, but not limited to, correspondence, electronic mail, witness interview notes, computerized records or databases, memoranda, minutes of meetings, intra and interoffice communications, studies, summaries, analysis, results of investigations, reviews, recommendations, critiques, notices, messages, instructions, notes, notebooks, tape recordings, partial or complete reports of telephone conversations, newspaper or other media releases, public and governmental filings, opinions, and any other writings or documents incident to the survey, investigation, evaluation and/or inspection conducted at the Clearfield Hospital in 2004 including, but not limited to, aspects of the survey dealing with nursing and staffing issues and the ICU Unit.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of **November, 2004**, a true and correct copy of the foregoing Notice of Intent to Serve a Subpoena was served upon the party named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jbennett@west-long.com

December 2, 2004

Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

**RE: Selvage and Retorick v. Clearfield Hospital
No. 03-393-CD**

Dear Sir or Madam:

Enclosed for filing in the above-referenced matter, please find the original and one copy of our Certificate Prerequisite to Serve Subpoena Pursuant to Rule 4009.22. Kindly file the within document and return to us, in the enclosed postage-paid envelope, our copy.

Thank you for your attention to this matter.

Sincerely,

WEST LONG LLC

Joanne M. Bennett
FILE

Joanne M. Bennett
Paralegal

Enclosure

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

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

v.

: No. 03-393-CD

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,

: Civil Action - Law

Defendants

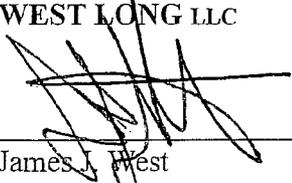
**CERTIFICATE PREREQUISITE TO
SERVE SUBPOENA PURSUANT TO RULE 4009.22**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiffs, Frances L. Selvage and Dawn L. Retorick, certify that:

1. A Notice of Intent to Serve the Subpoena with a copy of the subpoena attached thereto was mailed to each party at least twenty (20) days prior to the date on which the subpoena was sought to be served.
2. A copy of the Notice of Intent, including the proposed subpoena is attached to this certificate.
3. No objections to the subpoena have been received.
4. The subpoena which will be served is identical to the subpoena which is attached to the Notice of Intent.

Respectfully Submitted,

WEST LONG LLC


James A. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax


William A. Shaw
Prothonotary/Clerk of Courts

Dated: December 1, 2004

Counsel for Plaintiffs

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and : IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK : CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs :
v. :
CLEARFIELD HOSPITAL, : Civil Action - Law
LOIS EISENMAN, Director of Nursing, :
JACKIE STONE, Vice President of :
Nursing, THELMA STRATTON, ICU Unit :
Manager, :
Defendants :

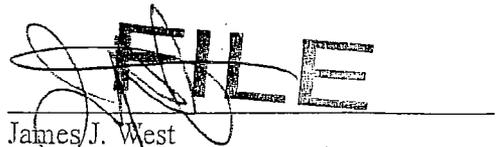
NOTICE OF INTENT TO SERVE A SUBPOENA
TO PRODUCE DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE 4009.21

TO: S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Plaintiffs, Frances L. Selvage and Dawn L. Retorick, intend to serve a subpoena identical to the one attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If no objection is made, the subpoena may be served.

Respectfully Submitted,

WEST LONG LLC


James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

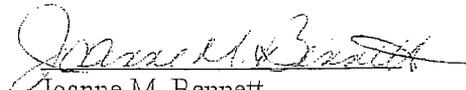
Dated: November 3, 2004

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of November, 2004, a true and correct copy of the foregoing Notice of Intent to Serve a Subpoena was served upon the party named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

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

v.

: No. 03-393-CD

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

: Civil Action - Law

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22**

TO: Pennsylvania Department of Health, Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce
the following documents or things:

See attached addendum.

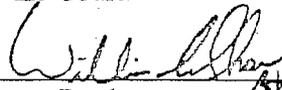
at 105 North Front Street, Suite 205, Harrisburg, PA 17101

You may deliver or mail legible copies of the documents or produce things requested by this
subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek, in advance, the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena, within twenty (20) days
after its service, the party serving this subpoena may seek a court order compelling you to comply
with it.

James J. West
Attorney Id. 00331
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
Counsel for Plaintiffs

By the Court:



WILLIAM A. SHAW
Prothonotary

My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

Deputy

Date: November 1, 2004

Addendum to Subpoena

All documents, including, but not limited to, correspondence, electronic mail, witness interview notes, computerized records or databases, memoranda, minutes of meetings, intra and interoffice communications, studies, summaries, analysis, results of investigations, reviews, recommendations, critiques, notices, messages, instructions, notes, notebooks, tape recordings, partial or complete reports of telephone conversations, newspaper or other media releases, public and governmental filings, opinions, and any other writings or documents incident to the survey, investigation, evaluation and/or inspection conducted at the Clearfield Hospital in 2004 including, but not limited to, aspects of the survey dealing with nursing and staffing issues and the ICU Unit.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of **December, 2004**, a true and correct copy of the foregoing document was served upon the party named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jwest@west-long.com

December 1, 2004

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Sandra M. Knoble
Pennsylvania Department of Health
Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care
805 Health & Welfare Building
Harrisburg, PA 17108

RE: Clearfield Hospital

Dear Ms. Knoble:

Enclosed with this letter is a subpoena calling for the production of various documents in your possession and/or under your control concerning Clearfield Hospital. Please note that the subpoena directs you to produce these documents within twenty (20) days after service of this subpoena. Please contact me at the above telephone number if you cannot comply with the requested date to produce these records. Your cooperation in this regard is appreciated.

Please note that this subpoena requests any and all information, without limitation, pertaining to the above-referenced individual. If you choose to withhold any records, documents or information, you should so note your omissions on the enclosed Affidavit. This subpoena also requests all information, and there is no time limitation on any of these records.

It is not necessary that you actually appear for this records deposition provided that you forward copies of the records requested on the subpoena on or before the above date. If it is your preference to produce the information in person, we can proceed with your deposition as scheduled on the enclosed subpoena. Please be assured that this firm will reimburse you for the reasonable duplication expenses. If the cost of photocopying the requested information exceeds \$25.00, please contact my office.

Likewise, if any portion of the subpoena is burdensome, please give me a call as I am sure we can work out such problems in a reasonable manner.

Sandra M. Knoble
Pennsylvania Department of Health
Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care
Page 2
December 1, 2004

If you have any additional questions, please feel free to contact me at the above telephone number.

Sincerely,

WEST LONG LLC

James J. West

JJW/jmb
Enclosure

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU Unit
Manager,
Defendants

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

:
:
: No. 03-393-CD

:
: Civil Action - Law

**SUBPOENA TO PRODUCE DOCUMENTS OR THINGS
FOR DISCOVERY PURSUANT TO RULE 4009.22**

TO: Pennsylvania Department of Health, Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce
the following documents or things:

See attached addendum.

at 105 North Front Street, Suite 205, Harrisburg, PA 17101

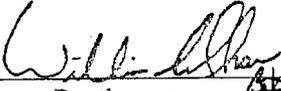
You may deliver or mail legible copies of the documents or produce things requested by this
subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek, in advance, the reasonable cost of preparing the
copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena, within twenty (20) days
after its service, the party serving this subpoena may seek a court order compelling you to comply
with it.

James J. West
Attorney Id. 00331
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
Counsel for Plaintiffs

Date: *November 1, 2004*

By the Court:



WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA Deputy

Addendum to Subpoena

All documents, including, but not limited to, correspondence, electronic mail, witness interview notes, computerized records or databases, memoranda, minutes of meetings, intra and interoffice communications, studies, summaries, analysis, results of investigations, reviews, recommendations, critiques, notices, messages, instructions, notes, notebooks, tape recordings, partial or complete reports of telephone conversations, newspaper or other media releases, public and governmental filings, opinions, and any other writings or documents incident to the survey, investigation, evaluation and/or inspection conducted at the Clearfield Hospital in 2004 including, but not limited to, aspects of the survey dealing with nursing and staffing issues and the ICU Unit.

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

NOTICE OF RECORDS DEPOSITION

TO: Pennsylvania Department of Health
Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care
805 Health & Welfare Building
Harrisburg, PA 17108

PLEASE TAKE NOTICE that pursuant to Pennsylvania Rules of Civil Procedure, Plaintiffs Frances L. Selvage and Dawn L. Retorick, will take the deposition of the Records Custodian of the Deputy Secretary for Quality Assurance, Division of Acute and Ambulatory Care for the Pennsylvania Department of Health, at the offices of West Long LLC, on December 22, 2004, at 10:00 a.m. THIS DEPOSITION IS FOR THE PURPOSE OF THE PRODUCTION OF DOCUMENTS ONLY and it is expected that no attorneys will be present

YOU ARE FURTHER DIRECTED AND SUBPOENAED TO BRING WITH YOU AND PRODUCE THE FOLLOWING:

All documents, including, but not limited to, correspondence, electronic mail, witness interview notes, computerized records or databases, memoranda, minutes of meetings, intra and interoffice communications, studies, summaries, analysis, results of investigations, reviews, recommendations, critiques, notices, messages, instructions, notes, notebooks, tape recordings, partial or complete reports of telephone conversations, newspaper or other media releases, public and governmental filings, opinions, and any other writings or documents incident to the survey, investigation, evaluation and/or inspection conducted at the Clearfield Hospital in 2004 including, but not limited to, aspects of the survey dealing with nursing and staffing issues and the ICU Unit.

IN LIEU OF ACTUAL ATTENDANCE AT THIS DEPOSITION, YOU MAY SATISFY THE NOTICE OF RECORDS DEPOSITION AND ACCOMPANYING SUBPOENA BY FORWARDING TO THE UNDERSIGNED LEGIBLE PRODUCED COPIES OF THE REQUESTED MATERIAL, TOGETHER WITH A CERTIFICATION THAT THE MATERIALS SO PROVIDED ARE TRUE, ACCURATE AND COMPLETE COPIES OF THE RECORDS.

Respectfully Submitted,

WEST LONG LLC



James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

Dated: December 1, 2004

Counsel for Plaintiffs

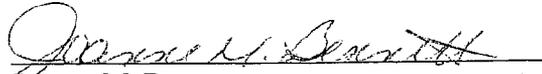
CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of **December, 2004**, a true and correct copy of the foregoing Notice of Records Deposition was served upon the parties named below by depositing same in the United States Mail, First Class postage prepaid, and addressed as follows:

Sandra Knoble
Pennsylvania Department of Health
Deputy Secretary for Quality Assurance
Division of Acute and Ambulatory Care
805 Health & Welfare Building
Harrisburg, PA 17108

and

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

DEPOSITION AFFIDAVIT OF THE RECORDS CUSTODIAN

I, the undersigned, being duly sworn according to law, depose and say that I am a duly authorized Records Custodian for the Pennsylvania Department of Health, Deputy Secretary for Quality Assurance, Division of Acute and Ambulatory Care, with the authority to certify said records, and I hereby certify to the following:

1. The records attached hereto are true and correct copies of the records in my custody requested by the Plaintiffs and further detailed in the Notice and Subpoena.

2. That, including this certification, all records which are in my custody have been photocopied at my office, in my presence, at my direction and under my supervision by

3. That unless qualified in paragraph (5), all records produced in my presence were prepared in the ordinary course of business by authorized personnel at or near the time of the act, condition or event; and

4. A careful search has been made by me or at my direction for records pertaining to the above identified individual and the records produced constitute and are the records of the individual so identified.

5. Additional comments: _____

I declare that the foregoing facts as are within my personal knowledge are true and correct and the other facts contained herein are true and correct to the best of my knowledge, information and belief.

Executed:

_____ Date Location

_____ Print or type name

_____ Print or type title and position

_____ Print or type name of organization

_____ Signature

Sworn to and subscribed
before me this ____ day
of _____, 2004

Notary Public

My commission expires:

Exhibit D

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

10/22/2004

View Previous Reports

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of a full State Licensure Survey which was conducted September 21-24, 2004 at Clearfield Hospital with the final exit conference conducted on October 22, 2004. It was determined that the facility was not in compliance with the requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 PA Code, Part IV, Subparts A and B, November 1987, as amended June 1998.

Plan of Correction:

No plan of correction is required

103.4 (3) LICENSURE

FUNCTIONS

(3) Take all reasonable steps to conform to all applicable Federal, State, and local laws and regulations.

Observations:

Based on review of policies and procedures, incident reports and closed medical records (MR), and staff interview (EMP), it was determined the facility failed to comply with applicable Commonwealth laws by failing to report serious events after June 21, 2004, which was the date for mandatory reporting according to The Medical Care Availability and Reduction of Error Act, Act 13 of 2002."

The Medical Care Availability and Reduction of Error Act, Act 13 of 2002, Section 307. Patient Safety Plans. (a) Development and compliance. A medical facility shall develop, implement and comply with an internal patient safety plan that shall be established for the purpose of improving the health and safety of patients. The plan shall be developed on consultation with the licensees providing health care services in the medical facility.

Findings include:

Review of the facility's "Patient Safety Plan, Policy # 01.06.45, Patient Safety Plan Criteria, #6, Definitions of a Serious Event/Incident/Infrastructure Failure, Serious Events are defined as, An event, occurrence or situation involving the

clinical care of a patient in a medical facility that results in death or compromises patient safety and results in an unanticipated injury requiring the delivery of additional health care services to the patient."

1) Interview with EMP3 on September 21, 2004, revealed that "surgical complications were not being reported" to the Patient Safety Authority. It was revealed by EMP3 and EMP5 "that it is the current practice of the facility that if a surgical complication was included on the informed consent, it was excluded from submission to the Patient Safety Authority."

2) On September 22, 2004 at 1:30 PM, an interview with EMP5 was conducted. At that time, it was revealed that "it has been the practice of the facility to define Additional Health Care that it does not include first aide, i.e. band aids, ice, steri strips, or negative result diagnostic tests." Furthermore, it was revealed "that an unanticipated injury does not include clinical judgement issues or situations that do not compromise patient safety, (i.e., situations or actions that expose a patient to significant actual or potential harm), for example, procedure complications included in the informed consent, or radiographic interpretations, etc."

3) During the review of the "Discharge Summary" for MR8, it was noted that the patient was admitted with the diagnosis of sigmoid colon carcinoma. The patient underwent a sigmoid colon resection with end colostomy and right colectomy with ileocolostomy. The post-operative course was complicated by fascial dehiscence, requiring return to the operating room for closure. Interview with EMP3 revealed that this serious event was not reported to the Patient Safety Authority.

4) Review of the "Discharge Summary" for MR9, revealed that the patient was admitted for elective laparoscopic cholecystectomy. The patient's general physical exam at the time of admission was unremarkable. Cardiac exam was negative. Under general anesthesia, a laparoscopic cholecystectomy was performed. Intraoperatively the patient had brady arrhythmias, which did not cause hypotension. The patient was seen immediately post operatively for cardiac evaluation. Cardiac enzymes were negative for signs of injury. It was recommended that the patient have a pacemaker, which was inserted. During the post operative period, the patient experienced an episode of hypotension. At that time, the clinical concern was that there was ventricular perforation with some cardiac tamponade. The patient was life flighted to a another facility under the care of a cardiac surgeon who emergently performed a pericardial window with relief of the patient's impending tamponade. The patient subsequently had a pacemaker placed at the receiving facility. Interview with EMP3 confirmed that this serious event was not reported to the Patient Safety Authority.

5) Review of the "Discharge Summary" for MR10 revealed that this patient presented to the Emergency Department 48 hours post laparoscopic cholecystectomy. The patient had persistent nausea and vomiting but no significant abdominal pain. The patient was admitted for treatment with antinauseants and intravenous fluids and gastrointestinal rest overnight. The following morning, a hepatobiliary scan and sonogram were completed. Both test's suggested biliary leak post laparoscopic cholecystectomy. The patient was

2

then transferred to another facility for ERCP (endoscopic retrograde cholangiopancreatogram) and possible stenting of the common duct. Interview with EMP3 revealed a conversation with EMP14, which confirmed that the patient did have a bile leak and required the delivery of additional health care services. Interview with EMP3 confirmed that this serious event was not reported to the Patient Safety Authority.

Tag 772 CFR 482.13 (e) Standard: Restraint for acute medical and surgical care (A) never be written as a standing or on as needed basis.

This regulation is not met as evidenced by:

Based on review of policies and procedures and closed medical records (MR), and staff interview (EMP), it was determined the facility failed to ensure restraint (mechanical and chemical) orders are not written on an as needed basis.

Findings include:

Review of the facility's policies revealed, RESTRAINT POLICY, revised August 2004

DEFINITIONS: ... 2. Chemical Restraint - Medication used in addition to or in replacement of the patient's regular drug regimen to control extreme behavior during an emergency. The medications that comprise the patient's regular medical regime (including PRN medications) are not considered chemical restraints, even if their purpose is to control the ongoing behavior. ...

RESTRAINTS - CLINICAL PROTOCOL ... 2. Physician Order: ... D. PRN orders for restraining patients are not accepted.

1) Review of seven closed medical records revealed 3:7 contained documentation of PRN restraint (mechanical and chemical) use.

MR1 revealed verbal Physician Orders dated March 11, 2004 at 1710 hours, "Risperdal .25MG 1/2 tab at bedtime PRN;" then again at 1940 hours, "Risperdal .25 MG 1/2 tab now, Haldol 2MG IVP every 3 hours PRN agitation;" 2130 hours, "Change Haldol to 4 MG IVP every 2 hours PRN."

March 12, at 1630, "Lorazepam 2MG IV now then 1MG every hour PRN restlessness/agitation." A review of the Nursing Admission Data Base revealed that these medications were not part of the patient's medical regime prior to admission.

MR 2 revealed Physician Order, dated July 17, 2004, at 10:45 PM, "Nursing: Per protocol, chest posey."

MR 4 revealed a verbal Physician Order, dated June 15, 2004, at 2245 hours, "Haldol 4MG IM now, Haldol 2MG IM every 2 hours PRN, Restrain PRN." A

review of the Nursing Admission Data Base revealed that these medications were not part of the patient's medical regime prior to admission.

2) Interview with EMP 2 on September 22, 2004, at approximately 1130 hrs, revealed "the physicians still write PRN restraint orders all the time."

3) Interview with EMP 4 on September 23, 2004, at approximately 2:00 PM, revealed," that the Pharmacy has no oversight on the use of chemical restraints. Pharmacy had requested a policy on restraints and has not received it to date."

Tag 770 CFR 482.13 (e) Standard: Restraint for Medical and Surgical Care (1) The patient has the right to be free from restraints of any form that are not medically necessary or are used as a means of coercion, discipline, convenience, or retaliation by staff.

This regulation is not met as evidenced by:

Based on review of policies and procedures, closed medical records (MR), and staff interview (EMP), it was determined the facility failed to provide documentation that restraint use was medically necessary and not for the convenience of the staff.

Findings include:

Review of the facility's policies revealed, RESTRAINT POLICY, revised August 2004

PURPOSE: Provide the least restrictive therapeutic environment possible

PHILOSOPHY: Clearfield Hospital supports the goal of reducing the use of restraints to the minimum level necessary to protect the well being of its patients and staff.Restraint use will be based on assessed needs using appropriate clinical justification when other less restrictive measures have been found to be ineffective.

RESTRAINTS - CLINICAL PROTOCOL

1. Restraints may be applied by trained licensed personnel utilizing clinical protocols in the following instances: b. There is documented evidence that less restrictive means were

attempted and were not successful....PRECAUTIONS:...3. Side rails should be up at all times while the patient is restrained.

RESTRAINT MANAGEMENT PROTOCOL, reviewed November 2003

PURPOSE:

4

To outline restraint criteria for patients receiving mechanical ventilation and for who unscheduled termination of therapy would be life threatening. Ventilator patients may be restrained using the least restrictive device.

APPLICATION CRITERIA:

1. c. Presence of endotracheal tube or tracheostomy...4. Grabbing at tubing, etc.

5. Low level of consciousness, can be aroused, but is unable to maintain wakefulness

1) Review of MR6 revealed a Physician Order, dated July 5, 2004, at 0200 hours, for both extremity restraints. Reason for application: Ventilator Management. Nurses Notes dated July 5, at 0650 hours, "Admitted via ED on vent. ... Sedated and not responding. Bilateral wrist restraints on."

2) Interview with EMP 2 on September 22, 2004, at approximately 1130 hrs, revealed, "We restrain all of our ventilator patients to prevent self extubation."

Tag 770 CFR 482.13 (e) Standard: Restraint for medical and surgical care (2) A restraint can only be used if needed to improve the patient's well being and less restrictive interventions have been determined to be ineffective (3) The use of a restraint must be (i) Selected only when other less restrictive measures have been found to be ineffective to protect the patient or others from harm.

This regulation is not met as evidenced by:

Based on review of policies and procedures and closed medical records (MR), and staff interview (EMP), it was determined the facility failed to provide clear documentation describing the least restrictive interventions used prior to the use of several types of restraints simultaneously.

Findings include:

Review of the facility's policies revealed, RESTRAINT POLICY, revised August 2004

RESTRAINTS - CLINICAL PROTOCOL, 1. Restraints may be applied by trained licensed personnel utilizing clinical protocols in the following instances:
b. There is documented evidence that less restrictive means were attempted and were not successful. ... PRECAUTIONS: ... 3. Side rails should be up at all times while the patient is restrained.

RESTRAINT MANAGEMENT PROTOCOL, reviewed November 2003

PURPOSE: To outline restraint criteria for patients receiving mechanical ventilation and for who unscheduled termination of therapy would be life

5

threatening. Ventilator patients may be restrained using the least restrictive device. ...

APPLICATION CRITERIA:

1. a. Presence of a feeding tube or drain
 - b. Presence of Invasive/Venous Line
 - c. Presence of endotracheal tube or tracheostomy
 2. Confusion and /or disorientation
 3. Unable to remember instructions
 4. Grabbing at tubing, etc.
 5. Low level of consciousness, can be aroused, but is unable to maintain wakefulness
 6. Combative
- 1) Review of seven closed medical records revealed 7:7 that contained documentation of restraint use without documentation that other less restrictive measures had been considered and failed. It was also revealed that several types of restraints were being used at the same time.

MR1 revealed a Physician Order for extremity restraints, undated and not timed. The reason for restraint: Peripheral IV. Order on March 13, 2004 at 2010 hours, and March 15 at 0100 hours, for vest restraint. Reason for application: Fall Management. Nurses notes dated March 12, 2004 at 2330 hours, "Awake, pulling at everything, pulled IV from right upper arm..., restraints applied, medicated with Haldol and Risperdal as per order, pleasant and follows commands, just becomes confused and tangled in IV's and wires." At 0410 hours, "Continues to be awake, nurse afraid to let go of wrist restraints, patient has already pulled IV out five times in last 24 hours - also tries to get out of bed on his own, concern about patient falling while trying to get out of bed - encouraged to leave restraints on until patient can discuss the situation with his doctor in the morning."

MR2 revealed a Physician Order, dated July 17, 2004, at 10:45 PM, "Nursing: Per protocol, chest posey." Physician Order, dated July 18, 19, 20, 2004, for vest restraint. Reason for application: Fall Management. Nurses Notes dated July 18, at 2100 hours, "Alert and pleasantly confused....Vest restraint intact. Appears to be in no distress. All four side rails up with bed alarm on."

MR3 revealed a Physician Order, dated July 28, 2004, at 2040 hours, for extremity restraint and side rails. Reason for application: Peripheral IV. Order dated July 29, 31, August 1 - 5, 2004, for extremity restraint. Reason for

application: Peripheral IV. Nurses Notes dated July 28 at 2200 hours, "Padded wrist restraint intact left wrist for maintenance of IV site." On August 5, at 0400 hours, "Remains unresponsive to any type of external stimuli. Right wrist restraint in place loosely."

MR4 revealed a verbal Physician Order, dated June 15, 2004, at 2245 hours, restrain PRN. Physician Order, dated July 16 - 20, 2004, for vest restraint. Reason for Application: Peripheral IV and Fall Management. Nurses Notes dated July 16 at 2100 hours, "Awake and oriented to name only..... Vest restraint intact. All four side rails up ... Resting well at present time."

MR5 revealed a Physician Order, dated August 20 - 23, 2004, for extremity restraint. Reason for application: Fall Management, GI Intubation, GU Intubation, Peripheral IV.

Nurses Notes dated August 23, 2004, at 0800 hours, "Awake, oriented to person and place. Feeding tube intact to right nare. Bilateral wrist restraints on to prevent tube pulling."

MR6 revealed a Physician Order dated July 5, 2004, at 0200 hours, for both extremity restraints. Reason for application: Ventilator Management. Nurses Notes dated July 5, at 0650 hours, "Admitted via ED on vent. ...Sedated and not responding. Bilateral wrist restraints on."

MR 7 revealed no Physician Order for restraints. Nurses Notes dated January 19, 2004 at 0230 hours, "Entered room, found patient lying on floor perpendicular to bed. Patient denies hitting head. Abrasion noted right shin. Full range of motion, denies pain. Bed alarm not functioning, four side rails up."

2) During an interview with EMP 2 on September 22, 2004, at approximately 1130 hrs, it was stated, "if other hospitals are using less restraints then they must have more staff then we do."

Tag 771 CFR 482.13 (e) Standard: Restraint for acute medical and surgical care (ii) In accordance with the order of a physician or other licensed independent practitioner permitted by the State and hospital to order a restraint. This order must--

This regulation is not met as evidenced by:

Based on review of policies and procedures, closed medical records (MR), and staff interview (EMP), it was determined the facility is utilizing siderails as a restraint without obtaining an order from a physician.

Findings include:

Review of the facility's policies revealed, RESTRAINT POLICY, revised

7

August 2004

POLICY: ... 2. Restraint use will be initiated only by a written physician's order (for behavior health reasons) and /or through a Medical Staff approved protocol (for medical/surgical reasons). ... TYPES OF RESTRAINTS:

1. Soft vest
2. Two point
3. Three point
4. Four point

PRECAUTIONS: ... 3. Side rails should be up at all times while the patient is restrained.

RESTRAINT MANAGEMENT PROTOCOL, reviewed November 2003, ... 9.

SAFETY: Use the following safety measures: ... b. Keep siderails up at all times while restrained.

1) Review of seven closed medical records revealed 5:7 that contained documentation of restraint use without obtaining an order from a physician.

MR1 revealed Nurses Notes dated March 15, 2004 at 0650 hours, "Found sitting on floor bedside, bed rails up times four and safety jacket on." The medical record contained no written physician's order for four siderails.

MR2 revealed a Physician Order, dated July 17, 2004, at 10:45 PM, "Nursing: Per protocol, chest posey." Physician Order, dated July 18, 19, 20, 2004, for vest restraint. Reason for application: Fall Management. Nurses Notes dated July 18, at 2100 hours, "Alert and pleasantly confused....Vest restraint intact. Appears to be in no distress. All four side rails up with bed alarm on." The medical record contained no written physician's order for four siderails.

MR4 revealed a verbal Physician Order, dated June 15, 2004, at 2245 hours, restrain PRN. Physician Order, dated July 16 - 20, 2004, for vest restraint. Reason for Application: Peripheral IV and Fall Management. Nurses Assessment Flow Sheet dated June 14, 2004, "Is able to move all extremities, all siderails up for patient safety." The medical record contained no written physician's order for four siderails.

MR6 revealed a Physician Order dated July 5, 2004, at 0200 hours, for both extremity restraints. Reason for application: Ventilator Management. Nurses Notes dated July 4, 2004 at 2245 hours, "Vent settings maintained as ordered. Siderails padded times four." The medical record contained no written physician's order for four siderails.

MR 7 revealed no Physician Order for restraints. Nurses Notes dated January 19,



2004 at 0230 hours, "Entered room, found patient lying on floor perpendicular to bed. Patient denies hitting head. Abrasion noted right shin. Full range of motion, denies pain. Bed alarm not functioning, four side rails up."

2) During an interview with EMP 2 on September 22, 2004, at approximately 1130 hrs, it was stated, "we don't recognize four siderails as a restraint, especially when the patient's family request that we put up all four siderails."

3) Review of the policy revealed that the use of four siderails is not included on this list.

Tag 777 CFR 482.13 (e) Standard: Restraint for acute medical and surgical care. (vi) Ended at the earliest possible time.

This regulation is not met as evidenced by:

Based on review of policies and procedures and closed medical records (MR), it was determined the facility failed to ensure that restraints were discontinued at the earliest possible time.

Findings include:

Review of the facility's policies revealed, RESTRAINT POLICY, revised August 2004

RELEASE OF RESTRAINTS, ... 1. Only a physician or trained licensed personnel may determine when a patient may be released from restraints. 2. Patients should be evaluated for the appropriateness of the removal of restraints at least every two hours. ...

- (1) Evaluation should include the patient's ability to cooperate
- (2) Reduction of the behavior warranting restraints
- (3) Decrease in the number of restraints used

RELEASE CRITERIA:

- 1. a. Removal of a feeding tube or drain
- b. Removal of Invasive/Venous Line
- c. Extubation
- 2. No confusion and /or disorientation
- 3. Ability to remember and repeat instructions

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4. Does not grab at tubing, etc.

5. Maintain wakefulness

6. Cooperative

1) Review of seven closed medical records revealed 4:7 did not contain written evidence that the restraints were discontinued at the earliest possible time.

MR1 revealed a Physician Order for extremity restraints, undated and not timed. The reason for restraint: Peripheral IV. Order on March 13, 2004 at 2010 hours, and March 15 at 0100 hours, for vest restraint. Reason for application: Fall Management. Nurses notes dated March 14, at 1400 hours, "Has been generally cooperative. Posey vest on for safety."

MR2 revealed Physician Order, dated July 17, 2004, at 10:45 PM, "Nursing: Per protocol, chest posey." Physician Order, dated July 18, 19, 20, 2004, for vest restraint. Reason for application: Fall Management. Nurses Notes dated July 19, at 0525 hours, "Patient much calmer this AM than previous AM. Resting well. Posey in place."

MR3 revealed a Physician Order, dated July 28, 2004, at 2040 hours, for extremity restraint and side rails. Reason for application: Peripheral IV. Order dated July 29, 31, August 1 - 5, 2004, for extremity restraint. Reason for application: Peripheral IV. Nurses Notes dated July 28 at 2200 hours, "Padded wrist restraint intact left wrist for maintenance of IV site." On August 5, at 0400 hours, "Remains unresponsive to any type of external stimuli. Right wrist restraint in place loosely."

MR5 revealed a Physician Order, dated August 20-23, 2004, for extremity restraint. Reason for application: Fall Management, GI Intubation, GU Intubation, Peripheral IV. Nurses Notes dated August 23, 2004, at 0800 hours, "Awake, oriented to person and place. Feeding tube intact to right nare. Bilateral wrist restraints on to prevent tube pulling."

Plan of Correction:

Immediate reporting of serious events per Act 13, including surgical complications. September 24, 2004

Whole-house staff education on a revised incident reporting form that mirrors the Patient Safety Authority reporting. The training included staff education regarding anonymous reporting, the need for filing incident reports immediately when an incident occurs, examples of items that have not been typically reported and the need for them to be reported, and the personal and organizational liability for not reporting of incidents. There were 30 sessions held for all shifts, and 489 employees were in-serviced. The training was initiated on August 30, 2004 and was completed on October 21, 2004.

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Education of clinical departments and Department Heads on need to report surgical complications as a reportable event and that a surgical complication identified on an informed consent is not an exclusion. This training was initiated on September 27, 2004 and was completed on November 4, 2004

Addition of a part time employee on November 1, 2004 to assist with patient safety reporting and investigation of incidents.

Development of a mechanism for tracking and identifying accountability for incident reporting (i.e., from filer to the Patient Safety Officer). Planned completion date is December 31, 2004

Documentation of facility's rationale for categorization of events upon review of the incident. Notations will be noted on each incident indicating the reasons for the harm score assigned. This was implemented on October 23, 2004.

Revision to reporting of incidents to include those that were being reviewed through another avenue (i.e., codes, transfers, and returns to the Emergency Department within 48-hours). Those other avenues will continue, but will also now result in an incident report being generated. This revision was approved by the Patient Safety Committee on November 2, 2004

A new Patient Safety Officer, a physician to assist with the clinical review, was assigned on November 2, 2004.

The restraint issue is being dealt with using re-education of the nursing staff and physician staff regarding the components of the Restraint Policy and Protocol. This re-education was rolled out in stages beginning with the revision of current tools to more accurately reflect the intent of the regulations and how we will apply those regulations in the care of our patients. This training was initiated October 8, 2004.

A. All current policies were revised to eliminate the recommendations for the application of physical restraints as a "routine" action. This was completed on November 8, 2004

B. Formal guidelines were developed for the use of the flow sheet taking each section of the form and providing detailed explanation for the appropriate completion of the form. These guidelines will also assist in the more timely discontinuation of restraints when appropriate. These guidelines were completed on November 8, 2004.

C. The Pharmacy will be instrumental in the development of and implementation of educational processes related to the chemical restraint portion of the protocol. This education was initiated on November 17, 2004 with a planned completion date of January 31, 2005.

D. Nursing staff will be re-educated regarding the improved policies and protocols on all shifts utilizing a formal presentation by a single RN supervisor

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so that all staff receive the same information. This process will begin with the presentation of the educational program to all nursing supervisory personnel and case management on November 17, 2004.

The sessions will then continue through the nursing staff on all in-house units with a projected completion date of January 31, 2005. The staff will be provided with a pocket-sized quick reference reminder card, initiated November 19, 2004.

E. Physician staff will be provided the same written information as the nursing staff and the RN responsible for nursing re-education will be made available for formal presentation. This education will be initiated December 2, 2004 and will be completed by January 31, 2005.

F. 100% chart reviews will be performed by the case management staff and all patients will be assessed by the RN supervisor on duty prior to the use of any restrictive device or chemical restraint until such time as the re-education process is complete, which is planned for March, 2005.

103.38 LICENSURE **EDUCATION PROGRAMS**

103.38 Education programs Orientation and inservice training programs should be provided in order that hospital personnel may maintain their skills and learn new developments in health care.

Observations:

Based on a review of policies and interviews with staff (EMP), it was determined that Agency staff does not receive the same orientation as a hospital employee.

Findings include:

Review of the facilities policies and procedures revealed "Policy 03.11, adopted June 1, 2002 Orientation Program, POLICY: All new employees must attend the general orientation program, which is conducted on the first day of employment. There are very few exceptions; however, employees must attend the next scheduled session.

PROCEDURE: The Hospital's orientation program is divided into three parts:

I General

II Department Specific

III Job Specific

1) Interview with EMP 5 and EMP 12 on September 22, 2004 at approximately 10:00 AM, revealed, "Agency staff just do a read and sign."

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Upon further questioning, it was determined that agency staff are given "Information Sheets" to read and then sign a statement indicating that they have read them. The information covered includes: the "Confidentiality Agreement", the provider's "Mission, Goals, Vision Statement", Documentation Tips, Corporate Compliance Plan, Notice of Privacy Practice, Environment of Care, Sexual Harassment Policy, Index for Categorizing Events and Infection Control."

2) Further review of this policy reveals that the orientation program does not address Agency Staff.

Plan of Correction:

To maintain compliance with Policy 03.11, the following plan has been established for the orientation of agency personnel. This plan was implemented October 28, 2004.

1. A one-day orientation program has been developed to meet the three parts of Clearfield Hospital's orientation process - General, Departmental, and Job Specific Orientations.
2. Agencies supplying staff will be notified of the requirement that any staff wishing to be scheduled to work within the organization must first attend the orientation program prior to working.
3. An agency staff orientation day will be scheduled monthly. Agencies may schedule a nurse to attend one of these programs through the Department of Nursing.
4. The coordinator of scheduling for the Department of Nursing will maintain a current list of the agency staff that have met all requirements and are approved for work within the organization.
5. The Nursing Supervisors will assist to evaluate all new agency personnel after their first day of work and annually thereafter.

109.4 LICENSURE

PROFESSIONAL NURSING STAFF

109.4 Professional nursing staff A sufficient number of registered professional nurses shall be on duty at all times to plan, assign, supervise, and evaluate nursing care as well as to give patients such nursing care as requires judgement of a registered or professional nurse. Auxiliary nursing personnel shall be supervised by a professional nurse.

Observations:

Based on direct observation, review of staffing patterns and interview with

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nursing and supervisory staff, it was determined that the outpatient chemotherapy clinic was not staffed with a sufficient number of registered professional nurses who were qualified to provide care rendered.

Findings include:

- 1) An unannounced visit to the Chemotherapy Clinic on September 22, 2004 revealed that one hospital staff member, a Registered Nurse, was working in the Clinic. Interview with EMP9 revealed that "on a busy day she cares for 14-15 patients."
- 2) Review of the Chemotherapy Clinic patient schedule for September 22, 2004, revealed that 14 patients were scheduled. Interview with EMP9 revealed that the chemotherapy treatment times ranged from 15 min to 4 hours. In addition, 5:14 patients were scheduled to have lab work drawn.
- 3) On September 23, 2004 an unannounced visit to the Chemotherapy Clinic revealed EMP9, working independently, performing all the duties within the Chemotherapy Clinic. Review of the patient schedule revealed 12 patients were scheduled for treatment.
- 4) On September 24, 2004 an unannounced visit to the Chemotherapy Clinic again revealed EMP9 independently performing all clinic duties.
- 5) Interview with EMP9 revealed that this employee is the only hospital employee working in the Chemotherapy Department. They perform all of the clerical functions, scheduling patients, mixing of the medications, rooming the patient, providing direct patient care and documentation. EMP9 stated, "I do not leave (the Chemotherapy Clinic) for lunch or breaks. I use the bathroom in the department." EMP9 further stated, "I don't know my supervisor's work schedule. I saw (the supervisor) briefly on Tuesday (September 21, 2004) walk past the door to the department. I have minimal interaction with my supervisor."
- 6) A request was made to see the staffing schedule for the past 6 months. In response, EMP9 referred the surveyors to a sign in sheet that is kept in the Clinic. EMP7 produced a hand written staffing schedule from September 27, 2004 through October 10, 2004. The schedule revealed schedules for EMP9 and EMP7. EMP7 is the part time supervisor working Tuesday, Wednesday and Thursday.
- 7) Interview with EMP7 revealed that EMP9 "prefers to work independently." It was further stated that "another registered nurse was scheduled to work in the Chemotherapy Clinic prior to June, 2004." EMP7 stated that "EMP9 indicated that they did not need the additional assistance." As a result that employee was re-assigned to another department within the hospital.
- 8) Interview with EMP7 revealed that they were "hired in the Chemotherapy Department to work with the Pharmacy, Marketing and Billing departments to coordinate the billing process". EMP7 stated that "EMP9 has the clinical

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expertise to provide the clinical care in this Clinic." It was further stated that, "I routinely do not go into the department" (Chemotherapy Clinic). My background is in the surgery department. I had a Chemotherapy course in March 2003, which was a General Introduction to Basic Medications."

Plan of Correction:

The staffing pattern effective September 27, 2004 is as follows:

1. Oncologic certified RN – Full time
2. Oncologic trained RN (not certified) – Part time
3. RN supervisor = Part time (Tuesday, Wednesday, and Thursday)

A minimum of 2 RN's are on duty within the Chemo Clinic at any time when patients are present for any type of treatment.

A Full-time oncologic certified RN supervisor has been hired and began employment November 15, 2004.

109.6 (c) LICENSURE
STAFFING SCHEDULES

109.6 (c) Schedules which contain an indication of personnel attendance by date, service unit, and time of actual attendance shall be kept on file for a minimum of one year.

Observations:

Based on staff interview (EMP) and review of policies and procedures, it was determined that personnel attendance records for the Chemotherapy Clinic had not been maintained.

Findings include:

Review of the Human Resources Policy and Procedure Manual: "Policy # 76, Record Retention, Adopted 6/01/02. Section E. Retention of Records, 1. Supervisors are authorized to retain the following departmental records: ... b. The attendance record for the preceding and current fiscal year. 2. Supervisors shall review the records annually and, when appropriate, forward original documents to the Human Resource Department for inclusion in the personnel record or purge duplicated/outdated information. ... 4. Records shall be retained in accordance with applicable governmental regulations."

1) When EMP9 was asked for the staffing schedules for the past 6 months, the surveyors were referred to a sign in sheet that is maintained in the Clinic.

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2) Interview with EMP7 revealed a hand written staffing schedule from September 27, 2004 through October 10, 2004. The schedule contained entries for EMP9 and EMP7. It was noted that EMP7, being a part time supervisor, was scheduled for Monday, Tuesday, and Wednesday and EMP9 scheduled Monday through Friday.

3) Interview with EMP9 revealed that they were unsure when EMP7 was going to be in the Chemotherapy Clinic. EMP9 was unable to recall the last time EMP7 was working in the Chemotherapy Clinic and stated that "I have minimal interaction with my supervisor."

Plan of Correction:

Schedules are now prepared on a biweekly basis by the unit supervisor and entered by the scheduling secretary into the ANSOS scheduling matrix. Printed copies are provided to the Chemotherapy Unit for posting and to the House Supervisors for reference as needed. This was implemented on October 28, 2004.

Actual attendance is recorded by the use of time clocks and this attendance is maintained in the Kronos payroll system. This system captures the use of sick hours, vacation hours and seminar hours and was implemented on July 1, 2000. Staff education on its availability was initiated on October 28, 2004

Focused monitoring regarding staffing schedules will be a quality audit for 6-months and this was implemented October 28, 2004.

109.13 LICENSURE

JOB DESCRIPTIONS

109.13 Job descriptions Job descriptions shall be written for each position classification in nursing services and shall delineate the functions, responsibilities, and desired qualification of each classification. Copies of job descriptions shall be available to nursing personnel.

Observations:

Based on review of the job description for the Chemotherapy Supervisor, and staff interview (EMP), it was determined the supervisor failed to meet the minimum job requirements, expectations and responsibilities as established in the job description.

Findings Include:

Review of the "Annual Evaluation: Job Title: Chemotherapy Supervisor,
QUALIFICATIONS: ... Oncology nursing society certification preferred. Three (3 years clinical experience with oncology preferred. ... Responsibilities: 1. Supervises workers engaged in carrying out functions of the department according to established hospital and departmental policies and procedures.

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Performance Standards: a. On a daily basis ensures that work is performed according to established procedures by physical inspection and/or verbal verification. ... 3. Quality Management - supports and participates in the development, implementation, and evaluation of Quality Management activities in accordance with hospital and departmental plans."

Review of the facility's reference manual entitled "Nursing Procedures and Protocols, Lippincott Manual, third edition, 2003" reveals under the heading, "Special considerations: ... Never give a medication poured by someone else."

1) Review of the staff schedule from September 27, 2004 through October 10, 2004 for the Chemotherapy clinic revealed, EMP7 as working part time, 3 days a week (Tuesday, Wednesday, Thursday).

Interview with EMP7 on September 24, 2004 revealed "that they are unable to, on a daily basis, ensure that work is performed according to established procedures, since EMP7 works part-time."

2) Interview with EMP9 September 22, 2004 revealed that "the Chemotherapy Clinic is open Monday - Friday and has minimal contact with the EMP7."

3) Interview with EMP2 revealed that the facility nursing staff does not have specific policies and procedures because they utilize the Lippincott Manual for nursing procedures for safe medication administration.

4) Review of Chemo Event at the Process Improvement Team (PIT) Committee dated June 17, 2004 revealed, "... The patient developed a reaction from Doxorubicin HCL Liposome injection where the order was Doxorubicin HCL non Liposome injection." Interview with EMP7 regarding the adverse drug reaction event, stated, "I drew up the medication." Interview with EMP9 regarding the adverse drug reaction event, revealed that when she went to medication room the Doxil was already drawn up in the syringe. EMP9 went on to state that "the medication looked cloudy but since it was checked by pharmacy and [the] supervisor [they] proceeded to give the medication."

5) EMP7 was questioned on September 24, 2004 about the quality improvement activities of the department which they supervise; their response was "me personally, none."

Review of documented quality performance activities for the Chemotherapy Department for the past year revealed that there was no noted activity since June of 2004; when another employee who was responsible for quality improvement was re-assigned to another department.

Plan of Correction:

Copies of job descriptions are kept in the Human Resources Department as well as within the Chemotherapy Unit Departmental Manual. These job descriptions

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are for a) Unit supervisor and b) Staff Nurses. This was implemented on October 28, 2004.

The addition of the Certified Oncology RN Supervisor to the staff will fulfill the listed qualifications. This will also allow for the fulfillment of the listed responsibilities including but not limited to the direct supervision of workers; ensuring that established policies and procedures are followed; and that Quality Management activities are performed and that they conform to the hospital and departmental plans. This was initiated November 15, 2004.

The Quality Management program was re-implemented October 23, 2004 with activities being conducted by the RN staff within the department with supervisory oversight.

There will be ongoing reporting of the Chemotherapy Quality Management activities to the Nursing Quality Management Committee per our organization's Performance Improvement Plan.

109.62 (a) LICENSURE
ADMINISTRATION OF DRUGS

109.62 Administration of drugs (a) The individual preparing a dose of medication for administration shall also administer it, except as provided by subsection (b) and (c) of this section.

Observations:

Based on review of incidents, personnel files (PF), committee meeting minutes and staff interview (EMP), it was determined that the person who prepared the medication was not the person who administered the medication.

Findings include:

Review of the facility's reference manual entitled "Nursing Procedures and Protocols, Lippincott Manual, third edition, 2003" reveals under the heading, "Special considerations: ... Never give a medication poured by someone else."

Review of the Clearfield Hospital Pharmacy Department Chemotherapy Manual # 79, entitled "Chemotherapy. Purpose: To provide safe, accurate calculation of dosing, labeling and preparation of chemotherapeutic agents at Clearfield Hospital. Procedure: F. In the out-patient Chemotherapy Clinic, a trained Registered Nurse will prepare the medications in a vertical flow hood."

Review of Event Report Form dated June 8, 2004 revealed an adverse drug reaction. "Factual Description: Wrong Chemo drug prepared 1/3 of dose administered."

Review of Chemo Event Process Improvement Team (PIT) Committee dated

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June 17, 2004, ... "The patient developed a reaction from Doxorubicin HCL Liposome injection where the order was Doxorubicin HCL non Liposome injection. Patient, upon receiving the medication, developed a reaction. Skin turned purple, heart pounding, patient described people as being distant. The nurse involved stopped the medication immediately, increased the IV rate, and patient's symptoms improved. Patient still does have some phlebitis at the injection site ... PIT action plan to prevent reoccurrence were the following: ... Pharmacy over-site needs to continue. Appropriate/safe staffing level in the Chemo Unit ... Encourage nurse who prepares drug for injection to administer the drug to patient. If medication looks cloudy or just not right, seek clarification ..."

1) Interview with EMP9 regarding the adverse drug reaction event, revealed that when they went to medication room, the Doxil was already drawn up in the syringe. EMP9 further stated that "the medication looked cloudy but since it was checked by pharmacy and the supervisor I proceeded to give the medication."

2) Interview with EMP7 on September 24, 2004 regarding the adverse drug reaction event revealed that "I drew up the medication."

3) Review of PF11 revealed that this staff member had "supervisory experience in the Department of Surgery." During an interview on September 24, 2004 with EMP7, it was stated, "I took one Chemotherapy Course in March of 2003. The course consisted of a General Introduction to Basic Medications."

Plan of Correction:

The nursing policy relating to the individual preparing the drug shall administer the medication was reinforced. This was implemented on September 24, 2004. This was accomplished via staff education.

**113.25 (d) LICENSURE
DRUG DISTRIBUTION SYSTEMS**

113.25 (d) There shall be a formulary or list of drugs accepted for use in the hospital which shall be developed and amended at regular intervals by the pharmacist and the appropriate committee. Drugs included in the Pennsylvania Generic Drug Formulary shall be considered for inclusion in the hospital's formulary.

Observations:

Based on review of policies and procedures, committee meeting minutes and staff interview (EMP), it was determined that the facility failed to have all drugs used in the facility approved by the Pharmacy and Therapeutics Committee and the Medical Staff.

Findings include:

Review of the Pharmacy Department Policy: 79:03:11 "Drug Procurement"

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reviewed and revised 8/2004 revealed: Procedure: A. The Department of Pharmacy shall maintain an up-to-date formulary of all available medications approved for use at Clearfield Hospital. The medications in the Hospital Formulary are approved for use by the Pharmacy and Therapeutics (P&T) Committee and Medical Staff. The Pharmacy Director is responsible for selecting the source of the supply of approved medications via a group purchasing organization. B. Non-formulary agents will be obtained if an emergency and a medical necessity. A. non-formulary agent may be requested for addition to the formulary in writing to the Chairman of Pharmacy and Therapeutics Committee. The Pharmacy and Therapeutics Committee will review the request at the next available meeting date".

1) Review of a Event Report Form dated June 8, 2004 revealed a wrong antineoplastic agent was administered to a patient.

2) Review of the Chemo Event Process Improvement Team (PIT) Committee Minutes dated June 17, 2004, "... the patient developed a reaction from Doxorubicin HCL Liposome injection where the order was Doxorubicin HCL non Liposome injection ... PIT action plan to prevent reoccurrence were the following: ... P&T committee approval process needs to be followed for adding new drugs to the formulary ... "

3) Review of the Pharmacy and Therapeutics Committee Meeting Minutes dated Thursday, June 17, 2004 revealed EMP4 "noted that some medications that are being requested through the Pharmacy are not being formally requested through the P&T Committee (i.e., chemotherapy agents). ... noted that medications are not without risk and the safety issues need to be addressed. Policy and Procedures for addition of a new drug to the formulary should be followed. The sponsoring physician must request in writing to add a new drug to the formulary ..."

4) Interview with EMP4 revealed that the following antineoplastic agents are being used without a formal written request by the sponsoring physician: Doxil (doxorubicin liposomal), Alimta (pemetrexed), Avastin (bevacizumab), Erbitux (cetuximab).

5) Review of the Pharmacy and Therapeutics Committee Meeting Minutes dated September 23, 2004 revealed that "The committee had available for their review information on Chemotherapy drugs that have been used in the out-patient Chemo Clinic without the written request of placing them on the formulary."

EMP13 stated that "they would recommend the approval of these medications because they are already using them, but wants to make sure that all safety issues are addressed." It is also recommended that [EMP8] be sent a letter from the chairman of this committee informing EMP8 of the policy and procedure on requesting a new drug to be added to the formulary."

6) Review of a letter dated September 27, 2004 addressed to EMP8 from the Chairman of Pharmacy & Therapeutics Committee revealed "This letter serves as a reminder of the Pharmacy & Therapeutics Policy and Procedures of

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requesting new drugs to be added to the formulary. When a physician wants a new drug for consideration, it's the sponsoring physician's responsibility to request in writing to the Chairman of the P&T Committee ..."

Plan of Correction:

The chemotherapeutic agents that were not previously approved for addition to the hospital formulary were reviewed and approved for addition to the formulary at the September 23, 2004 Pharmacy and Therapeutics Committee meeting. There was also written communication sent to the involved oncologist regarding the need to follow hospital policy on September 24, 2004.

The Pharmacy Director through the Pharmacy & Therapeutics Committee will monitor medical staff compliance to this policy. This will be a focused monitor involving formulary review for one year with quarterly reporting to the Pharmacy and Therapeutics Committee.

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Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

6/29/2004

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There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of an occupancy survey conducted on June 29, 2004 at a satellite clinic of Clearfield Hospital located at 1049 Front Street, Philipsburg, PA. It was determined the facility was in compliance with all applicable requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, November 1987, as amended June 1998 and the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities.

Plan of Correction:

No plan of correction is required

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Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

4/28/2004

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There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of an occupancy survey conducted on April 28, 2004 at Clearfield Hospital. It was determined the facility was in compliance with all applicable requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, November 1987, as amended June 1998 and the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

2/4/2004

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There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of an unannounced complaint survey (JOH04C006J) which was conducted on February 4, 2004 at Clearfield Hospital. It was determined the Facility was in compliance with the requirements of the 42 CFR, Title 42, Part 482 - Conditions of Participation For Hospitals.

Plan of Correction:

No plan of correction is required

Initial Comments:

This report is the result of an unannounced complaint investigation (JOH04C006J) conducted at Clearfield Hospital on February 4, 2004. It was determined that the Hospital was in compliance with the requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, November 1987, as amended June 1998.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

12/10/2003

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There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of a occupancy survey of five satellite clinic's which was conducted on November 24 and concluded on December 4, 2003 at Clearfield Hospital. It was determined the facility was not in compliance with all applicable requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, November 1987, as amended June 1998 and the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities.

Plan of Correction:

No plan of correction is required

101.64 LICENSURE

HOSPITAL RESPONSIBILITIES

101.64 Hospital responsibilities A hospital shall comply with all applicable environmental, health, sanitation, and life-safety standards which are not under the direct jurisdiction of the Department. This shall include but not be limited to radiologic health, sanitation, food services, pharmacy, electric wiring, and life-safety code compliance. When the hospital has been inspected by another regulatory agency, it shall have on the record during the survey by the Department written confirmation of compliance as provided by the rules and regulations of appropriate agencies.

Observations:

Based on on-site visits of the satellite clinics (SC) owned and operated by the Clearfield Hospital and interview with the facility's Project Manager, it was determined that the facility failed to have documented evidence that each clinic had obtained the required inspection permit by another regulatory agency, Labor and Industry.

Findings include

1) During the on-site visits on of five satellite clinics owned and operated by Clearfield Hospital, it was revealed that 5 of 5 clinics, Therapy Works (SC1), Houtzdale Family Medical Services (SC2), Clearfield Internal Medicine (SC3),

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Philipsburg Family Medical Services (SC4), Curwensville Family Medical Services (SC5), failed to have an occupancy permit provided by the Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Occupational and Industrial Safety posted.

2) During the on-site occupancy survey on November 24, 2003, SC5 and SC3 were visited. The clerical staff at SC5 was able to produce the Labor and Industry Occupancy Permit for this clinic.

3) Interview with the Project Manager on December 4, 2003, revealed that SC1, SC2, SC3 had no documented evidence that Labor and Industry had ever completed an occupancy inspection.

4) During the onsite visit on December 4, 2003 of SC1, the facilities Project Manager was present and stated that they "would be able to provide the Department with the required Labor and Industry Occupancy Permit's for all the satellite clinics by December 5, 2003."

5) On December 5, 2003 at 1:30pm a telephone conversation with the Project Manager revealed that the facility was unable to provide the Department with the occupancy permits for SC1, SC2, SC3.

Plan of Correction:

The Labor and Industry Occupancy Permit was located for SC3 (Clearfield Internal Medicine) on December 30, 2003.

Numerous contacts were made to the Department of Labor and Industry and this entity was able to provide Clearfield Hospital with the Labor and Industry Occupancy permit for SC1 (Therapy Works) on December 31, 2003.

The Department of Labor and Industry was contacted and this entity was able to provide verbal confirmation (#79702) of a Labor and Industry Occupancy permit for SC2 (Houtzdale Family Services) on December 30, 2003. Due to a change in ownership for this clinic, Clearfield Hospital had to provide the Department of Labor and Industry with proof of ownership and then this entity will provide Clearfield Hospital with the Labor and Industry Occupancy permit for SC2.

Labor and Industry Occupancy permits have been posted for SC1 (Therapy Works), SC3 (Clearfield Internal Medicine), SC4 (Philipsburg Family Medical Services), and SC5 (Curwensville Family Medical Services) on December 31, 2003. The occupancy permit for SC2 (Houtzdale Family Medical Services) will be posted as soon as it arrives from the Department of Labor and Industry.

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Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

10/14/2003

[View Previous Reports](#)

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of an occupancy survey which was conducted on October 14, 2003 at Clearfield Hospital. It was determined the facility was in compliance with all applicable requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, November 1987, as amended June 1998 and the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

6/13/2003

[View Previous Reports](#)

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of an unannounced complaint investigation (CHL03C722F) conducted at Clearfield Hospital on June 13, 2003. It was determined that the facility was in compliance with the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, Rules and Regulations for Hospitals, November 1987, as amended June 1998.

Plan of Correction:

No plan of correction is required

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Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

4/24/2003

View Previous Reports

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of a Medicare Validation Survey at the request of the Centers for Medicare and Medicaid (CMS). The request by CMS was the result of the Facility's voluntary withdrawal from the Joint Commission of Accreditation of Healthcare Organizations (JCAHO). The Validation Survey was conducted on April 23-24, 2003. It was determined that Clearfield Hospital was not in compliance with the requirements of 42 CFR 482 Conditions of Participation for Hospitals.

Plan of Correction:

No plan of correction is required

482.11(c) STANDARD
LICENSURE OF PERSONNEL

42 CFR 482.11(c) Licensure of personnel ----- The hospital must assure that personnel are licensed or meet other applicable standards that are required by State or local laws.

Observations:

Based on a review of Medical Staff By-Laws, Human Resource files, Emergency Department Policy Manual, medical record review and Administrative staff interview, it was determined that the Facility failed to ensure that the licensure requirements of personnel met the applicable State laws.

Findings include:

- 1) During the review of Medical Staff By-Laws, it was noted that there were no provisions to address how the Medical Staff would delineate the duties and responsibilities of Allied Health Professionals as members of the staff at the facility.
- 2) During the review of the Human Resource files for Physician Assistant #1 and #2 revealed that the collaborative agreement failed to describe the manner in which the physician assistant will be assisting the physician. It also failed to identify the supervising and substitute physician(s) for the physician assistants.

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The collaborative agreement was not dated nor did it reveal evidence that it had been approved by the State Board of Medicine.

3) The review of the "collaborative agreement" provided by Human resources that is signed by the physician assistant and the CEO is a business contract outlining salary and benefits but does not include any delineation of duties and responsibilities and physician supervision.

Review of the "Scope of Practice" for the Physician Assistant revealed that under

"Section 1 - Functions and Tasks

II. Treatment plan for all patients to be reviewed by the emergency physician in an appropriately timely manner in order to allow appropriate symptomatic treatment concurrent with evaluation, imaging, etc..

III. Medication Standing Orders: Td, TT, Acetaminophen and Ibuprofen, Local Anesthetic by infiltration (Lidocaine with Epinephrine, Bupivacaine)

Restrictions: The following orders require prior approval of the responsible Emergency Physician:

1. Parenteral Medication
2. IV fluids
3. CT scanning, Ultrasound, Nuclear Medicine testing
4. Consultation/Referral/Admission/Transfer

Section 2 - Time/Place and Manner of Supervision

2. The physician assistant will provide services between the hours of 2 PM - 10 PM.

5. The emergency physician will review the physician assistant's evaluation of all patients seen and will personally examine each patient to the degree he/she deems appropriate/necessary. Patients seen for wound rechecks and suture removal may be discharged without physician evaluation at the discretion of the physician assistant.

6. All medical records completed by the physician assistant will have a notation (written or transcribed) and be signed by the responsible emergency physician attesting to his/her agreement with the evaluation and management of the patient.

1) During the review of the "Scope of Practice" for the Physician Assistant located in Emergency Department revealed that it was not signed and/or dated by the respective physicians' s assistant and supervising physician.

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- 2) Review of medical record # 2 revealed that "Toradol 60mg/2ml vial IM now" was ordered solely by a physician assistant. This record lacked any documentation or signature from the supervising physician.
- 3) Review of medical record # 1 revealed that the physician assistant was treating patients at 10:16 AM, outside of the 2 PM - 10 PM time frame. Review of medical record # 2 of a patient treated for a contusion of the hand revealed lack of any documentation or signature from the supervising physician.
- 4) Interview with the Administrative Staff revealed documentation to show that the "Scope of Practice" had been approved by the Medical Executive Committee 09/16/97 and has not been reviewed or revised since that time.
- 5) Interview also revealed that the current Director of the Emergency Department was not in this position in 1997, nor were the current physician assistants employed when this "Scope of Practice" was originally approved.

Plan of Correction:

Immediate education of the physician assistant's working in our Emergency Department that they must function under their current "scope of practice" until revisions are made/approved. April 24, 2003

Review of current PA Code, Title 49. Professional and Vocational Standards for physician assistants, particularly relating to written agreements, responsibility of supervisor and physician assistant scope of practice, including medication prescribing and dispensing. May, 2003

Revision of our physician assistant's scope of practice to reflect necessary job duties for their position in the Emergency Department, with elimination of specific hours that they are allowed to work. September, 2003

Obtain approval from the State for the revised written agreement and physician assistant scope of practice. October, 2003

Obtain State approval for change in primary supervising physician to a MD with privileges in our Emergency Department, so that our Emergency Department physician assistant's can utilize their medication prescribing privileges for ordering medications as permitted. October, 2003

Develop a credentialing tool for physician assistant's to include appropriate sign-offs with dates for approvals through the chain of command (i.e. Chief of Service recommendation, Credentials Committee recommendation, Medical Executive Committee recommendation, and Board of Directors approval). November, 2003

Maintain physician assistant's credentials files in the Medical Staff Office. November, 2003

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Revision to the Medical Staff Bylaws to add Allied Health Professionals (i.e. physician assistants) to the Medical Staff credentialing process to include initial approval of a physician assistant's scope of practice and to include a periodic reappraisal process. April, 2004

Ongoing monitoring (chart audits) of documentation for appropriate physician supervision sign-offs for validation of the Emergency Department physician assistant's plan of care.

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

11/15/2002

View Previous Reports

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

Based on an unannounced complaint investigation (PIT02C451F) conducted November 15, 2002 at Clearfield Hospital, it was determined the facility was in compliance with the requirements for 42 CFR 482 Conditions of Participation for Hospitals.

Plan of Correction:

No plan of correction is required

Initial Comments:

Based on an unannounced complaint investigation (PIT02C451F) conducted on November 15, 2002, it was determined that Clearfield Hospital was in compliance with the requirements of 28 PA Code, Part IV, Subpart A Rules and Regulations for Hospitals, November 1987, as amended 1998.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

10/4/2002

View Previous Reports

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of a Full State Licensure Survey that was conducted on October 1-4, 2002 at Clearfield Hospital, as governed by the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 1987 amended 1998. The Facility was found to be non-complaint. The following State deficiencies were cited.

Plan of Correction:

No plan of correction is required

103.22 (b)(8) LICENSURE IMPLEMENTATION

(8) The patient has the right to full information in laymen's terms, concerning his diagnosis, treatment, and prognosis, including information about alternative treatments and possible complications. When it is not medically advisable to give such information to the patient, the information shall be given on his behalf to the patient's next of kin or other appropriate person.

Observations:

Based on review of the the Hospital's Medical Staff Rules and Regulations, Administrative policy and procedure manual, Medical Executive & Quality Management Committee meeting minutes, and review of closed medical records of patients who received blood transfusions, it was determined that the medical staff failed to provide documented evidence that the patient or significant other was informed of the possible complications associated with a blood transfusion.

Findings include:

- 1) Review of the Medical Staff Rules and Regulations of Clearfield Hospital (reviewed and amended October 01, 2001), Under Article X entitled "Informed Consents", Section 1: "Responsibility for Obtaining Informed Consent", (a) After admission, it shall be the responsibility of the physicians to obtain consents from patients in the following circumstances. (4) informed consents for blood transfusions. (b) The hospital consent form must be signed by the patient or his/her representative and the responsible physician. Except in emergencies, a

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failure to include a completed consent form in the patient's chart prior to performance of the the procedure shall automatically cancel the procedure.

2) Review of Administrative Policy Manual revealed hospital policy # 01.06.13 (revised 09-02) entitled "Informed Consent Policy" section IV. Obtaining Consents: B. The medical staff physician is responsible for discussing with the patient the contemplated procedure, for obtaining the patient's informed consent for the procedure, and for placing appropriate documentation of these discussions and of the patients informed consent in the medical record.

3) Review of the blood consent form revealed the physician's signature with date and time is located at the bottom of the blood consent form, directly above the physicians signature is the following statement "I have personally explained the above information to the patient or the patient's representative. Review of 10 closed medical records revealed that the physician failed to sign, date and time 6 out of the 10 blood consent forms.

4) Review of the Medical Executive Committee meeting minutes dated January 15, 2002 it was noted that there has been concern with decreased compliance with blood consents in the Department of Medicine and a sticker system has been implemented. Meeting minutes dated February 2002, revealed that blood consents had a completion rate of 69% for physician signatures.

5) Review of the Quality Management Meeting Committee meeting minutes of April 11, 2002 it was noted that there was a compliance issue with obtaining blood consents for the department of medicine. There has also been education of the unit clerks and a recent implementation of the consent stickers as reminders. Minutes from the August 8, 2002 revealed that compliance for physician signatures on blood consents was 57%.

Plan of Correction:

Clearfield Hospital will institute the following:

- Separate Blood Consent Form - The forms were ordered October 23, 2002 and plan to have the separate consent form available November 4, 2002.

- Add a distinctive color to the Blood Consent Form for visibility - The color request was made on October 23, 2002 and plan to have form available by November 4, 2002.

- Department of Medicine education on the informed consent process as it related to blood consents. This occurred on October 10, 2002 and included the elements of an informed consent and the necessary documentation requirements (i.e. blood consent form or narrative in the physician progress notes).

- The nurses who round with the physicians and the case managers involved in the care management of the patient will assist the physician in the signing of the

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blood consents. This staff education for the blood consent process occurred at the Nursing Quality Management Committee level on October 16, 2002.

- 100% chart review of blood utilization for 4-months to assess the effectiveness of our educational efforts and to assess compliance with informed consent for blood utilization. There will however be an ongoing review of blood utilization.

- Overall medical staff education on informed consents as they relate to Patient Safety – Act 13. This occurred on October 15, 2002 at the Medical Executive Committee, and we will continue with medical staff education at the clinical department level during the months of October, November, December, 2002.

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

10/4/2002

[View Previous Reports](#)

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

Based on an Occupancy Survey on October 3, 2002 to inspect a reception and waiting area located on the 2nd floor of central wing of the main hospital, it was determined that Clearfield Hospital was in compliance with Rules and Regulations as governed by the Pennsylvania Department of Health's Rules and Regulations for Hospitals.

Plan of Correction:

No plan of correction is required

CA

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

FRANCIS L. SELVAGE and
DAWN L. RETORICK

v.

No. 03-393-CD

CLEARFIELD HOSPITAL, LOIS
EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON,
ICU Unit Manager

FILED ^{1 CC} ^{Atty's:}
0/10:50 ^{BD} J. West
MAY 26 2005 E. Smith
William A. Shaw ⁽⁶⁰⁾
Prothonotary/Clerk of Courts

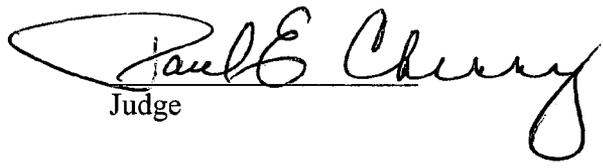
ORDER

AND NOW, this 25th day of May, 2005, following oral argument and the submission of
briefs on Defendants' Motion for Protective Order in response to Plaintiffs' Subpoena to Produce
Documents or Things for Discovery Pursuant to Rule 4009.22, it is the ORDER of the Court as
follows:

Defendants' Motion for Protective Order is GRANTED TO THE EXTENT AS FOLLOWS:

1. The Pennsylvania Department of Health is directed to comply with Plaintiffs' Subpoena
to Produce Documents or Things to the extent that it shall provide to Plaintiffs
documents pertaining to any "survey, investigation, evaluation and/or inspection
conducted at the Clearfield Hospital in 2004" requested in said Subpoena. HOWEVER,
the Department of Health shall only provide those portions of any "survey[s],
investigation[s], evaluation[s] and/or inspection[s]" which directly pertain to nursing and
staffing issues in the ICU unit at the Clearfield Hospital.

By the Court


Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.
RETORICK,

Plaintiffs,

vs.

CLEARFIELD HOSPITAL; LOIS
EISENMAN, Director of Nursing; JACKIE
STONE, Vice President of Nursing; and
THELMA STRATTON, ICU Unit Manager,

Defendants.

CIVIL DIVISION

03-393-CD

**NOTICE OF INTENT TO SERVE
SUBPOENAS TO PRODUCE
DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE
4009.21**

Filed on Behalf of Defendants:
Clearfield Hospital; Lois Eisenman, Director
of Nursing; Jackie Stone, Vice President of
Nursing; and Thelma Stratton, ICU Unit
Manager

Counsel of Record for This Party:

John K. Gisleson, Esquire
PA ID No.: 62511

S. Elaine Diedrich, Esquire
PA ID No.: 87044

Terri Imbarlina Patak, Esquire
PA ID No.: 65610

SCHNADER HARRISON SEGAL
& LEWIS LLP
Firm ID No.: 061

120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200
(412) 765-3858 **FAX**

FILED *WACC*

11:45 AM
OCT 24 2005


William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.	)	CIVIL DIVISION
RETORICK,)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS)	
EISENMAN, Director of Nursing; JACKIE)	
STONE, Vice President of Nursing; and)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

Defendants, Clearfield Hospital; Lois Eisenman, Director of Nursing; Jackie Stone, Vice President of Nursing; and Thelma Stratton, ICU Unit Manager, by and through its undersigned counsel, Schnader Harrison Segal & Lewis LLP, files the following Notice of Intent to Serve Subpoenas to Produce Documents and Things for Discovery Pursuant to Rule 4009.21:

Defendants, Clearfield Hospital; Lois Eisenman, Director of Nursing; Jackie Stone, Vice President of Nursing; and Thelma Stratton, ICU Unit Manager, intends to serve subpoenas identical to the ones attached hereto as Exhibit "A."

You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoenas.

If no objection is made the subpoenas may be served.

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

BY: Terri Imbarlina Patak / JS
John K. Gisleson, Esquire
PA ID No.: 62511
S. Elaine Diedrich, Esquire
PA ID No.: 87044
Terri Imbarlina Patak, Esquire
PA ID No.: 65610
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200
(412) 765-3858 FAX

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

Vs.

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

No. 2003-00393-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
PENNSYLVANIA NURSES ASSOCIATION RULE 4009.22
ASSOCIATION, OPEIU, LOCAL 112
TO: 5000/TILGHMAN STREET/SUITE 248/ALLENTOWN, PA 18104
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

SEE ATTACHMENT "A." PLEASE PRODUCE ANY AND ALL DOCUMENTS REFERENCED IN ATTACHMENT "A" TO TERRI IMBARLINA PATAK, ESQUIRE/SCHNADER HARRISON SEGAL & LEWIS LLP 120 FIFTH AVENUE/SUITE 2700/PITTSBURGH, PA 15222/(412) 577-5200
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: TERRI IMBARLINA PATAK, ESQUIRE
ADDRESS: 120 5TH AVE., STE. 2700
PITTSBURGH, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 65610
ATTORNEY FOR: DEFENDANTS

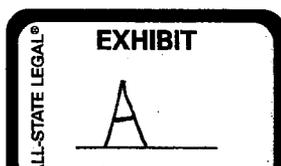
BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, October 20, 2005
Seal of the Court

Deputy Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

Deputy



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L. RETORICK,	)	CIVIL DIVISION
)	
Plaintiffs,	)	03-393-CD
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS EISENMAN, Director of Nursing; JACKIE STONE, Vice President of Nursing; and THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

SUBPOENA

TO: Pennsylvania Nurses Association, OPEIU, Local 112
5000 Tilghman Street
Suite 248
Allentown, PA 18104

1. Copies of any and all documents or things relating to Frances L. Selvage and Dawn L. Retorick including, but not limited to, any and all documents, correspondence, notes, electronic mail, computerized records or databases, memorandum, files, or any other writings, documents or things related to grievances filed by the aforementioned individuals or any other matters related to the aforementioned individual's employment with Clearfield Hospital.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

Vs.

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

No. 2003-00393-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

CARLISLE REGIONAL HOSPITAL
TO: 246 PARKER STREET/ CARLISLE, PA 17013

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

SEE ATTACHMENT "A." PLEASE PRODUCE ANY AND ALL DOCUMENTS REFERENCED IN ATTACHMENT "A" TO TERRI IMBARLINA PATAK, ESQUIRE/SCHNADER HARRISON SEGAL & LEWIS LLP 120 FIFTH AVENUE/SUITE 2700/PITTSBURGH, PA 15222/(412) 577-5200

(Address)

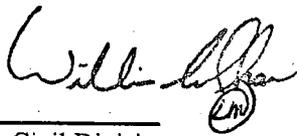
You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: TERRI IMBARLINA PATAK, ESQUIRE
ADDRESS: 120 5TH AVE., STE. 2700
PITTSBURGH, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 65610
ATTORNEY FOR: DEFENDANTS

BY THE COURT:


William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, October 20, 2005
Seal of the Court

~~Deputy~~ Prothonotary
My Commission Expires
1st Monday in the
Clearfield Co.

Deputy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L. RETORICK,	)	CIVIL DIVISION
)	
Plaintiffs,	)	03-393-CD
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS EISENMAN, Director of Nursing; JACKIE STONE, Vice President of Nursing; and THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

SUBPOENA

TO: Carlisle Regional Hospital
246 Parker Street
Carlisle, PA 17013

1. Copies of any and all documents relating to the employment of Frances L. Selvage and Dawn L. Retorick including, but not limited to, the complete personnel file of each of the aforementioned individuals, documents, correspondence, electronic mail, computerized records or databases, memorandum, interview notes, employment applications, compensation and benefit information, complaints filed by or against the aforementioned individuals, notes from investigations of said complaints, performance evaluations, and any other writings, documents or things relating to said individuals and their employment with the Hospital.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE SUBPOENAS PURSUANT TO RULE 4007.1** was served via U.S. First Class Mail, Postage Pre-Paid on this 21st day of October, 2005, upon the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101

SCHNADER HARRISON SEGAL & LEWIS LLP

BY: Terri Imbarlina Patak /ds
John K. Gisleson, Esquire
PA ID No.: 62511
S. Elaine Diedrich, Esquire
PA ID No.: 87044
Terri Imbarlina Patak, Esquire
PA ID No.: 65610
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200
(412) 765-3858 **FAX**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.
RETORICK,

Plaintiffs,

vs.

CLEARFIELD HOSPITAL; LOIS
EISENMAN, Director of Nursing; JACKIE
STONE, Vice President of Nursing; and
THELMA STRATTON, ICU Unit Manager,

Defendants.

CIVIL DIVISION

03-393-CD

**CERTIFICATE PREREQUISITE TO
SERVICE A SUBPOENA PURSUANT TO
RULE 4009.22 DIRECTED TO
PENNSYLVANIA NURSES
ASSOCIATION, OPEIU, LOCAL 112**

Filed on Behalf of Defendants:
Clearfield Hospital; Lois Eisenman, Director
of Nursing; Jackie Stone, Vice President of
Nursing; and Thelma Stratton, ICU Unit
Manager

Counsel of Record for This Party:

John K. Gisleson, Esquire
PA ID No.: 62511

S. Elaine Diedrich, Esquire
PA ID No.: 87044

Terri Imbarlina Patak, Esquire
PA ID No.: 65610

SCHNADER HARRISON SEGAL
& LEWIS LLP
Firm ID No.: 061

120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200
(412) 765-3858 FAX

FILED ^{no cc}
mll:2161
OCT 28 2005 

William A. Shaw
Prothonotary/Clerk of Courts

PTDATA 289983_1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L. RETORICK,	)	CIVIL DIVISION
)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS EISENMAN, Director of Nursing; JACKIE STONE, Vice President of Nursing; and THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

**CERTIFICATE PREREQUISITE TO SERVICE A
SUBPOENA PURSUANT TO RULE 4009.22 DIRECTED
TO PENNSYLVANIA NURSES ASSOCIATION, OPEIU, LOCAL 112**

Defendants, Clearfield Hospital; Lois Eisenman, Director of Nursing; Jackie Stone, Vice President of Nursing; and Thelma Stratton, ICU Unit Manager, (“Clearfield”) by and through its undersigned counsel, Schnader Harrison Segal & Lewis LLP, files this Certificate Prerequisite to Service a Subpoena Pursuant to Rule 4009.22 Directed to Pennsylvania Nurses Associates, OPEIU, Local 112.

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Clearfield certifies that:

- (1) A Notice of Intent to Serve Subpoenas with a copy of the Subpoena Directed to Pennsylvania Nurses Associates, OPEIU, Local 112 attached thereto was mailed to each party on October 21, 2005.
- (2) A copy of the Notice of Intent, including the proposed Subpoena Directed to Pennsylvania Nurses Associates, OPEIU, Local 112, is attached hereto as Exhibit “A.”

(3) In order to expedite this matter, each party waived the twenty (20) day objection period on the Subpoena Directed to Pennsylvania Nurses Associates, OPEIU, Local 112; therefore, no objection was made.

(4) The Subpoena Directed to Pennsylvania Nurses Associates, OPEIU, Local 112 which will be served is identical to the Subpoena Directed to Pennsylvania Nurses Associates, OPEIU, Local 112 which is attached to the Notice of Intent to Serve Subpoenas.

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

BY:



John K. Gisleson, Esquire

PA ID No.: 62511

S. Elaine Diedrich, Esquire

PA ID No.: 87044

Terri Imbarlina Patak, Esquire

PA ID No.: 65610

120 Fifth Avenue, Suite 2700

Pittsburgh, PA 15222

(412) 577-5200

(412) 765-3858 **FAX**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.
RETORICK,

Plaintiffs,

vs.

CLEARFIELD HOSPITAL; LOIS
EISENMAN, Director of Nursing; JACKIE
STONE, Vice President of Nursing; and
THELMA STRATTON, ICU Unit Manager,

Defendants.

CIVIL DIVISION

03-393-CD

**NOTICE OF INTENT TO SERVE
SUBPOENAS TO PRODUCE
DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE
4009.21**

Filed on Behalf of Defendants:
Clearfield Hospital; Lois Eisenman, Director
of Nursing; Jackie Stone, Vice President of
Nursing; and Thelma Stratton, ICU Unit
Manager

Counsel of Record for This Party:

John K. Gisleson, Esquire
PA ID No.: 62511

S. Elaine Diedrich, Esquire
PA ID No.: 87044

Terri Imbarlina Patak, Esquire
PA ID No.: 65610

SCHNADER HARRISON SEGAL
& LEWIS LLP
Firm ID No.: 061

120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200
(412) 765-3858 FAX



William A. Shaw
Prothonotary/Clerk of Courts

PTDATA:206493

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.	)	CIVIL DIVISION
RETORICK,)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS)	
EISENMAN, Director of Nursing; JACKIE)	
STONE, Vice President of Nursing; and)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

Defendants, Clearfield Hospital; Lois Eisenman, Director of Nursing; Jackie Stone, Vice President of Nursing; and Thelma Stratton, ICU Unit Manager, by and through its undersigned counsel, Schnader Harrison Segal & Lewis LLP, files the following Notice of Intent to Serve Subpoenas to Produce Documents and Things for Discovery Pursuant to Rule 4009.21:

Defendants, Clearfield Hospital; Lois Eisenman, Director of Nursing; Jackie Stone, Vice President of Nursing; and Thelma Stratton, ICU Unit Manager, intends to serve subpoenas identical to the ones attached hereto as Exhibit "A."

You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoenas.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

*

Vs.

*

No. 2003-00393-CD

*

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
PENNSYLVANIA NURSES ASSOCIATION, OPEIU, LOCAL 112
RULE 4009.22
TO: 5000/TILGHMAN STREET/SUITE 248/ALLENTOWN, PA 18104
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

SEE ATTACHMENT "A." PLEASE PRODUCE ANY AND ALL DOCUMENTS REFERENCED IN ATTACHMENT "A" TO TERRI IMBARLINA PATAK, ESQUIRE/SCHNADER HARRISON SEGAL & LEWIS LLP 120 FIFTH AVENUE/SUITE 2700/PITTSBURGH, PA 15222/(412) 577-5200
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

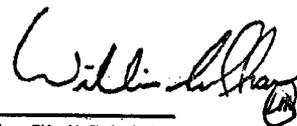
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: TERRI IMBARLINA PATAK, ESQUIRE
ADDRESS: 120 5TH AVE., STE. 2700
PITTSBURGH, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 65610
ATTORNEY FOR: DEFENDANTS

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division



DATE: Thursday, October 20, 2005
Seal of the Court

Deputy Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

Deputy



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L. RETORICK,	)	CIVIL DIVISION
)	
Plaintiffs,	)	03-393-CD
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS EISENMAN, Director of Nursing; JACKIE STONE, Vice President of Nursing; and THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

SUBPOENA

TO: Pennsylvania Nurses Association, OPEIU, Local 112
5000 Tilghman Street
Suite 248
Allentown, PA 18104

1. Copies of any and all documents or things relating to Frances L. Selvage and Dawn L. Retorick including, but not limited to, any and all documents, correspondence, notes, electronic mail, computerized records or databases, memorandum, files, or any other writings, documents or things related to grievances filed by the aforementioned individuals or any other matters related to the aforementioned individual's employment with Clearfield Hospital.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE SUBPOENAS PURSUANT TO RULE 4007.1** was served via U.S. First Class Mail, Postage Pre-Paid on this 21st day of October, 2005, upon the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101

SCHNADER HARRISON SEGAL & LEWIS LLP

BY: Terri Imbarlina Patak /hs

John K. Gisleson, Esquire
PA ID No.: 62511
S. Elaine Diedrich, Esquire
PA ID No.: 87044
Terri Imbarlina Patak, Esquire
PA ID No.: 65610
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200
(412) 765-3858 FAX

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **CERTIFICATE PREREQUISITE TO SERVICE SUBPOENAS PURSUANT TO RULE 4009.22 DIRECTED TO PENNSYLVANIA NURSES ASSOCIATION, OPEIU, LOCAL 112** was served via U.S. First Class Mail, Postage Pre-Paid on this 26th day of October, 2005, upon the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101

SCHNADER HARRISON SEGAL & LEWIS LLP

BY:



John K. Gisleson, Esquire
PA ID No.: 62511
S. Elaine Diedrich, Esquire
PA ID No.: 87044
Terri Imbarlina Patak, Esquire
PA ID No.: 65610
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200
(412) 765-3858 FAX

John K. Gisleson (PA Id. No. 62511)
S. Elaine Diedrich (PA Id. No. 87044)
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200
Attorneys for Defendants

FILED
0/12.15 LM
DEC 01 2005
ICC Amy
Diedrich
JMS

William A. Shaw
Prothonotary

FRANCES L. SELVAGE and)
DAWN L. RETORICK,)
)
Plaintiffs,)
)
vs.)
)
CLEARFIELD HOSPITAL,)
LOIS EISENMAN, Director of Nursing,)
JACKIE STONE, Vice President of Nursing,)
THELMA STRATTON, ICU Unit Manager,)
)
Defendants.)

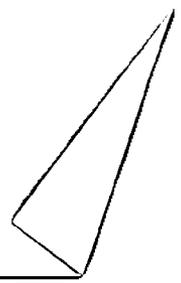
**IN THE COURT OF COMMON
PLEAS OF CLEARFIELD
COUNTY, PENNSYLVANIA**

No. 03-393-CD
Civil Action - Law

STIPULATION FOR PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto through their respective counsel, as follows:

1. Any documents, data, oral or written material or information disclosed by the parties or produced by the parties in the context of this action, which any party considers to be non-public, confidential, trade secret, proprietary or privileged information, may be designated by such party as "confidential" at the time of production or inspection or at any time thereafter (hereinafter "confidential material"). All confidential material and information, regardless of its form or classification, shall be used only by the persons specified in paragraph 2 below, only in connection with this action, and shall not be used in connection with any other lawsuit or for any other purpose whatsoever.



2. No person shall be given, shown, allowed to examine or shall be privy to any discussions regarding material designated as “confidential” except the following:

- (a) The parties, attorneys for the parties, or employees for the attorneys for the parties, and designated representatives of the parties;
- (b) The Court and any employees of the Court designated by the Court, with or without notice to the parties;
- (c) Any person permitted to review confidential material by Court Order; and
- (d) Experts, consultants and other persons employed by the parties or attorneys for the parties for purposes of this litigation.

3. The inadvertent failure of any party to designate documents, data, oral or written material or information as confidential material shall not constitute, or have the effect of, a waiver of any claim that such material, or any similar material, is confidential within the meaning of this Order, including discovery materials which a party inadvertently fails to designate as confidential at the time of production but which such party subsequently designates as confidential. The treatment by the parties receiving such materials as other than confidential prior to their designation as confidential shall not be construed as a violation of the provisions herein governing the use of confidential materials.

4. The production of documents or other information by the parties pursuant to this Order shall not constitute a waiver of any claim based upon any wrongful use of the confidential material or any use of the confidential material not expressly permitted by this Order.

5. All confidential documents and copies of such documents reproduced pursuant to this Order (other than the “work product” of counsel arising from the examination of such documents), shall be surrendered to or destroyed at the request of the party producing such confidential material at the conclusion of this action, whether by compromise, settlement or final judgment, and the exhaustion of all appellate remedies. Any notes arising from the examination

of confidential material shall continue to be subject to the restrictions set forth herein after the conclusion of this action, whether by compromise, settlement or by final judgment, and the exhaustion of all appellate remedies.

6. This Order shall not limit the parties' right to submit confidential material to the Court as part of their pleadings and to use confidential material at trial provided, however, that either party shall have the right to request that this Court enter a protective order requiring that specified documents, or types of documents, be filed under seal or that a further protective order be adopted by the Court for use at trial.

7. Any disputes concerning the application of any provision of this Order shall be heard by the Court upon application of the aggrieved party.

8. This Order and the provisions herein shall not prejudice the right of any party to seek reconsideration by the Court, upon written application, to modify, extinguish or vacate this Order.

9. If any party objects to the classification or designation of confidential material herein, said party shall first contact the party making such designation or classification and shall confer in good faith within twenty (20) days in an effort to resolve the dispute. If the parties are unable to resolve the dispute, the party objecting to such classification or designation may apply to the Court, by motion or otherwise, for an Order reclassifying or redesignating the confidential material, or any other appropriate Order regarding the treatment of such materials, including, but not limited, to an Order permitting certain specific witnesses and/or parties to review and analyze such confidential material. This Order in no way affects a party's ability to object to the production of documents for any reason permitted under the Pennsylvania Rules of Civil Procedure.

10. Should any person bound hereby receive a subpoena, civil or regulatory investigation demand, or other process from a third party which may be construed to require the disclosure of confidential material in any form, said person shall immediately give notice to the party or his attorney who designated the information sought by the subpoena, demand or other process as confidential. Once notified, it shall be the burden of the party who designated the information confidential to protect the information from disclosure or production pursuant to the subpoena, demand or process.

It is so stipulated.

Dated this 11 day of November, 2005.



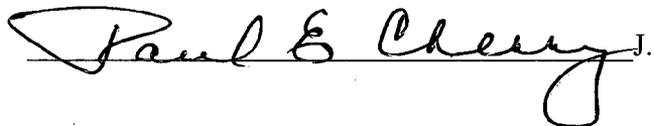
James J. West
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101
ATTORNEY FOR PLAINTIFFS

Dated this 6th day of January, 2005.



S. Elaine Diedrich, PA Id. No. 84077
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
ATTORNEY FOR DEFENDANTS

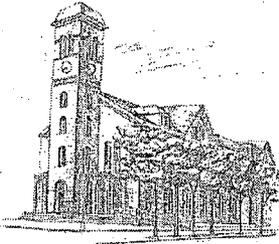
IT IS SO ORDERED this 15th day of December, 2005.



FILED

DEC 01 2005

William A. Shaw
Prothonotary



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

X 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
CIVIL DIVISION

FILED
01:10:49 PM
MAY 05 2006

William A. Shaw
Prothonotary/Clerk of Courts
500 Amy West

FRANCES L. SELVAGE and
DAWN L. RETORICK

vs.

No. 03-393-CD

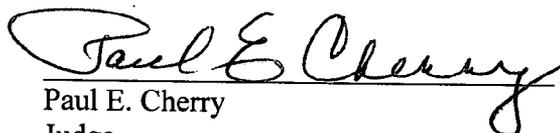
CLEARFIELD HOSPITAL, LOIS
EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager

ORDER

AND NOW, this 4th day of May, 2006, upon consideration of Defendants' Motion for Summary Judgment in the above matter, it is the ORDER of the Court that argument on said Motion has been rescheduled from May 11, 2006 at 11:00 AM to the **2nd day of June 2006, at 9:00 A.M.** in Courtroom No. 2., Clearfield County Courthouse, Clearfield, PA.

It is the responsibility of Plaintiffs' Counsel to serve certified copies of said scheduling Order upon all Defendants.

BY THE COURT:


Paul E. Cherry
Judge

CA

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

FRANCES L. SELVAGE and
DAWN L. RETORICK

-VS-

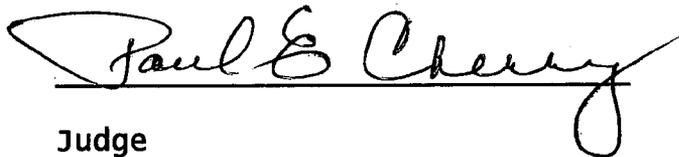
No. 03-393-CD

CLEARFIELD HOSPITAL, LOIS
EISENMAN, DIRECTOR OF
NURSING, JACKIE STONE,
VICE PRESIDENT OF NURSING,
THELMA STRATTON, ICU UNIT
MANAGER

O R D E R

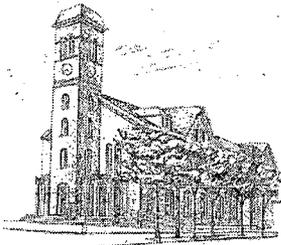
NOW, this 2nd day of June, 2006, following argument on Defendants' Motion for Summary Judgment, it is the ORDER of this Court that counsel for Defendants shall provide the Court with response to oral argument of Plaintiffs, and Plaintiffs shall provide reply and memorandum of law to Defendant's reply and memorandum of law within no more than twenty (20) days from today's date.

BY THE COURT,


Judge

FILED ^{2cc}
013:00 ^{Attys: J. West}
JUN 06 2006 ^{E. Smith}

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

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: 6/6/06

 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:

light most favorable to the non moving party, and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. Murphy v. Duquesne University of the Holy Ghost, 777 A.2d 418, 429 (2001) (citation omitted).

The Plaintiffs' Complaint contains an allegation for Intentional Infliction of Emotional Distress. To prevail on a claim for Intentional Infliction of Emotional Distress, the Plaintiffs must prove "conduct... so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." Hoy v. Angelone, 720 A.2d 745, 754 (Pa. 1998) (internal citations omitted).

The Court carefully reviewed evidence in support of the intentional infliction claim and determines it must fail as a matter of law. Facts in support fail to meet the required threshold to establish a sufficient claim. Accordingly the count for Intentional Infliction of Emotional Distress will be dismissed.

Therefore, the Court enters the following:

ORDER

NOW, this 16th day of October 2006, after consideration of the Defendants' Motion for Summary Judgment, the Court hereby finds as follows:

1. The request to Dismiss Plaintiffs' Complaint in its entirety is hereby DENIED.
2. The request to Dismiss Plaintiffs' claim for Intentional Infliction of Emotional Distress is hereby GRANTED.

BY THE COURT,


PAUL E. CHERRY
Judge

FILED

OCT 16 2006

**William A. Shaw
Prothonotary/Clerk of Courts**

DATE: 10-16-06

____ 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:

JA

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL TRIAL LISTING

CERTIFICATE OF READINESS TO THE PROTHONOTARY

DATE PRESENTED

CASE NUMBER TYPE TRIAL REQUESTED ESTIMATED TRIAL TIME

03-393 D

Date Complaint (X) Jury () Non-Jury 8 days
Filed: 09-18-2003 () Arbitration

Writ of Summons Filed 03/20/2003

PLAINTIFF(S)

Frances L. Selvage and Dawn Retorick () Check block if a Minor
DEFENDANT(S) is a Party to the Case

FILED rec
m/12:57/6/West
DEC 11 2006

William A. Shaw
Prothonotary/Clerk of Courts

Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton ()

ADDITIONAL DEFENDANT(S)

_____ ()

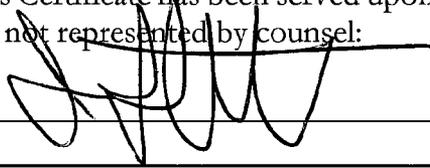
JURY DEMAND FILED BY: DATE JURY DEMAND FILED:
Plaintiffs 03/20/2003

AMOUNT AT ISSUE CONSOLIDATION DATE CONSOLIDATION ORDERED

More than
& () yes (X) no

PLEASE PLACE THE ABOVE CAPTIONED CASE ON THE TRIAL LIST.

I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy fo this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel:



FOR THE PLAINTIFF TELEPHONE NUMBER
James J. West, Esquire (717) 233-5051

FOR THE DEFENDANT TELEPHONE NUMBER
John K. Gisleson, Esquire (412) 577-5216

FOR ADDITIONAL DEFENDANT TELEPHONE NUMBER

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.
RETORICK,

Plaintiffs,

vs.

CLEARFIELD HOSPITAL; LOIS
EISENMAN, Director of Nursing; JACKIE
STONE, Vice President of Nursing; and
THELMA STRATTON, ICU Unit Manager,

Defendants.

CIVIL DIVISION

03-393-CD

**CERTIFICATE PREREQUISITE TO
SERVICE OF SUBPOENAS PURSUANT
TO RULE 4009.22 DIRECTED TO
GENTIVA HEALTH SERVICES, OLSTEN
HEALTH SERVICES, AND THE
PENNSYLVANIA DEPARTMENT OF
HEALTH**

Filed on Behalf of Defendants:
Clearfield Hospital, Lois Eisenman, Jackie
Stone, and Thelma Stratton

Counsel of Record for This Party:

John K. Gisleson
PA Id. No.: 62511
S. Elaine Diedrich
PA Id. No.: 87044
Terri Imbarlina Patak
PA Id. No.: 65610

SCHNADER HARRISON SEGAL
& LEWIS LLP
Firm ID No.: 061

120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200
Facsimile: (412) 765-3858

FILED *NO CC*
m 11:00 AM
MAR 19 2017
(M)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L. RETORICK,	)	CIVIL DIVISION
)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS EISENMAN, Director of Nursing; JACKIE STONE, Vice President of Nursing; and THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

**CERTIFICATE PREREQUISITE TO SERVICE OF
SUBPOENAS PURSUANT TO RULE 4009.22 DIRECTED
TO GENTIVA HEALTH SERVICES, OLSTEN HEALTH SERVICES AND THE
PENNSYLVANIA DEPARTMENT OF HEALTH**

Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton, (collectively "Defendants" or "Clearfield") by and through their undersigned counsel, Schnader Harrison Segal & Lewis LLP, file this Certificate Prerequisite to Service a Subpoena Pursuant to Rule 4009.22 Directed to Gentiva Health Services, Olsten Health Services, and the Pennsylvania Department of Health.

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Clearfield certifies that:

(1) A Notice of Intent to Serve Subpoenas with a copy of the Subpoenas attached thereto directed to Olsten Health Services, Gentiva Health Services, and the Pennsylvania Department of Health was mailed by Defendants to Plaintiffs on March 13, 2007 and sent *via* facsimile to Plaintiffs on March 14, 2007. A true and correct copy of the Notice of Intent to Serve Subpoenas is attached hereto as Exhibit "A."

(2) A Subpoena directed to Carlisle Hospital was also forwarded with the above-mentioned Intent to Server Subpoenas, but the parties have not yet agreed upon a waiver of the twenty (20) day notice period for the Carlisle Hospital Subpoena.

(3) A Notice of Intent to Serve Subpoena with a copy of a subpoena attached thereto directed to Gentiva Health Services in Wilkes Barre, Pennsylvania was sent by facsimile by Defendants to Plaintiffs on March 15, 2007. A true and correct copy of the Notice of Intent to Serve Subpoena on Gentiva Health Services in Wilkes Barre, Pennsylvania is attached hereto as Exhibit "B."

(4) Plaintiffs agreed to waive the twenty (20) day objection period, with no objections being made, on the Subpoenas Directed to Gentiva Health Services, Olsten Health Services and the Pennsylvania Department of Health.

(5) The subpoenas which will be served are identical to the subpoenas which are attached to the Notices of Intent to Serve the subpoenas and are attached hereto as Exhibit "C."

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

Date: March 16, 2007

BY: 

John K. Gisleson
PA Id. No.: 62511
S. Elaine Diedrich
PA Id. No.: 87044
Terri Imbarlina Patak
PA Id. No.: 65610
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.
RETORICK,

Plaintiffs,

vs.

CLEARFIELD HOSPITAL; LOIS
EISENMAN, Director of Nursing; JACKIE
STONE, Vice President of Nursing; and
THELMA STRATTON, ICU Unit Manager,

Defendants.

CIVIL DIVISION

03-393-CD

**NOTICE OF INTENT TO SERVE
SUBPOENAS TO PRODUCE
DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE
4009.21**

Filed on Behalf of Defendants:
Clearfield Hospital; Lois Eisenman, Director
of Nursing; Jackie Stone, Vice President of
Nursing; and Thelma Stratton, ICU Unit
Manager

Counsel of Record for This Party:

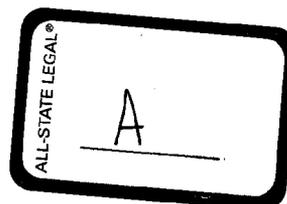
John K. Gisleson, Esquire
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PA ID No.: 65610

SCHNADER HARRISON SEGAL
& LEWIS LLP
Firm ID No.: 061

120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200
(412) 765-3858 FAX



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.	)	CIVIL DIVISION
RETORICK,)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS)	
EISENMAN, Director of Nursing; JACKIE)	
STONE, Vice President of Nursing; and)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

Defendants, Clearfield Hospital; Lois Eisenman, Director of Nursing; Jackie Stone, Vice President of Nursing; and Thelma Stratton, ICU Unit Manager, by and through its undersigned counsel, Schnader Harrison Segal & Lewis LLP, files the following Notice of Intent to Serve Subpoenas to Produce Documents and Things for Discovery Pursuant to Rule 4009.21:

Defendants, Clearfield Hospital; Lois Eisenman, Director of Nursing; Jackie Stone, Vice President of Nursing; and Thelma Stratton, ICU Unit Manager, intends to serve subpoenas identical to the ones attached hereto as Exhibit "A."

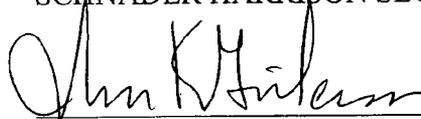
You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoenas.

If no objection is made the subpoenas may be served.

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

BY:



John K. Gisleson, Esquire

PA ID No.: 62511

S. Elaine Diedrich, Esquire

PA ID No.: 87044

Terri Imbarlina Patak, Esquire

PA ID No.: 65610

120 Fifth Avenue, Suite 2700

Pittsburgh, PA 15222

(412) 577-5200

(412) 765-3858 FAX

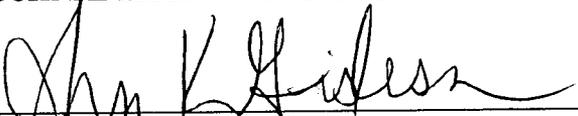
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE SUBPOENAS PURSUANT TO RULE 4007.1** was served via U.S. First Class Mail, Postage Pre-Paid on this 13th day of March, 2007, upon the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101

SCHNADER HARRISON SEGAL & LEWIS LLP

BY:



John K. Gisleson, Esquire

PA ID No.: 62511

S. Elaine Diedrich, Esquire

PA ID No.: 87044

Terri Imbarlina Patak, Esquire

PA ID No.: 65610

120 Fifth Avenue, Suite 2700

Pittsburgh, PA 15222

(412) 577-5200

(412) 765-3858 FAX

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

Vs.

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

No. 2003-00393-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Olsten Health Services

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

The full and complete personnel files pertaining to each of the Plaintiffs, Francis L. Selvage and Dawn L. Retorick with respect to the above matter. See attachment "A."

(Address)

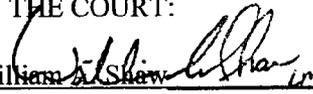
You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: S. Elaine Diedrich, Esquire
ADDRESS: 120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 84077
ATTORNEY FOR: Defendant, Clearfield
Hospital

BY THE COURT:


William S. Shuman
Prothonotary/Clerk, Civil Division

DATE: March 12, 2007
Seal of the Court

Deputy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.	)	CIVIL DIVISION
RETORICK,)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS)	
EISENMAN, Director of Nursing; JACKIE)	
STONE, Vice President of Nursing; and)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

SUBPOENA

TO: Olsten Health Services
1065 Highway 315
Wilkes Barre, PA 18701

1. Copies of any and all documents relating to the employment of Frances L. Selvage and Dawn L. Retorick including, but not limited to, the complete personnel file of each of the aforementioned individuals, documents, correspondence, electronic mail, computerized records or databases, memorandum, interview notes, employment applications, compensation and benefit information, complaints filed by or against the aforementioned individuals, notes from investigations of said complaints, performance evaluations, and any other writings, documents or things relating to said individuals and their employment with the Olsten Health Services or services performed for or through Olsten Health Services.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

Vs.

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

No. 2003-00393-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Gentiva Health Services

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

The full and complete personnel files pertaining to each of the Plaintiffs, Francis L. Selvage and Dawn L. Retorick with respect to the above matter. See attachment "A."

(Address)

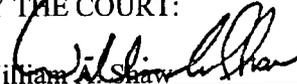
You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: S. Elaine Diedrich, Esquire
ADDRESS: 120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 84077
ATTORNEY FOR: Defendant, Clearfield
Hospital

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: March 12, 2007
Seal of the Court

Deputy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.	)	CIVIL DIVISION
RETORICK,)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS)	
EISENMAN, Director of Nursing; JACKIE)	
STONE, Vice President of Nursing; and)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

SUBPOENA

TO: Gentiva Health Services
3 Huntington Quadrangle 200S
Melville, NY 11747-4627

1. Copies of any and all documents relating to the employment of Frances L. Selvage and Dawn L. Retorick including, but not limited to, the complete personnel file of each of the aforementioned individuals, documents, correspondence, electronic mail, computerized records or databases, memorandum, interview notes, employment applications, compensation and benefit information, complaints filed by or against the aforementioned individuals, notes from investigations of said complaints, performance evaluations, and any other writings, documents or things relating to said individuals and their employment with the Gentiva Health Services or services provided for or through Gentiva Health Services.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

*

Vs.

*

No. 2003-00393-CD

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: PENNSYLVANIA DEPARTMENT OF HEALTH
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

Documents related to Complaint No. PIT02C451F made concerning the Clearfield Hospital ICU in November 2002, including, but not limited to, a copy of the Complaint.

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

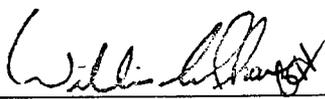
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: S. Elaine Diedrich
ADDRESS: 120 Fifth Avenue, Ste 2700
Pittsburgh, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 84077
ATTORNEY FOR: Defendant, Clearfield
Hospital

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: March 12, 2007
Seal of the Court


Deputy

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

Vs.

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

No. 2003-00393-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: CARLISLE HOSPITAL

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

The full and complete personnel files pertaining to each of the Plaintiffs, Francis L. Selvage and Dawn L. Retorick with respect to the above matter.

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: S. Elaine Diedrich, Esquire
ADDRESS: 120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 84077
ATTORNEY FOR: Defendant, Clearfield
Hospital

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

Deputy

DATE: March 12, 2007
Seal of the Court

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.
RETORICK,

Plaintiffs,

vs.

CLEARFIELD HOSPITAL; LOIS
EISENMAN, Director of Nursing; JACKIE
STONE, Vice President of Nursing; and
THELMA STRATTON, ICU Unit Manager,

Defendants.

CIVIL DIVISION

03-393-CD

**NOTICE OF INTENT TO SERVE
SUBPOENAS TO PRODUCE
DOCUMENTS AND THINGS FOR
DISCOVERY PURSUANT TO RULE
4009.21**

Filed on Behalf of Defendants:
Clearfield Hospital; Lois Eisenman, Director
of Nursing; Jackie Stone, Vice President of
Nursing; and Thelma Stratton, ICU Unit
Manager

Counsel of Record for This Party:

John K. Gisleson, Esquire
PA ID No.: 62511

S. Elaine Diedrich, Esquire
PA ID No.: 87044

Terri Imbarlina Patak, Esquire
PA ID No.: 65610

SCHNADER HARRISON SEGAL
& LEWIS LLP
Firm ID No.: 061

120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200
(412) 765-3858 FAX



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.	)	CIVIL DIVISION
RETORICK,)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS)	
EISENMAN, Director of Nursing; JACKIE)	
STONE, Vice President of Nursing; and)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

NOTICE OF INTENT TO SERVE SUBPOENAS TO PRODUCE DOCUMENTS AND THINGS FOR DISCOVERY PURSUANT TO RULE 4009.21

Defendants, Clearfield Hospital; Lois Eisenman, Director of Nursing; Jackie Stone, Vice President of Nursing; and Thelma Stratton, ICU Unit Manager, by and through its undersigned counsel, Schnader Harrison Segal & Lewis LLP, files the following Notice of Intent to Serve Subpoenas to Produce Documents and Things for Discovery Pursuant to Rule 4009.21:

Defendants, Clearfield Hospital; Lois Eisenman, Director of Nursing; Jackie Stone, Vice President of Nursing; and Thelma Stratton, ICU Unit Manager, intends to serve a subpoena identical to the one attached hereto as Exhibit "A."

You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoenas.

If no objection is made the subpoena may be served.

Respectfully submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

BY:



John K. Gisleson, Esquire

PA ID No.: 62511

S. Elaine Diedrich, Esquire

PA ID No.: 87044

Terri Imbarlina Patak, Esquire

PA ID No.: 65610

120 Fifth Avenue, Suite 2700

Pittsburgh, PA 15222

(412) 577-5200

(412) 765-3858 FAX

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

Vs.

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

No. 2003-00393-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Gentiva Health Services
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

The full and complete personnel files pertaining to each of the Plaintiffs, Francis L. Selvage and Dawn L. Retorick with respect to the above matter. See attachment "A."

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: S. Elaine Diedrich, Esquire
ADDRESS: 120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 84077
ATTORNEY FOR: Defendant, Clearfield
Hospital

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: March 12, 2007
Seal of the Court

Deputy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L. RETORICK,	)	CIVIL DIVISION
)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS EISENMAN, Director of Nursing; JACKIE STONE, Vice President of Nursing; and THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

SUBPOENA

TO: Gentiva Health Services
1065 Highway 315,
Crosscreek Point
Wilkes Barre, PA 18702

1. Copies of any and all documents relating to the employment of Frances L. Selvage and Dawn L. Retorick including, but not limited to, the complete personnel file of each of the aforementioned individuals, documents, correspondence, electronic mail, computerized records or databases, memorandum, interview notes, employment applications, compensation and benefit information, complaints filed by or against the aforementioned individuals, notes from investigations of said complaints, performance evaluations, and any other writings, documents or things relating to said individuals and their employment with the Gentiva Health Services or services provided for or through Gentiva Health Services.

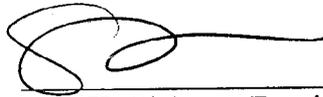
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE SUBPOENAS PURSUANT TO RULE 4007.1** was served via, Facsimile Transmission on this 15th day of March, 2007, upon the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101

SCHNADER HARRISON SEGAL & LEWIS LLP

BY:



John K. Gisleson, Esquire
PA ID No.: 62511

S. Elaine Diedrich, Esquire
PA ID No.: 87044

Terri Imbarlina Patak, Esquire
PA ID No.: 65610

120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222

(412) 577-5200

(412) 765-3858 FAX

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

Vs.

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

No. 2003-00393-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Olsten Health Services

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:
The full and complete personnel files pertaining to each of the Plaintiffs, Francis L. Selvage and Dawn L. Retorick with respect to the above matter. See attachment "A."

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

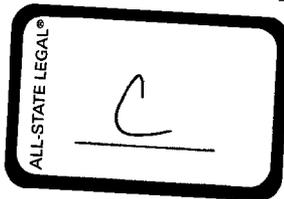
NAME: S. Elaine Diedrich, Esquire
ADDRESS: 120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 84077
ATTORNEY FOR: Defendant, Clearfield
Hospital

BY THE COURT:

William A. Shuman
Prothonotary/Clerk, Civil Division

DATE: March 12, 2007
Seal of the Court

Deputy



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.	)	CIVIL DIVISION
RETORICK,)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS)	
EISENMAN, Director of Nursing; JACKIE)	
STONE, Vice President of Nursing; and)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

SUBPOENA

TO: Olsten Health Services
1065 Highway 315
Wilkes Barre, PA 18701

1. Copies of any and all documents relating to the employment of Frances L. Selvage and Dawn L. Retorick including, but not limited to, the complete personnel file of each of the aforementioned individuals, documents, correspondence, electronic mail, computerized records or databases, memorandum, interview notes, employment applications, compensation and benefit information, complaints filed by or against the aforementioned individuals, notes from investigations of said complaints, performance evaluations, and any other writings, documents or things relating to said individuals and their employment with the Olsten Health Services or services performed for or through Olsten Health Services.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

Vs.

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

No. 2003-00393-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Gentiva Health Services

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

The full and complete personnel files pertaining to each of the Plaintiffs, Francis L. Selvage and Dawn L. Retorick with respect to the above matter. See attachment "A."

(Address)

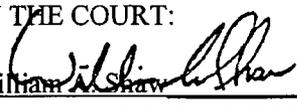
You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: S. Elaine Diedrich, Esquire
ADDRESS: 120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 84077
ATTORNEY FOR: Defendant, Clearfield
Hospital

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: March 12, 2007
Seal of the Court

Deputy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L.	)	CIVIL DIVISION
RETORICK,)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS)	
EISENMAN, Director of Nursing; JACKIE)	
STONE, Vice President of Nursing; and)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

SUBPOENA

TO: Gentiva Health Services
3 Huntington Quadrangle 200S
Melville, NY 11747-4627

1. Copies of any and all documents relating to the employment of Frances L. Selvage and Dawn L. Retorick including, but not limited to, the complete personnel file of each of the aforementioned individuals, documents, correspondence, electronic mail, computerized records or databases, memorandum, interview notes, employment applications, compensation and benefit information, complaints filed by or against the aforementioned individuals, notes from investigations of said complaints, performance evaluations, and any other writings, documents or things relating to said individuals and their employment with the Gentiva Health Services or services provided for or through Gentiva Health Services.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

*

Vs.

*

No. 2003-00393-CD

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: PENNSYLVANIA DEPARTMENT OF HEALTH
(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

Documents related to Complaint No. PIT02C451F made concerning the Clearfield Hospital ICU in November 2002, including, but not limited to, a copy of the Complaint.

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: S. Elaine Diedrich
ADDRESS: 120 Fifth Avenue, Ste 2700
Pittsburgh, PA 15222
TELEPHONE: (412)577-5200
SUPREME COURT ID # 84077
ATTORNEY FOR: Defendant, Clearfield
Hospital

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: March 12, 2007
Seal of the Court


Deputy

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Francis L. Selvage
Dawn L. Retorick
Plaintiff(s)

Vs.

Clearfield Hospital
Lois Eisenman
Jackie Stone
Thelma Stratton
Defendant(s)

No. 2003-00393-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO
RULE 4009.22

TO: Gentiva Health Services

(Name of Person or Entity)

Within twenty (20) days after service of this subpoena, you are ordered by the Court to produce the following documents or things:

The full and complete personnel files pertaining to each of the Plaintiffs, Francis L. Selvage and Dawn L. Retorick with respect to the above matter. See attachment "A."

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: S. Elaine Diedrich, Esquire
ADDRESS: 120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
TELEPHONE: (412) 577-5200
SUPREME COURT ID # 84077
ATTORNEY FOR: Defendant, Clearfield
Hospital

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: March 12, 2007

Seal of the Court

Deputy

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

FRANCES L. SELVAGE and DAWN L. RETORICK,	)	CIVIL DIVISION
)	
	)	03-393-CD
Plaintiffs,)	
)	
vs.)	
)	
CLEARFIELD HOSPITAL; LOIS EISENMAN, Director of Nursing; JACKIE STONE, Vice President of Nursing; and THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

SUBPOENA

TO: Gentiva Health Services
1065 Highway 315,
Crosscreek Point
Wilkes Barre, PA 18702

1. Copies of any and all documents relating to the employment of Frances L. Selvage and Dawn L. Retorick including, but not limited to, the complete personnel file of each of the aforementioned individuals, documents, correspondence, electronic mail, computerized records or databases, memorandum, interview notes, employment applications, compensation and benefit information, complaints filed by or against the aforementioned individuals, notes from investigations of said complaints, performance evaluations, and any other writings, documents or things relating to said individuals and their employment with the Gentiva Health Services or services provided for or through Gentiva Health Services.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**CERTIFICATE PREREQUISITE TO SERVICE OF SUBPOENAS PURSUANT TO
RULE 4009.22 DIRECTED TO GENTIVA HEALTH SERVICES, OLSTEN HEALTH
SERVICES AND THE PENNSYLVANIA DEPARTMENT OF HEALTH** was served via
U.S. First Class Mail, Postage Pre-Paid on this 16th day of March, 2007, upon the following
counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101

SCHNADER HARRISON SEGAL & LEWIS LLP

BY: _____


S. Elaine Diedrich
PA Id. No. 84077

John K. Gisleson (PA Id. No. 62511)
 S. Elaine Diedrich (Pa. Id. No. 84077)
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 120 Fifth Avenue
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 (412) 577-5200
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 Attorneys for Defendants

FILED *no cc*
M 110.486
MAR 28 2007 *OK*

William A. Shaw
 Prothonotary/Clerk of Courts

FRANCES L. SELVAGE and	)	IN THE COURT OF COMMON
DAWN L. RETORICK,	)	PLEAS OF CLEARFIELD
	)	COUNTY, PENNSYLVANIA
Plaintiffs,)	
)	
vs.	)	No. 03-393-CD
)	
CLEARFIELD HOSPITAL,	)	Civil Action – Law
LOIS EISENMAN, Director of Nursing,)	
JACKIE STONE, Vice President of Nursing,)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

**DEFENDANTS’ MOTION TO COMPEL PLAINTIFFS TO
 SUBMIT TO MENTAL EXAMINATION BY PHYSICIAN**

Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton (collectively “defendants”), by their undersigned counsel and pursuant to Pa.R.C.P. 4010(a), hereby move this court to order plaintiffs, Dawn L. Retorick and Frances L. Selvage, to submit to a mental examination by defendants’ psychiatric expert, Dr. Paul M. Bernstein, and aver the following in support of their motion:

1. Pennsylvania Rule of Civil Procedure 4010 provides, in pertinent part, that whenever the physical or mental condition of a party is in controversy, the Court may order a physical or mental examination of that party by a physician on a motion for good cause.
2. Plaintiffs allege in their Amended Complaint that they suffered personal injuries in the incidents giving rise to this action, including but not limited to emotional harm.

3. Plaintiffs hired a psychologist, Stanley E. Schneider, Ed.D, who has examined them and issued an expert report on their mental condition. His expert report opines:

there was a direct and proximate result of the defendants' conduct in that both Frances and Dawn did experience emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, and irritability. Their anxiety and depression was noted, particularly Frances Selvage's, in a review of her medical records. . . . I believe, in my clinical judgment, that being in an environment so hostile and intolerable as the one these nurses experienced would result in a reasonable nurse leaving the position rather than staying.

Plaintiffs' expert report is attached hereto as Exhibit "A."

4. Defendants have denied that plaintiffs suffered mental injuries as a result of the alleged incidents described in the Amended Complaint.

5. In view of the above, it is clear that plaintiffs' mental condition is in controversy in this action and a mental examination of plaintiffs' condition is relevant and essential to defendant's defense of this action, especially since plaintiffs retained a psychologist who personally examined them. In fairness, defendants should be permitted to have their expert evaluate plaintiffs as well.

6. Because plaintiffs have placed their mental state at issue and, themselves, have had a psychologist offer an opinion as to their mental state, defendants rightfully should have the opportunity to have their own examination of the plaintiffs' mental state.

7. Defendants, through their counsel, have unsuccessfully sought to have plaintiffs examined by agreement. These efforts have included a letter to plaintiffs' counsel on March 20, 2007, requesting whether the plaintiffs would consent to being examined by a psychiatrist for defendants. On March 26, 2007, counsel for defendants again forwarded correspondence to plaintiffs counsel requesting whether plaintiffs would consent to the examination. No response

has been received to either request. True and correct copies of counsel's March 20 and March 26 correspondence are attached hereto as Exhibits "B" and "C" respectively.

8. Defendants desire to have plaintiffs examined by Dr. Bernstein, a specialist in the area of psychiatry, on March 31, 2007. The due date for defendants to submit expert reports is April 13, 2007 (the date defendants' pretrial statement is due) and, therefore, time is of the essence.

WHEREFORE, defendants respectfully request this Court to enter an order directing the plaintiffs to attend and undergo a mental examination by Dr. Paul M. Bernstein at 106 N. Second Street, First Floor Suite, Clearfield, Pennsylvania, 16830, on March 31, 2007 at 10:00 a.m. for purposes of inquiring into plaintiffs' alleged mental condition and injuries or suffer sanction upon further order of this Court.

Respectfully Submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By: 

John K. Gisleson (PA Id. No. 62511)
S. Elaine Dieddrich (Pa Id. No. 84077)
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Attorneys for Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton

GUIDANCE ASSOCIATES OF PENNSYLVANIA

412 Erford Road, Camp Hill, PA 17011 (717) 732-2917; FAX: (717) 732-5375
20 Briarcrest Square, Suite 205, Hershey, PA 17033 (717) 533-4312

Stanley E. Schneider, Ed.D.
Director

May 8, 2006

James J. West, Esq.
West Long, LLC
105 N. Front St.
Suite 205
Harrisburg, PA 17101

RE: Salvage/Retorick v. Clearfield Hospital

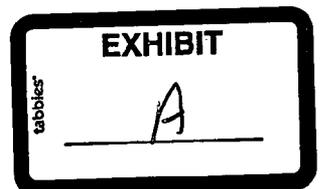
Dear Attorney West:

In your correspondence of September 15, 2005 and January 30, 2006, you asked that I evaluate whether 1) did Dawn Retorick and Frances Salvage suffer any emotional distress related to their employment conditions and if so, 2) was that distress related to a hostile and retaliatory work environment which existed between 1999 and 2002. A third inquiry relates to whether a reasonable nurse faced with similar intolerable circumstances would quit their job rather than stay.

I met with and interviewed Dawn and Frances on February 2, 2006.

In addition, I reviewed the following:

- 9/15/05 letter of referral from Attorney West with amended complaint, including Exhibits #1 through #14.
- Review of 8/8/05 video/transcribed deposition of Frances Salvage, RN
- Review of 8/9/05 video/transcribed deposition of Dawn Retorick, RN
- Review of 8/9/05 video/transcribed deposition of Frances Salvage, RN
- Dawn Retorick -- medical records 3/96 through 1/05
- Frances Salvage -- medical records (cardiology) 7/99-5/02
- Frances Salvage -- medical records (primary care physician) 2/98-11/03
- 1/30/06 letter from Attorney West
- March/April 2006 -- Review of Dawn Retorick's Performance Evaluations from Clearfield Hospital 1982-2002 with attached letters from peers
- Review of Dawn Retorick's Performance Evaluations -- Carlisle Regional Medical Center 2002-2005, March-April 2006
- March/April 2006 -- Review of Frances Salvage's Performance Evaluations from Clearfield Hospital 1993-2002



- March/April 2006 – Review of Frances Selvage’s Performance Evaluations – Carlisle Regional Medical Center

Your Amended Complaint includes a summary of the case, specific factual allegations, nursing statutory, regulatory and ethical standards, duties and issues related to the law. You note (Count VI) “as a direct and proximate result of the defendant’s conduct, the Plaintiffs have suffered severe emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, irritability...”

Dawn Retorick, was interviewed on February 2, 2006. On that occasion, she presented as open, accessible, and somewhat dysphoric, becoming upset as she recalled her history and experiences during 1999-2002 at Clearfield Hospital.

Currently, she is working at Carlisle Regional Medical Center in the Emergency Room, 7:00 p.m. – 7:00 a.m. shift. She commutes 2 ½ hours each way from her home to the hospital. She has been there a little over three years.

Ms. Retorick relates being on the following medications: Lopressor, for blood pressure, Lasix, Neurontin, for restless legs, and Benadryl, for eczema. She reports having a thyroid problem which relates to heart palpitations and also relates that her Circadian Rhythm may be off.

Background information indicates that she was born in Central Pennsylvania. There were five children born to her parents, three older than she, and one younger. Her next older sister died from cancer (7/05).

She describes her family as good, with her parents being somewhat strict. There was no abuse or neglect. Her dad worked as a Supervisor of Housekeeping Services at Penn State University. Her mother worked at a pre-school program. There is no evidence of any abuse or neglect nor any evidence of any drug or alcohol use, misuse or abuse in her family. Basically, she experienced a normal, typical childhood.

Dawn reports liking school and indicates that she was an Honor Roll student. There is no pattern of any detentions, suspensions or expulsions. She graduated high school in 1979. There was no military service.

She began her nursing program in Phillipsburg – a hospital-based program. She completed her RN Degree in 1982 without incident. As she progressed through her RN career, her patient care responsibilities increased.

She was hired as an RN at Clearfield Hospital in June 1982. She was at that hospital working as an RN for approximately 20 years (1982-2002). She reports no difficulties at the hospital until Ms. Thelma Stratton, RN started as the Intensive Care Unit (ICU) Supervisor.

Review of Dawn’s Performance Evaluations from 1982 through 2001 are satisfactory. Apparently, their performance evaluation process involves both a quantitative and qualitative

approach. Quantitatively, she received Satisfactory to Above Average ratings, meeting the position's requirements and, at times over those years, exceeding the position requirements. Some of the comments include, "...able to work at ICU with confidence regarding actions taken in emergencies, positive attitude, self-starter, continues through on her own, functions well in her role as ICU nurse, makes sound judgments...is good member of the team, works well with other ICU staff members as a team, handles all situations well, contributes to overall functioning of the unit on a day-to-day basis, functions well as both staff and Charge Nurse, is a good ICU nurse, she identifies problems...and possible solutions, makes excellent decisions as Charge Nurse, she cares about the place and its people...stable force on evening (shift), excellent critical care skills and knowledge, conscientious, is an efficient Charge Nurse, efficiently oversees personnel and patients, functions well in emergent situations."

The sole evaluation provided by Thelma Stratton, dated 8/13/02, is the only evaluation over the years that Ms. Retorick commented on in her defense. The manager/supervisor's evaluation comments include an incident of transcription error, medication error, as well as Ms. Retorick having "difficulty mentoring in a positive manner." An area of improvement is noted and includes the need to "refrain from discussing Union Business on Company time."

Included with the packet of Performance Evaluations from Clearfield Hospital are letters from peers. Letters were reviewed from Bonnie Maines, Karin Lucas, Diana Dale, Brenda English, and Cheryl Smeal. Ms. Smeal seems to have summarized the sentiments presented by the others when she wrote, "...you have to realize they are responsible for the patients' lives when they are in charge. They have their own patients' lives, plus the lives of patients under the other nurses' care. This is an awesome responsibility. They cannot watch everything another nurse does when they have their own critical patient/s that need/s their attention...Dawn and Fran are very caring, sensitive people...."

Evaluations from Carlisle Regional Medical Center from November 2002 through February 2003 note that Ms. Retorick consistently meets expectations/exhibits behavior. A note is made that she "takes personal responsibility for ensuring all areas are safe and clean while providing a friendly and caring atmosphere. By November 2005, she received the highest rating with a comment, "provides direction to ancillary/professional personnel."

In her deposition of August 2005 and my interview with her in February 2006, Ms. Retorick identified the stressors she dealt with prior to her leaving her position in November 2002. She identified the specific factual allegations included in the Complaint, in addition to her attempts to have those addressed by administrative, supervisory, and managerial staff. She referred to her attempts to resolve issues using the system, filing appropriate notifications, using the Grievance Process, meet and discuss and mediation, saying, "it was hopeless."

In her interview of February 2006, she talked about her situation during those years. She reported being responsible for "everything that happened on my shift." She admits to being worried about her license being compromised in some fashion, saying, "if they mess up and something happened, they would come back and take my license." She felt violated by the ICU manager, who shared information with other staff. She reported her judgment not being trusted

and being undermined. She talked about her professional integrity being questioned. She was cited for a medication error when not on duty. She felt humiliated and embarrassed. She felt singled out and discriminated against, referring to having her personal time compromised. She referred to her need to work through lunches and breaks because of insufficient and unqualified ICU staff and being able to meet continuing education credits.

She describes symptoms consistent with depression, including a sense of helplessness and hopelessness. She said, "I was a wreck." She felt demeaned and degraded and experienced constant turmoil. Anxiety symptoms were noted through her experiencing continuing apprehension and tenseness, in addition to sleep problems. She talked about feeling emotionally abused and in a state of chronic vigilance in that she could not predict her work environment from day to day. She felt singled out in that information was shared with other staff and "people were talking about you." Socially and personally, she talked about her marital relationship being affected, and "almost came to a divorce." She was unavailable to assist her husband raising their children. As the situation progressed, she continued to experience lack of support and said, "I couldn't take it anymore...there was too much turmoil...they forced me out of my job by all of the things they were doing...." She felt humiliated in a meeting in the September/October 2002 timeframe in that she was embarrassed in that meeting which was with a "room full of peers." She felt no administrative support and basically identified herself as a "persona non grata."

Review of her medical records from 1996 through 2005 identify her having dermatitis, allergic rhinitis, arthralgia, and other minor difficulties such as sinus infections and sore throats from 1996 through 1999. She did have borderline high blood pressure identified in 1998. In 1999, the records indicate that she was experiencing headaches, elevated blood pressure, and her gastrointestinal reflux disease (GERD) was no longer controlled with medications. By the end of 1999, her headaches were noted to be severe. These conditions continue with some relief noted over the years. In 2002, the record (July) reflects "working a lot (as) ICU nurse with little time for much else," and by August the records state "burned out with work." Ms. Retorick did not present any psychological or emotional symptoms needing of medication. It appears that she converted her stress into physical symptoms. After 2002, there is no reference to headaches.

Frances Selvage is currently working at Carlisle Regional Medical Center on a 7:00 p.m. to 7:00 a.m. shift in the Emergency Room. She works 76 hours every two weeks and like Dawn Retorick, commutes from Clearfield County to Carlisle. She has partial custody of two grandchildren, ages 12 and 8, and has the children on Sundays from 10:00 a.m. until 7:00 p.m. when she has to work at the hospital and the entire weekend, Friday through Sunday, when she does not work. She reported that her daughter, the mother of the children, was in an accident in 2002 and experienced a brain injury, with short-term memory loss.

Frances began her interview in an apparent normal way. She did not evidence any acute distress and her presentation was unremarkable. There was no evidence or sign of any major affective, cognitive, or behavioral problem. Initially, there were no symptoms or signs of any depression. However, as the interview progressed, she became more anxious and depressed, and at times was tearful when recalling some of her experiences at Clearfield Hospital. Her discussing experiences during that timeframe continue to be emotional triggers.

Background information obtained indicates that she was born and raised in Clearfield County. She is the oldest of three children, having two younger brothers. She felt loved by both parents. She describes her family as "Italian," and described dad as a "bit distant." There was no abuse or neglect. There is no evidence of any drug or alcohol use, misuse or abuse.

Educationally, she attended public schools, from kindergarten through 4th, and Catholic School from 5th through the 12th. She related positively with teachers and administrators. There were no disciplinary problems. She had friends and she was an Honor Roll student. She graduated high school at age 17. In 1966, Fran started the Clearfield Hospital School of Nursing Program, attending two years. In 1968, she married and they relocated to New Jersey.

She returned to Clearfield after five years. She bore three children and adopted a son. Her husband worked construction in New Jersey and was away from home a lot. She was a stay-at-home mom during that time. She began to take part-time classes beginning in 1989 and received her Bachelor of Nursing Degree in 1993. She reports working at Clearfield Hospital from 1993 without any problem until November of 2002. Review of her Performance Evaluations reflect her being a dedicated, responsible, and professional nurse.

She enjoyed working in the Intensive Care Unit, saying, "the ICU was your family. It was a small town...your work family were your stress relievers...we were always there for each other...." She took pride in her work and enjoyed caring for her patients.

Her current medications include Norvasc, Lexapro, and Benicar. She has been taking some sort of antidepressant medication since her difficulties began at Clearfield Hospital.

Frances presented the same concerns, issues, and experiences, as did Dawn Retorick. She notes that when Thelma Stratton became Unit Supervisor, "everything changed." She talked about frustrations having an LPN assigned to the Intensive Care Unit without having the necessary experience and training needed to care for patients, resulting in potential "unpredictable crises."

Frances reports that she would worry, was chronically apprehensive, concerned about losing her license, and also would not eat in order to take care of patients during lunch breaks. She identified it going on for a number of months.

Ms. Selvage also indicated that her ability to be in charge was always questioned. She experienced a number of reactions to the same kinds of stressors noted above. She noted, for example, "it made me a nervous wreck (crying)." She went on to say, "patient families heard Thelma say things...." Frances admits to having expectations – professional expectations that people had to perform. She apparently has very high standards.

Ms. Selvage felt that she was being "abused for being a good nurse." As a result of the work environment during that time period, she experienced a number of reactions.

Physically, she reports an increase in blood pressure, chest pains, sleeplessness, feeling chronically nervous and anxious. She was especially concerned about potential citations

resulting in her license being compromised. Emotionally, she reports apprehensiveness, nervousness, frustration, and irritation concerning her feeling degraded, discounted, and humiliated.

Review of her medical records indicates that she was on antidepressant medication beginning in the fall of 1999. Dr. Ralph Cardamone was treating her hypertension. His notes indicate that in the Spring of 2002, she was experiencing a lot of stress and chest pain. There is a note in May stating, "she has been having a lot of stress at work."

Dr. Conrad was her primary care physician beginning in 1998. Ms. Selvage was on no anxiolytics nor antidepressants until May 1999. His records indicate Situational Anxiety and Sleeplessness. She was prescribed Xanax for anxiety, and Sonata for sleep. Elavil and Zoloft, in addition to Adavan, were also tried from 1999 through 2002. The records indicate Chronic Depression and Situational Anxiety in 2002. Her diagnosis was changed to Chronic Anxiety by the fall of 2002, shortly before she left Clearfield Hospital.

After leaving the hospital, she remained on Zoloft, had quit smoking for a period of time, her depression was stabilized, but she was placed on Lexapro, which is noted to be helping her. This suggests that her depressive disorder continues.

Review of Ms. Selvage's Performance Evaluations indicate a satisfactory rating. Comments include, "...she functions well as a Charge Nurse and Team Nurse...a flexible worker...has a somewhat abrupt personality and difficulty with coworkers on occasion...a very willing worker...provides comprehensive nursing care utilizing the nursing process...functions well in a critical care setting...provides excellent nursing care, functions as a patient advocate, maintains open lines of communication."

Her first negative review occurred in August 2002. It is noted that she "has a tendency to be excitable in emergency situations." Earlier evaluations do not contain a similar content or reference. In fact, a 2001 evaluation notes that she "functions effectively in emergency situations...."

Her 2002 evaluation also includes the following comment: "There is a problem in the Unit of hiring and retraining staff in the Unit and those leaving are refusing to accept positions in the ICU relate that it is because of their treatment and criticism from this employee...." It further states, "I have had three nurses leave the ICU staff and relate their reason for leaving was due to their treatment...criticism which they received from this employee...."

In August 2002, there is a comment that notes, "(she)...confronts and addresses (unreadable) such a manner as to promote a negative atmosphere and ...a disruptive environment in the Unit." A contrasting comment was noted in her 2001 Performance Evaluation: "fosters a positive work environment by acting as a role model and preceptor to all new staff, especially 3-11 personnel."

Letters were received from peers including Kevin Hallin, Cheryl Smeal, Bonnie Maines, Brenda English, Diana Dale, and Karin Lucas, all in support of Ms. Selvage.

Review of the Carlisle Regional Medical Center evaluation in 2004 indicates that Ms. Selvage "consistently meets expectations. The comment includes "serves as a role model and resource person to mentor new employees...." All the areas evaluated noted her performing and demonstrating the roles and responsibilities as a Charge Nurse and her consistently meeting expectations. A similar evaluation was noted in December 2005. There was a lower rating in the area of her needing to delegate, with that rating reflecting that she usually meets expectations.

Regarding the referral questions, my findings support the averment identified above, that is, that there was a direct and proximate result of the defendant's conduct in that both Frances and Dawn did experience emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, and irritability. Their anxiety and depression was noted, particularly France Selvage's, in a review of her medical records.

Regarding the third question, I believe, in my clinical judgment, that being in an environment so hostile and intolerable as the one these nurses experienced would result in a reasonable nurse leaving the position rather than staying. Any work situation that compromises a professional's ethics and challenges their professional integrity, creating the level of stress they experienced, is an unacceptable situation.

In conclusion, it is my clinical judgment, to a reasonable degree of psychological certainty, that the conditions noted in the Complaint were such that Ms. Selvage's and Ms Retorick's decisions to leave that environment were in theirs and their patients' best interests.

Respectfully,



Stanley E. Schneider, Ed.D.
Psychologist

March 20, 2007

S. Elaine Diedrich
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E-mail: sediedrich@schnader.com

James J. West, Esq.
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VIA FAX (717) 234-7517
and U.P.S. EXPRESS

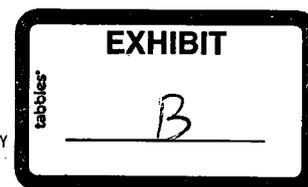
Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your letter of March 15, 2007; I appreciate your courtesies in waiving the twenty (20) day notice requirements for service of the subpoenas on the three entities. Concerning the Carlisle Subpoena, while we forwarded you an intent to serve a subpoena upon Carlisle Hospital in October of 2005, our records do not indicate that we served the subpoena, and Carlisle Hospital has confirmed that it does not have record of a subpoena ever being served upon it. This was an error on our part and we now would like to serve the subpoena. I can assure you that we do not have any records from Carlisle Hospital in our files concerning the plaintiffs. Given this additional information, kindly advise whether you will now agree to waive the twenty (20) day notice period for the Carlisle Hospital subpoena. If your clients have privacy concerns concerning their employment records, we have a Protective Order in place that should allay their concerns. I would be glad to treat all of the plaintiffs' employment records from Carlisle Hospital with confidentiality and mark copies thereof as such pursuant to that Order if requested to do so.

If I do not hear from you concerning the Carlisle records by Wednesday, March 21, I will request the Court to rule on your objections to the Subpoena. I note that we requested that the plaintiffs sign an authorization for the release of their employment records with our First Request for Production of Documents (request 28 and attached authorization) which were served on November 3, 2004; however, as discussed below, this authorization was never provided to us.

Concerning the statement in your letter that discovery in this matter closed with the filing of our Motion for Summary Judgment last year, could you kindly advise me as to the basis for this contention. In Clearfield, discovery either closes when the parties agree to close discovery or when the Court sets a date for the close of discovery. We have not agreed upon a date for the close of discovery and there has not been a Court order setting such date. Please contact me today or tomorrow to discuss an agreed-upon date for the close of discovery. I would like for us to come to an agreed date so that we need not disturb the Court with this issue. If I do not hear from you by Thursday, March 22, I will request the Court to schedule a status conference so that



March 20, 2007
Page 2

the Court can set a date for the close of discovery. There are discovery materials that still need to be produced pursuant to items that we have requested, but have never received from the plaintiffs despite several requests by phone and by letters dated January 6, 2005, January 25, 2005, February 11, 2005, and September 27, 2005. Specifically, we served document requests on the plaintiffs on November 3, 2004, including specific requests and authorizations for plaintiffs' signatures to obtain all of plaintiffs' medical records, as well as plaintiffs' tax and social security records from 1999 to the present. Rather than provide these authorizations in response to our discovery requests, you objected to providing these authorizations on the basis that the documents already "existed" and therefore the plaintiffs would not provide authorizations. We served a Second Request for Production of Documents on January 25, 2005, again requesting all of Plaintiff's medical records. In an attempt to resolve issues concerning the medical records, we only requested records dating back to 1980.

Concerning the tax records requested in our first document requests, we still need all of Fran Selvages W-2 forms from 1999 to the present and Dawn Retorick's W-2 forms for 2005 to the present (2006). While plaintiffs finally provided us with Ms. Retorick's W-2 Forms from 1999 to 2004 on October 7, 2005, the plaintiffs still did not produce any of Ms. Selvages W-2s at that time on the stated basis that providing Ms. Retorick's W-2s was sufficient to determine both of the plaintiffs incomes for those years. We are, however, entitled to both of the plaintiffs' tax records and W-2 forms so that we can accurately ascertain their incomes. When I again requested the remainder of the tax records during our telephone discussion last week, you indicated that you may or may not provide these documents, although they were requested over 2 years ago. You stated that you believed the plaintiffs had already signed authorizations for their tax records. However, as I noted above, these authorizations were never provided to us.

In addition, I recently noted when reviewing the limited medical records that were provided to us that Fran Selvage's primary care physician is Dr. Cardamone. However, we were only provided records for Ms. Selvage dating back to 1998 (which is the earliest date for which medical records were received for Ms. Selvage from *any* physician) and the authorizations that you provided in October 2005 did not include any authorization for Dr. Cardamone's records. As such, I am enclosing herewith an authorization for Ms. Selvage so that we may obtain her records from Dr. Cardamone.

While I do not wish to do so, I will file a motion to compel on Thursday, March 21, if I do not receive by that date the plaintiffs' tax filings and W-2s for the missing years (Selvage years 1999-2006 and Retorick for years 2005-2006), signed authorizations that were originally requested in our first request for production of documents concerning plaintiffs' tax and social security records (I have enclosed herewith additional updated copies for your convenience), and a signed authorization from Ms. Selvage for Dr. Cardamone's records, also enclosed herewith. These are materials that I have been addressing as outstanding with you since they were first

March 20, 2007
Page 3

requested in our document requests dated November 3, 2004 and January 25, 2005, but have never received.

I also enclose herewith a request to supplement your previous responses to interrogatories and document requests. This includes, but is not limited to, documents provided to or exchanged with your experts, your expert's CV, and any of plaintiff's Carlisle records in yours or plaintiff's custody or control.

Finally, could you advise whether you would consent to a motion for an examination of each of the plaintiffs by a psychiatric expert?

I apologize for the tone of this letter, as we have had a cordial relationship throughout this litigation. However, your recent position that discovery is closed with the filing of our summary judgment motion last year combined with the failure of plaintiffs to properly or completely produce documents responsive to discovery requests that are several years old and after many, many attempt to obtain same has forced me to take this route.

As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,



S. Elaine Diedrich

SED/mfh
Enclosures

cc: John K. Gisleson, Esq. (w/o enc.)
Terri I. Patak, Esq. (w/o enc.)

March 26, 2007

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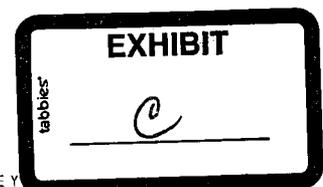
**VIA FAX (717) 234-7517
and U.P.S. EXPRESS**

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your recent correspondence. As a follow-up on two issues which I raised in my letter of March 20, 2007, could you advise whether you consent to allowing our psychiatrist to examine the plaintiffs? He is available to do so this weekend and will, of course, go to Clearfield for the examinations. We would like to schedule the examinations for Saturday, March 31, at 10:00 a.m. If plaintiffs are not available on Saturday, our psychiatrist is available on Sunday, April 1. Please advise if this is acceptable to you and whether the schedule works for plaintiffs. If I do not hear from you by tomorrow afternoon, I will go ahead and schedule a motion to be heard by the Court requesting an order to have the plaintiffs examined by our psychiatrist.

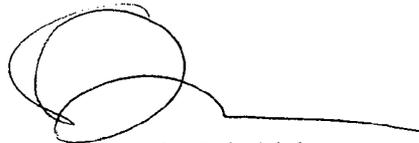
Concerning the close of discovery, we do not believe there is any doubt that discovery in this case was not closed simply because we filed a summary judgment motion. We have never received a contention such as this from counsel. As I discussed in my previous correspondence, the practice in Clearfield County is that counsel agrees on a date for the close of discovery. If they cannot agree upon a date, the Court will hold a status conference and set a date. I would also note that the great majority of discovery that has been done since our summary judgment motion concerns plaintiffs' alleged damages which were not addressed in our motion. Could you let us know if you will agree that discovery in this matter has not closed? If so, we would like to come to an agreement with you as to a date for the close of discovery. If we cannot agree upon a date, we could request the Court to determine a date for the close of discovery during our conference with the Court on April 20. If you will not agree that discovery is not closed in this matter, we will file a praecipe with the Court on Wednesday to request a status conference to determine a date for the close of discovery in this case.



March 26, 2007
Page 2

As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal tail extending to the right.

S. Elaine Diedrich

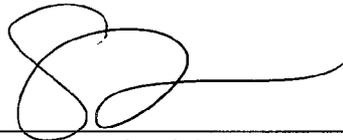
SED/mfh

cc: John K. Gisleson, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2007, a true and correct copy of the foregoing Motion to Compel Plaintiffs to Submit to a Mental Examination was sent, via facsimile and U.S. First Class Mail, postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich (PA Id. No. 84077)

FILED ^{no cc}
M10:48/01
MAR 28 2007 (60)

William A. Shaw
Prothonotary/Clerk of Courts

John K. Gisleson (PA Id. No. 62511)
S. Elaine Diedrich (Pa. Id. No. 84077)
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200
Facsimile (412)765-3858
Attorneys for Defendants

FRANCES L. SELVAGE and	)	IN THE COURT OF COMMON
DAWN L. RETORICK,	)	PLEAS OF CLEARFIELD
	)	COUNTY, PENNSYLVANIA
Plaintiffs,)	
)	
vs.	)	No. 03-393-CD
)	
CLEARFIELD HOSPITAL,	)	Civil Action – Law
LOIS EISENMAN, Director of Nursing,)	
JACKIE STONE, Vice President of Nursing,)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

DEFENDANTS' MOTION FOR STATUS CONFERENCE

Defendants Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton (collectively, "defendants"), by and through their undersigned counsel, respectfully request a status conference with the Court to determine a date for the close of discovery and other matters as considered appropriate by the Court.

1. Plaintiffs filed their Amended Complaint in this action on or about November 10, 2003, alleging claims against Clearfield Hospital and three of its administrators including claims under the Pennsylvania Whistleblower Law, 43 P.S. § 1422 *et seq.* and constructive discharge. Plaintiffs claimed damages include, *inter alia*, front pay, expenses of finding and engaging in other employment, amounts for emotional harm, pain and suffering and medical expenses.

2. This case has been placed on the Spring 2007 trial list.

3. On March 12, 2007, defendants requested that plaintiffs re-sign authorizations to obtain additional medical records of plaintiffs and served on plaintiffs' counsel notices of intent to serve subpoenas on two agencies for whom plaintiffs' had performed services, the Pennsylvania Department of Health and Carlisle Hospital, plaintiffs' employer since they resigned their positions with Clearfield Hospital. A true and correct copy of this correspondence is attached hereto as Exhibit "A."

4. In response to these requests, plaintiffs' counsel agreed to provide authorizations of his clients, but at the same time, asserted that "discovery is closed with the filing of [defendants'] Motion for Summary Judgment last year". A true and correct copy of plaintiffs' counsel's letter dated March 15, 2007 is attached hereto as Exhibit "B."

5. On March 20, 2007, defense counsel forwarded a letter to plaintiffs' counsel and included a request for plaintiff to advise as to the basis for his assertion that discovery was closed. In addition, defense counsel attempted to come to an agreement with plaintiffs' counsel that discovery in this matter was not closed and to agree upon a date for the close of discovery. A true and correct copy of the March 20, 2007 letter is attached hereto as Exhibit "C."

6. In a letter dated March 21, 2007, plaintiffs' counsel stated as support for his statement that with defendants' filing of its summary judgment motion in 2006 "under Rule 1003.52(2) [sic] the Defendants felt that discovery was complete as the Rule requires."

7. Plaintiffs' counsel presumptively means Rule 1035.2 (2), which provides only that "After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or (2) if,

after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issue to be submitted to a jury.” Pa. R.C.P. 1035.2.

8. Rule 1035.2 does not provide that with the filing of a motion for summary judgment, discovery is closed in a case. Such date is generally set by Court Order or agreement of the parties.

9. The parties have not entered into any agreements as to the close of discovery in this matter and there has been no order of court setting a date for the close of discovery.

10. Moreover, the discovery being sought in this matter by defendants deals largely with damages, which had nothing to do with defendants’ summary judgment motion.

11. On March 26, 2007, defense counsel forwarded another letter to plaintiffs’ counsel requesting whether he would agree that discovery was not closed in this case and requesting whether he would agree upon a date for the close of discovery. A true and correct copy of the March 26, 2007 correspondence is attached hereto as Exhibit “E.”

12. Plaintiffs’ counsel has not responded to these attempts to come to agreement on this issue.

13. As such, Defendants respectfully request this Honorable Court schedule a Status Conference whereby a date for the close of discovery may be set.

Respectfully Submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By: _____



John K. Gisleson (PA Id. No. 62511)
S. Elaine Dieddrich (Pa Id. No. 84077)
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants, Clearfield Hospital, Lois
Eisenman, Jackie Stone and Thelma Stratton

March 12, 2007

Kimberly L. Vasquez, Paralegal
Direct Dial 412-577-5293
Direct Fax 412-765-3858
E-mail: kvasquez@schnader.com

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101

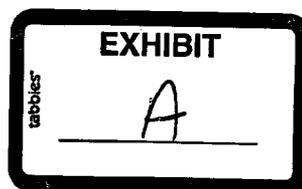
RE: Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital;
Lois Eisenman, Director of Nursing; Jackie Stone, Vice President
of Nursing; and Thelma Stratton, ICU Unit Manager
GD 03-393

Dear Mr. West:

Enclosed please find a copy of Defendant's Notice of Intent to Serve four (4) Subpoenas to Produce Documents and Things for Discovery Pursuant to Rule 4009.21, the original of which we are sending to the Prothonotary for filing today. Copies of the subpoenas to be served are attached to the enclosed Notice.

As we discussed by phone, you have agreed to review these subpoenas and advise as to whether or not you would be willing to waive the twenty-day objection period as to any or all of these subpoenas. In the absence of such a waiver or receipt of your written objection(s), the subpoenas will be served as reflected on the enclosed Notice.

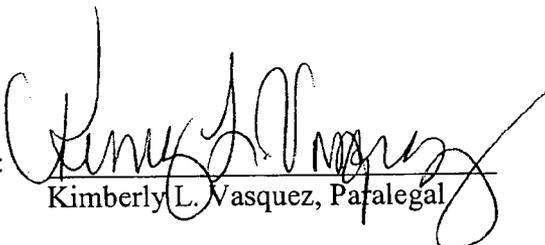
Finally, I am including several medical authorizations requiring your clients' signatures. As I mentioned, you had previously provided us with authorizations, however they are either outdated, or the providers require their own specific release. Please review these as well and, if acceptable to you, kindly have each of the plaintiffs sign them and return them to me. We will, of course, provide you with copies of any records we obtain using these authorizations.



Thank you for your cooperation. Please feel free to call should you have any questions.

Very truly yours,

SCHNADER, HARRISON, SEGAL & LEWIS, LLP

BY: 
Kimberly L. Vasquez, Paralegal

/KLV
Enclosures

JAMES J. WEST, LLC

105 North Front Street, Suite 205

Harrisburg, PA 17101

Telephone: (717) 233-5051

Facsimile: (717) 234-7517

James J. West

jwest@jwestlaw.com

March 15, 2007

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

RE: Retorick/Selvage v. Clearfield Hospital

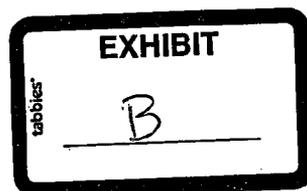
Dear Elaine:

I received the materials you forwarded to me. Even though discovery is closed with the filing of your Motion for Summary Judgment last year, I am concurring in many of the requests and would expect the same courtesy as we prepare for trial.

Insofar as your request to issue subpoenas to Olsten Health Services, Gentiva Health Services and the PA Department of Health, I would advise that you can issue those immediately so long as I receive copies of any documents obtained pursuant to the subpoenas.

I do not consent to the subpoena of the Carlisle Hospital. This was previously done, obviously presented a delicate situation for the Plaintiffs, and it is unnecessary to obtain these same documents a second time. Check your file, I believe it will confirm that those documents have previously been subpoenaed.

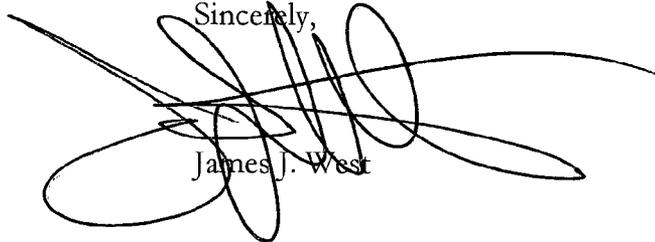
Notwithstanding the fact that we have previously filed consent forms for medical records several years ago, I have acquiesced in your recent request and have sent the new consent forms that you have forwarded to me to my clients for signature and return to you. I have asked them to sign the forms and that if they have any immediate problem to contact me and I am attempting to do this as expeditiously as possible. I first received your forms this morning by fax.



S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Page 2
March 15, 2007

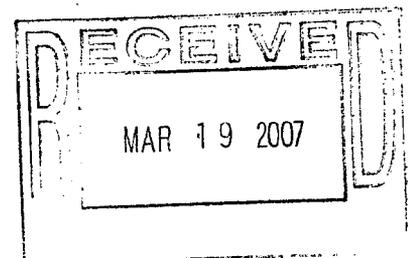
If there is any question regarding this letter, please contact me personally and immediately. Best regards.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

James J. West

JJW/jmb



March 20, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

**VIA FAX (717) 234-7517
and U.P.S. EXPRESS**

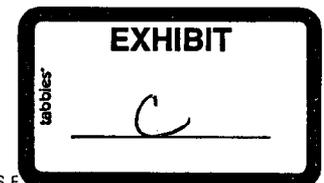
Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your letter of March 15, 2007; I appreciate your courtesies in waiving the twenty (20) day notice requirements for service of the subpoenas on the three entities. Concerning the Carlisle Subpoena, while we forwarded you an intent to serve a subpoena upon Carlisle Hospital in October of 2005, our records do not indicate that we served the subpoena, and Carlisle Hospital has confirmed that it does not have record of a subpoena ever being served upon it. This was an error on our part and we now would like to serve the subpoena. I can assure you that we do not have any records from Carlisle Hospital in our files concerning the plaintiffs. Given this additional information, kindly advise whether you will now agree to waive the twenty (20) day notice period for the Carlisle Hospital subpoena. If your clients have privacy concerns concerning their employment records, we have a Protective Order in place that should allay their concerns. I would be glad to treat all of the plaintiffs' employment records from Carlisle Hospital with confidentiality and mark copies thereof as such pursuant to that Order if requested to do so.

If I do not hear from you concerning the Carlisle records by Wednesday, March 21, I will request the Court to rule on your objections to the Subpoena. I note that we requested that the plaintiffs sign an authorization for the release of their employment records with our First Request for Production of Documents (request 28 and attached authorization) which were served on November 3, 2004; however, as discussed below, this authorization was never provided to us.

Concerning the statement in your letter that discovery in this matter closed with the filing of our Motion for Summary Judgment last year, could you kindly advise me as to the basis for this contention. In Clearfield, discovery either closes when the parties agree to close discovery or when the Court sets a date for the close of discovery. We have not agreed upon a date for the close of discovery and there has not been a Court order setting such date. Please contact me today or tomorrow to discuss an agreed-upon date for the close of discovery. I would like for us to come to an agreed date so that we need not disturb the Court with this issue. If I do not hear from you by Thursday, March 22, I will request the Court to schedule a status conference so that



March 20, 2007

Page 2

the Court can set a date for the close of discovery. There are discovery materials that still need to be produced pursuant to items that we have requested, but have never received from the plaintiffs despite several requests by phone and by letters dated January 6, 2005, January 25, 2005, February 11, 2005, and September 27, 2005. Specifically, we served document requests on the plaintiffs on November 3, 2004, including specific requests and authorizations for plaintiffs' signatures to obtain all of plaintiffs' medical records, as well as plaintiffs' tax and social security records from 1999 to the present. Rather than provide these authorizations in response to our discovery requests, you objected to providing these authorizations on the basis that the documents already "existed" and therefore the plaintiffs would not provide authorizations. We served a Second Request for Production of Documents on January 25, 2005, again requesting all of Plaintiff's medical records. In an attempt to resolve issues concerning the medical records, we only requested records dating back to 1980.

Concerning the tax records requested in our first document requests, we still need all of Fran Selvages W-2 forms from 1999 to the present and Dawn Retorick's W-2 forms for 2005 to the present (2006). While plaintiffs finally provided us with Ms. Retorick's W-2 Forms from 1999 to 2004 on October 7, 2005, the plaintiffs still did not produce any of Ms. Selvages W-2s at that time on the stated basis that providing Ms. Retorick's W-2s was sufficient to determine both of the plaintiffs incomes for those years. We are, however, entitled to both of the plaintiffs' tax records and W-2 forms so that we can accurately ascertain their incomes. When I again requested the remainder of the tax records during our telephone discussion last week, you indicated that you may or may not provide these documents, although they were requested over 2 years ago. You stated that you believed the plaintiffs had already signed authorizations for their tax records. However, as I noted above, these authorizations were never provided to us.

In addition, I recently noted when reviewing the limited medical records that were provided to us that Fran Selvage's primary care physician is Dr. Cardamone. However, we were only provided records for Ms. Selvage dating back to 1998 (which is the earliest date for which medical records were received for Ms. Selvage from *any* physician) and the authorizations that you provided in October 2005 did not include any authorization for Dr. Cardamone's records. As such, I am enclosing herewith an authorization for Ms. Selvage so that we may obtain her records from Dr. Cardamone.

While I do not wish to do so, I will file a motion to compel on Thursday, March 21, if I do not receive by that date the plaintiffs' tax filings and W-2s for the missing years (Selvage years 1999-2006 and Retorick for years 2005-2006), signed authorizations that were originally requested in our first request for production of documents concerning plaintiffs' tax and social security records (I have enclosed herewith additional updated copies for your convenience), and a signed authorization from Ms. Selvage for Dr. Cardamone's records, also enclosed herewith. These are materials that I have been addressing as outstanding with you since they were first

March 20, 2007
Page 3

requested in our document requests dated November 3, 2004 and January 25, 2005, but have never received.

I also enclose herewith a request to supplement your previous responses to interrogatories and document requests. This includes, but is not limited to, documents provided to or exchanged with your experts, your expert's CV, and any of plaintiff's Carlisle records in yours or plaintiff's custody or control.

Finally, could you advise whether you would consent to a motion for an examination of each of the plaintiffs by a psychiatric expert?

I apologize for the tone of this letter, as we have had a cordial relationship throughout this litigation. However, your recent position that discovery is closed with the filing of our summary judgment motion last year combined with the failure of plaintiffs to properly or completely produce documents responsive to discovery requests that are several years old and after many, many attempt to obtain same has forced me to take this route.

As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,



S. Elaine Diedrich

SED/mfh
Enclosures

cc: John K. Gisleson, Esq. (w/o enc.)
Terri I. Patak, Esq. (w/o enc.)

JAMES J. WEST, LLC

105 North Front Street, Suite 205

Harrisburg, PA 17101

Telephone: (717) 233-5051

Facsimile: (717) 234-7517

James J. West

jwest@jwestlaw.com

March 21, 2007

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

**VIA FACSIMILE AND FIRST CLASS
MAIL**

RE: Retorick/Selvage v. Clearfield Hospital

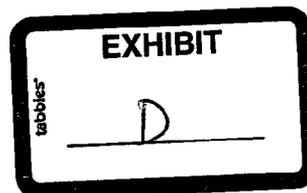
Dear Elaine:

I was very surprised by the tone of today's letter especially since I have been working with you on obtaining additional discovery you had not received because subpoenas, releases that I had my clients consent to or sign at your request were not in proper form or had expired without compliance. Frankly, I thought I was being generous in my assistance.

I felt that the matters you raise today concerning medical records and W-2 forms were complied with to your satisfaction based on my letters and enclosures of June 6, 2005 and October 7, 2005. To my recollection, I have heard nothing since those materials were sent to you. Moreover, since you moved for summary judgment last year (without previously contacting me) it was clear to me that under Rule 1003.52(2) the Defendants felt that discovery was complete as the Rule requires.

In any event, I have reviewed your letter received this morning and without arguing as to why this would come up for the first time after a two year hiatus, I am attempting to give you additional information concerning W-2's that have been issued after the discovery request was answered. In addition, I am providing you new waiver forms executed by the Plaintiffs which will again allow you to seek additional information. I would also call to your attention that the H&R Block materials I previously provided to you contains itemized information concerning Fran Selvage's W-2 forms. This enclosing information can be summarized as follows:

1. Authorization for Release of Information directed to Philipsburg Hospital signed by Frances Selvage;



S. Elaine Diedrich, Esquire

Page 2

March 21, 2007

2. Authorization for Release of Information directed to Dr. Donald Conrad signed by Frances Selvage;

3. Authorization for Release of Information directed to Ralph Cardamone, M.D. signed by Frances Selvage;

4. Authorization for Release of Information directed to Dr. Domingo Tan signed by Frances Selvage;

5. Authorization for Release of Information directed to Milton S. Hershey Medical Center signed by Dawn Retorick;

6. Request for Social Security Earnings Information signed by Frances Selvage;

7. Request for Social Security Earnings Information signed by Dawn Retorick;

8. 1999 through 2006 W-2's for Frances Selvage; and

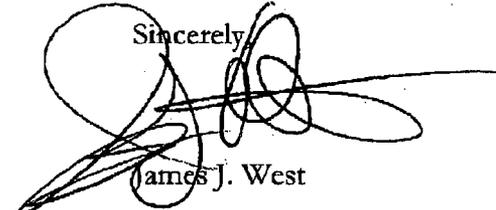
9. 2005 and 2006 W-2's for Dawn Retorick.

I am also enclosing a copy of my expert's curriculum vitae which I obtained for you today. I believe all other information Dr. Schneider considered in forming his opinion is available to you. If I am incorrect, please let me know immediately.

I believe I will have additional requests for you as the case approaches trial but I doubt that will be before next week. Again, having noticed this for trial on December 11, 2006, I was very surprised to get your letter this morning indicating that you believed discovery was open. I will gladly update matters and even help in those matter where you have not gotten compliance with subpoenas we previously consented to or not used the waiver forms in a timely fashion, but my clients are extremely anxious, after four years, to get this case to trial. I know you can understand that.

If you have any questions, please do not hesitate to contact me.

Sincerely,



James J. West

JJW/jmb
Enclosures

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: Frances Selvage SSN: 195-38-9930 DOB: 01/04/49

Address: 302 Merrill Street City: Clearfield State: PA Zip Code: 16830

I. General Release.

I hereby authorize _____ to disclose the information set forth in Section IV of _____ [Name and address of record source: e.g., Employer]

this Authorization for the period from _____ to _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

- a.) Person(s) authorized to disclose the information: Philipsburg Hospital
[Name of the Provider: Hospital, Doctor, Insurance Co.]
- b.) Information to be disclosed: The information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____
- c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: Schnader, Harrison, Segal & Lewis, LLP
[Name of MCS Client]

I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

- d.) Purpose of this request: At my request.
- e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____
- f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.
- g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.
- h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Frances Selvage 3-21-07
Signature of Person Identified Above or his or her Authorized Representative / Guardian Date

By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p>Employment Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p>Car Insurance Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p>Social Security Benefits Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned individual.</p>
<input type="checkbox"/>	<p>School Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p>Other</p>
V. Information Subject to the Health Information Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p>Employment Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p>Pharmacy Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party; from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p>Medical Insurance Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input checked="" type="checkbox"/>	<p>Medical Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p>Other</p>

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: Frances Selvage SSN: 195-38-9930 DOB: 01/04/49

Address: 302 Merrill Street City: Clearfield State: PA Zip Code: 16830

I. General Release.

I hereby authorize _____ to disclose the information set forth in Section IV of _____
of _____
(Name and address of record source: e.g., Employer)

this Authorization for the period from _____ to _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

a.) Person(s) authorized to disclose the information: Dr. Donald Conrad
(Name of the Provider: Hospital, Doctor, Insurance Co.)

b.) Information to be disclosed: The Information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____

c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: Schnader, Harrison, Segal & Lewis, LLP
(Name of MCS Client)

I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

d.) Purpose of this request: At my request.

e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____

f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.

g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.

h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Frances Selvage _____ Date 3-21-07
Signature of Person Identified Above or his or her Authorized Representative / Guardian

By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Car Insurance</u> Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Social Security Benefits</u> Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned individual.</p>
<input type="checkbox"/>	<p><u>School</u> Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>
V. Information Subject to the Health Information Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Pharmacy</u> Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party; from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical insurance</u> Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input checked="" type="checkbox"/>	<p><u>Medical</u> Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: Frances L. Selvage SSN: 195-38-9930 DOB: 1/4/49
Address: 302 Merrill Street City: Clearfield State: PA Zip Code: 16830

I. General Release.

I hereby authorize _____ to disclose the information set forth in Section IV of _____
of _____
(Name and address of record source: e.g., Employer)

this Authorization for the period from _____ to _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

- a.) Person(s) authorized to disclose the information: Ralph Cardamone, M.D.
(Name of the Provider: Hospital, Doctor, Insurance Co.)
 - b.) Information to be disclosed: The information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____
 - c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: Schnader Harrison Segal & Lewis, LLP
(Name of MCS Client)
- I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.
- d.) Purpose of this request: At my request.
 - e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____
 - f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.
 - g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.
 - h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Frances L. Selvage 3-21-07
Signature of Person Identified Above or his or her Authorized Representative / Guardian Date

By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.	
Provider	
<input type="checkbox"/>	<p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Car Insurance</u> Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Social Security Benefits</u> Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned individual.</p>
<input type="checkbox"/>	<p><u>School</u> Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>
V. Information Subject to the Health Information Release.	
Provider	
<input type="checkbox"/>	<p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Pharmacy</u> Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party, from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical Insurance</u> Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input checked="" type="checkbox"/>	<p><u>Medical</u> Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: Frances Selvage SSN: 195-38-9930 DOB: 01/04/49

Address: 302 Merrill Street City: Clearfield State: PA Zip Code: 16830

I. General Release.

I hereby authorize Dr. Domingo Tan to disclose the information set forth in Section IV of _____
of _____ [Name and address of record source: e.g., Employer]

this Authorization for the period from _____ to _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

- a.) Person(s) authorized to disclose the information: Dr. Domingo Tan
[Name of the Provider: Hospital, Doctor, Insurance Co.]
 - b.) Information to be disclosed: The information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____
 - c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: Schnader, Harrison, Segal & Lewis, LLP
[Name of MCS Client]
- I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.
- d.) Purpose of this request: At my request.
 - e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____
 - f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.
 - g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.
 - h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Frances Selvage _____ 3-21-07
Signature of Person Identified Above or his or her Authorized Representative / Guardian Date

By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.	
Provider	
<input type="checkbox"/>	<p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Car Insurance</u> Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Social Security Benefits</u> Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned individual.</p>
<input type="checkbox"/>	<p><u>School</u> Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>
V. Information Subject to the Health Information Release.	
Provider	
<input type="checkbox"/>	<p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Pharmacy</u> Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party, from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical Insurance</u> Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input checked="" type="checkbox"/>	<p><u>Medical</u> Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>

MAR-20-2007 12:25P FROM:

TO:17172347517

P:1

Mar 21 2007 11:25PM James J. West LLC

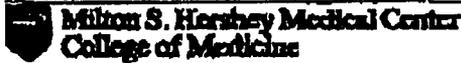
717-234-7517

P.3

FEB-15-2007 01:00 PM

P.02

PENNSTATE



AUTHORIZATION FOR RELEASE OF HOSPITAL RECORDS

Health Information Services, MRI-24, P.O. Box 888, Hershey, Pennsylvania 17033-0888

Name of Patient Dawn Rectorick Social Security # 195-52-2256

Date of birth 08 / 16 / 61 Medical Record Number Phone # () -

THIS AUTHORIZATION WILL NOT BE ACCEPTED UNLESS ALL ITEMS ARE COMPLETED. THE INFORMATION BEING DISCLOSED MAY INCLUDE HIV/AIDS, DRUG/ALCOHOL ABUSE & MENTAL HEALTH DATA.

I HEREBY AUTHORIZE HERSHEY MEDICAL CENTER/UNIVERSITY HOSPITAL TO

A. RELEASE TO OR B. RECEIVE FROM (Circle One)

The MGS Group on behalf of Schneider, Harrison, Segal & Lewis LLP (Name of authorized person, agency, institution, or other)

Forbes Avenue Pittsburgh, PA 15219 (Street) (City) (State) (Zip Code)

Reason for Request: Litigation

Type of information to be released consists of:

DISCHARGE DATE(S) ALL OUTPATIENT VISIT DATE(S)

Discharge Summary (yes) History + Physical Operative Report

Diagnostic Test(s) Indicate Type of Test & Date

Other (please specify)

This consent is subject to revocation at any time except to the extent that the person who is to make the disclosure has already taken action in reliance on it. If you wish to revoke this authorization, you must do so in writing to the address at the top of this form, to the attention of the HMC Privacy Officer. If not previously revoked, this consent will terminate ninety (90) days from the date of signature. Failure to sign this form will not impact your right to receive care at Hershey Medical Center. Neither our treatment nor your payment is conditioned upon your signature on this form.

I hereby release the provider of said records from any legal responsibility or liability in connection with the release of the records indicated and herein.

Signature of Patient or the person(s)

Date 3-21-07

(Relationship if signed by other than Patient)

Witnessed - MUST BE SIGNATURE

PHONE

Note to recipient of information: This information has been disclosed to you from the records protected by Pennsylvania Law. Pennsylvania Law prohibits you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains.

REQUEST FOR SOCIAL SECURITY EARNINGS INFORMATION

1. From whose record do you need the earnings information?

Print the Name, Social Security Number (SSN), and date of birth below.

Name Frances L. Selvage Social Security Number 195-38-9930
Other Name(s) Used (Include Maiden Name) Frances Lombardo Date of Birth (Mo/Day/Yr) 1/4/49

2. What kind of information do you need?

Detailed Earnings Information For the period(s)/year(s):
(If you check this block, tell us below why you need this information.)

Certified Total Earnings For Each Year. For the year(s): 1999 - 2006
(Check this box only if you want the information certified. Otherwise, call 1-800-772-1213 to request Form SSA-7004, Request for Earnings and Benefit Estimate Statement)

3. If you owe us a fee for this detailed earnings information, enter the amount due using the chart on page 3 A. \$ 31.00

Do you want us to certify the information? Yes No
If yes, enter \$15.00 B. \$ 15.00

ADD the amounts on lines A and B, and enter the TOTAL amount C. \$ 46.00

- You can pay by CREDIT CARD by completing and returning the form on page 4, or
Send your CHECK or MONEY ORDER for the amount on line C with the request and make check or money order payable to "Social Security Administration"
DO NOT SEND CASH.

4. I am the individual to whom the record pertains (or a person who is authorized to sign on behalf of that individual). I understand that any false representation to knowingly and willfully obtain information from Social Security records is punishable by a fine of not more than \$5,000 or one year in prison.

SIGN your name here (Do not print) > Frances L. Selvage Date 3-21-07
Daytime Phone Number (Area Code) (Telephone Number)

5. Tell us where you want the information sent. (Please print) Schnader Harrison Segal & Lewis, LLP
Name S. Elaine Diedrich, Esq. Address Suite 2700, Fifth Avenue Place
City, State & Zip Code Pittsburgh, PA 15222 120 Fifth Avenue

6. Mail Completed Form(s) To: Exception: If using private contractor (e.g., FedEx) to mail form(s), use:

Social Security Administration Social Security Administration
Division of Earnings Record Operations Division of Earnings Record Operations
P.O. Box 33003 300 N. Greene St.
Baltimore Maryland 21290-3003 Baltimore Maryland 21290-0300

MAR-20-2007 12:24P FROM:

TO:17172347517

P:1

Mar 21 2007 11:25PM James J. West LLC

717-234-7517

P:2

REQUEST FOR SOCIAL SECURITY EARNINGS INFORMATION

1. From whose record do you need the earnings information?

Print the Name, Social Security Number (SSN), and date of birth below.

Name <u>Dawn L. Retorick</u>	Social Security Number <u>195-52-2256</u>
Other Name(s) Used (Include Maiden Name) <u>Dawn Clark</u>	Date of Birth (Mo/Day/Yr) <u>8/16/61</u>

2. What kind of information do you need?

Detailed Earnings Information For the period(s)/year(s): _____
 (If you check this block, tell us below why you need this information.)

Certified Total Earnings For Each Year. For the year(s): 1999 - 2006
 (Check this box only if you want the information certified. Otherwise, call 1-800-772-1213 to request Form SSA-7004, Request for Earnings and Benefit Estimate Statement)

3. If you owe us a fee for this detailed earnings information, enter the amount due using the chart on page 3 A. \$ 31.00

Do you want us to certify the information? Yes No
 If yes, enter \$15.00 B. \$ 15.00

ADD the amounts on lines A and B, and enter the TOTAL amount C. \$ 46.00

- ? You can pay by CREDIT CARD by completing and returning the form on page 4, or
- ? Send your CHECK or MONEY ORDER for the amount on line C with the request and make check or money order payable to "Social Security Administration"
- ? DO NOT SEND CASH.

4. I am the individual to whom the record pertains (or a person who is authorized to sign on behalf of that individual). I understand that any false representation to knowingly and willfully obtain information from Social Security records is punishable by a fine of not more than \$5,000 or one year in prison.

SIGN your name here (Do not print) > Dawn L. Retorick Date 3-21-07

Daytime Phone Number 714 345-6387
(Area Code) (Telephone Number)

5. Tell us where you want the information sent. (Please print) Schnader Harrison Segal & Lewis, LLP
 Name S. Elaine Diedrich, Esq. Address Suite 2700, Fifth Avenue Place
 City, State & Zip Code Pittsburgh, PA 15222 120 Fifth Avenue

6. Mail Completed Form(s) To: Exception: If using private contractor (e.g., FedEx) to mail form(s), use:

Social Security Administration Division of Earnings Record Operations P.O. Box 33003 Baltimore Maryland 21290-3003	Social Security Administration Division of Earnings Record Operations 300 N. Greene St. Baltimore Maryland 21290 0300
---	--

03/21/2007 00:20 8147652111

H&R BLOCK

1 Control number A99		1 Wages, tips, other compensation 47690.93		2 Federal income tax withheld 9042.94		3 Social security wages 39708.22		4 Social security tax withheld 2481.91		5 Medicare wages and tips 39708.22		6 Medicare tax withheld 575.77		7 Federal income tax withheld 6587.90			
8 Employer's name, address and ZIP code CLEARFIELD HOSPITAL PO BOX 992 CLEARFIELD PA 16830		9 Social security wages 47690.93		10 Social security tax withheld 2956.84		11 Medicare wages and tips 47690.93		12 Medicare tax withheld 691.52		13 Control number 020487 BJU		14 Dept 840010		15 Corp. A		16 Employer use only 610	
17 Social security tips		18 Allocated tips		19 Advance EIC payment		20 Employer's FED ID number 25-0979346		21 Employer's EIN number 195-38-9930		22 Social security tips		23 Allocated tips		24 Advance EIC payment		25 Dependent care benefits	
26 Dependent care benefits		27 Nonqualified plans		28 See instructions for box 12		29 Nonqualified plans		30 Benefits included in box 1		31 See instrs. for box 13		32 Other 210.60 GIFT		33 See instrs. for box 13		34 Other	
35 State wages, tips, etc. PA 15995152		36 State income tax 1335.35		37 Local wages, tips, etc. 46794.21		38 Local income tax 487.97		39 State income tax 1079.68		40 Local wages, tips, etc. 38592.16		41 Local income tax 385.93		42 Localities name CLEARFIELD		43 Local income tax 385.93	

11-3654096
FRANCIS L. SELVAGE
11-3654096

1 Wages, tips, other compensation
1316.00

2 Federal income tax withheld
128.98

3 Social security wages
1316.00

4 Social security tax withheld
81.59

5 Medicare wages and tips
1316.00

6 Medicare tax withheld
19.08

7 Social security tips

8 Allocated tips

9 Advance EIC payment

10 Dependent care benefits

11 Nonqualified plans

12 Benefits included in box 1

13 See instrs. for box 13

14 Other

15 See instrs. for box 13

16 Other

17 State wages, tips, etc.
PA 15995152

18 State income tax
1079.68

19 Local wages, tips, etc.
38592.16

20 Local income tax
385.93

21 Localities name
CLEARFIELD

22 Local income tax
385.93

PAGE 2
1 9101-183
INTELSTAF HEALTHSERVICES(STAFFING)
1000 SOUTH RODEY PARKMAN
LITTLE ROCK, AR 72206

2001

1 W-2 Wage and Tax Statement
Copy B To Be Filed With Employee's FEDERAL Tax Return

19 State wages, tips, etc.
PA 15995152

20 State income tax
1335.35

21 Local wages, tips, etc.
46794.21

22 Local income tax
487.97

23 State income tax
1079.68

24 Local wages, tips, etc.
38592.16

25 Localities name
CLEARFIELD

26 Local income tax
385.93

27 Localities name
CLEARFIELD

28 Local income tax
385.93

29 State income tax
1079.68

30 Local wages, tips, etc.
38592.16

31 Localities name
CLEARFIELD

32 Local income tax
385.93

W-2 Wage and Tax Statement 1999
Federal Filing Copy
Department of the Treasury - Internal Revenue Service

2000

1 W-2 Wage and Tax Statement
Copy B To Be Filed With Employee's FEDERAL Tax Return

19 State wages, tips, etc.
PA 15995152

20 State income tax
1181.28

21 Local wages, tips, etc.
42517.45

22 Local income tax
425.17

23 State income tax
1181.28

24 Local wages, tips, etc.
42517.45

25 Localities name
CLEARFIELD

26 Local income tax
425.17

27 Localities name
CLEARFIELD

28 Local income tax
425.17

29 State income tax
1181.28

30 Local wages, tips, etc.
42517.45

31 Localities name
CLEARFIELD

32 Local income tax
425.17

2001

1 W-2 Wage and Tax Statement
Copy B To Be Filed With Employee's FEDERAL Tax Return

19 State wages, tips, etc.
PA 15995152

20 State income tax
1335.35

21 Local wages, tips, etc.
46794.21

22 Local income tax
487.97

23 State income tax
1079.68

24 Local wages, tips, etc.
38592.16

25 Localities name
CLEARFIELD

26 Local income tax
385.93

27 Localities name
CLEARFIELD

28 Local income tax
385.93

29 State income tax
1079.68

30 Local wages, tips, etc.
38592.16

31 Localities name
CLEARFIELD

32 Local income tax
385.93

Federal Filing Copy
2001
Employee's Federal Income Tax Return

2000

1 W-2 Wage and Tax Statement
Copy B To Be Filed With Employee's FEDERAL Tax Return

19 State wages, tips, etc.
PA 15995152

20 State income tax
1181.28

21 Local wages, tips, etc.
42517.45

22 Local income tax
425.17

23 State income tax
1181.28

24 Local wages, tips, etc.
42517.45

25 Localities name
CLEARFIELD

26 Local income tax
425.17

27 Localities name
CLEARFIELD

28 Local income tax
425.17

29 State income tax
1181.28

30 Local wages, tips, etc.
42517.45

31 Localities name
CLEARFIELD

32 Local income tax
425.17

INTELSTAF HEALTHSERVICES(STAFFING)
1000 SOUTH RODEY PARKMAN
LITTLE ROCK, AR 72206

FRANCIS L SELVAGE
302 MERRILL ST.
CLEARFIELD, PA 16830

03/21/2007 00:20 8147652111

H&R BLOCK

PAGE 03

Copy B To Be Filed With Employee's FEDERAL Tax Return **2003** OMB No. 1545-0008

a Control number 8580563		1 Wages, tips, other comp. 72881.66	2 Federal income tax withheld 9813.75
b Employer ID number 251887146		3 Social security wages 73692.09	4 Social security tax withheld 4568.28
		5 Medicare wages and tips 73682.09	6 Medicare tax withheld 1068.39
c Employer's name, address, and ZIP code CARLISLE REGIONAL MED CENTER 246 PARKER ST CARLISLE PA 17013			
d Employee's social security number 195-38-9930			
e Employee's name, address, and ZIP code FRANCES L SELVAGE 302 MERRILL STREET CLEARFIELD PA 16830			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12 D 800.43	
13a Statutory employee	14 Other	12b Code C 48.76	12c Code
Retirement plan X	DNS 254.84	12d Code	
Third-party sick pay			
PA 251887146	73682.09	2061.57	
15 State Employer's state I.D. no.	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc. 73633.33	19 Local income tax 737.01	20 Locality name CARLISL	

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS
The information is being furnished to the Internal Revenue Service.

Copy B To Be Filed With Employee's FEDERAL Tax Return **2004** OMB No. 1545-0008

a Control number 8580526		1 Wages, tips, other comp. 85014.06	2 Federal income tax withheld 9164.53
b Employer ID number 251887146		3 Social security wages 85014.06	4 Social security tax withheld 5270.87
		5 Medicare wages and tips 85014.06	6 Medicare tax withheld 1232.70
c Employer's name, address, and ZIP code CARLISLE REGIONAL MED CENTER 246 PARKER ST CARLISLE PA 17013			
d Employee's social security number 195-38-9930			
e Employee's name, address, and ZIP code FRANCES L SELVAGE 302 MERRILL STREET CLEARFIELD PA 16830			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12 D 800.43	
13a Statutory employee	14 Other	12b Code C 344.78	12c Code
Retirement plan X	INS 283.23	12d Code	
Third-party sick pay			
PA 251887146	85084.70	2601.40	
15 State Employer's state I.D. no.	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc. 84739.92	19 Local income tax 847.27	20 Locality name CARLISL	

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS
The information is being furnished to the Internal Revenue Service.

Copy B To Be Filed With Employee's FEDERAL Tax Return **2002** OMB No. 1545-0008

a Control number 8580620		1 Wages, tips, other comp. 7485.63	2 Federal income tax withheld 1255.28
b Employer ID number 251887146		3 Social security wages 7565.38	4 Social security tax withheld 469.05
		5 Medicare wages and tips 7565.38	6 Medicare tax withheld 109.69
c Employer's name, address, and ZIP code CARLISLE REGIONAL MED CENTER 246 PARKER ST CARLISLE PA 17013			
d Employee's social security number 195-38-9930			
e Employee's name, address, and ZIP code FRANCES L SELVAGE 302 MERRILL STREET CLEARFIELD PA 16830			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12 D 79.75	
13a Statutory employee	14 Other	12b Code	12c Code
Retirement plan X		12d Code	
Third-party sick pay			
PA 251887146	7565.38	211.81	
15 State Employer's state I.D. no.	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc. 7565.38	19 Local income tax 75.63	20 Locality name CARLISL	

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS
The information is being furnished to the Internal Revenue Service.

Copy B To Be Filed With Employee's FEDERAL Tax Return **2002** OMB No. 1545-0008

a Control number 651		1 Wages, tips, other compensation 56006.06	2 Federal income tax withheld 10416.35
b Employer ID number 25-0979346		3 Social security wages 56581.06	4 Social security tax withheld 3508.03
		5 Medicare wages and tips 56581.06	6 Medicare tax withheld 820.43
c Employer's name, address, and ZIP code CLEARFIELD HOSPITAL PO BOX 992 CLEARFIELD PA 16810			
d Employee's social security number 395-38-9930			
e Employee's name, address, and ZIP code FRANCES SELVAGE 302 MERRILL ST CLEARFIELD PA 168301608			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a See instructions for box 12 B 575.00	
13a Statutory employee	14 Other	12b Code	12c Code
Retirement plan X	PA OC 10.00 ON 407.60 TPS 3985.00	12d Code	
Third-party sick pay			
PA 25-0979346	56581.06	32996.06	
15 State Employer's state I.D. no.	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc. 15995152	19 Local income tax 1483.89	20 Locality name 53925.46	
18 Local income tax 539.24	20 Locality name CLEARFIELD		

Form W-2 Wage and Tax Statement Dept. of the Treasury - Internal Revenue Service

Copy 2-To Be Filed With Employee's State, City, or Local Income Tax Return		2005	OMB No. 1545-0048
a Control number	1 Wages, tips, other comp.	2 Federal income tax withheld	
8580488	84094.05	8412.28	
b Employer ID number (FIN)	3 Social security wages	4 Social security tax withheld	
251887146	84094.05	5213.83	
	5 Medicare wages and tips	6 Medicare tax withheld	
	84094.05	1219.36	
c Employer's name, address, and ZIP code			
CARLISLE REGIONAL MED CENTER 246 PARKER ST CARLISLE PA 17013			
d Employee's social security number			
105-38-9930			
e Employee's name, address, and ZIP code			
FRANCES L SELVAGE 302 MERRILL STREET CLEARFIELD PA 16830			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code	
13 Statutory employee	14 Other	12b Code	
Retirement plan	INS 281.07	C 295.32	
Third-party sick pay		12c Code	
		12d Code	
PA 251887146	84094.05	2572.51	
15 State Employer's state I.D. no.	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	
84692.48	846.80	CARLISLE	

Form W-2 Wage and Tax Statement

Dept. of the Treasury - IRS

2006 W-2 and EARNINGS SUMMARY

File, accurate, ASTI Use  Visit the IRS Web Site at www.irs.gov/efile.

Employee Reference Copy W-2 Wage and Tax Statement 2006

Control number	Dept.	Corp.	Employer use only
580540 VLA	0780	858	A 28992

Employer's name, address, and ZIP code
CARLISLE REG MED CTR
361 ALEXANDER SPRING RD
CARLISLE, PA 17015

Employee's name, address, and ZIP code
FRANCES L SELVAGE
302 MERRILL STREET
CLEARFIELD, PA 16830

Employer's FED ID number 25-1887146	d Employee's SSA number 193-38-9930
Wages, tips, other comp. 91179.86	2 Federal income tax withheld 9690.87
Social security wages 94200.00	4 Social security tax withheld 5840.40
Medicare wages and tips 94326.59	6 Medicare tax withheld 1367.73
Social security tips	8 Allocated tips
Advance EIC payment	10 Dependent care benefits
Nonqualified plans	12a See instructions for box 12 D 3146.73
Other 1684.59 PRETAX INS	12b 12c 12d
	13 Stat emp. Ret. plan <input checked="" type="checkbox"/> and party sick pay
State Employer's state ID no. TOTAL STATE	16 State wages, tips, etc.
State income tax 2885.45	18 Local wages, tips, etc.
Local income tax 941.92	20 Locality name TOTAL LOCAL

FRANCES L SELVAGE
302 MERRILL STREET
CLEARFIELD, PA 16830

Social Security Number: 193-38-9930

1 Wages, tips, other comp. 79459.58		2 Federal income tax withheld 13792.97	
3 Social security wages 81961.14		4 Social security tax withheld 8981.59	
5 Medicare wages and tips 81961.14		6 Medicare tax withheld 1188.43	
a Control number 8580491	Dipl 0780	Corp. 858	Employer use only A 28917
7 Employer's name, address, and ZIP code CARLISLE REG MED CTR 301 ALEXANDER SPRING RD CARLISLE, PA 17015			
8 Employer's FEEO ID number 25-1887146		9 Employee's SSN 195-62-2256	
10 Social security type		11 Allocation type	
12 Advance EIC payment		13 Dependent care benefits	
14 Nonqualified plans		15a D 2301.16	
16 Other 4802.30 RETAX INS		17a <input type="checkbox"/> 17b <input type="checkbox"/> 17c <input type="checkbox"/>	
18 Employee's name, address and ZIP code DAWN L RETORICK 806 GRASSFLAT AVE MORRISDALE, PA 16858			
19 State Employer's state ID no. PA 251887146		20 State wages, tips, etc. 81961.14	
21 State income tax 2400.53		22 Local wages, tips, etc. 65798.47	
23 Local income tax 657.89		24 Locality name CARLISLE	

City or Local Filing Copy
W-2 Wage and Tax Statement 2006
Copy to be filed with employer's City or Local Income Tax Return.

2005 Form 1042-ES

a Control number 8580491		1 Wages, tips, other comp. 71920.07		3 Federal income tax withheld 14726.89	
b Employer ID number (EIN) 251887146		3 Social security wages 74286.39		4 Social security tax withheld 4605.75	
		5 Medicare wages and tips 74286.39		6 Medicare tax withheld 1077.15	
c Employer's name, address, and ZIP code CARLISLE REGIONAL MED CENTER 246 PARKER ST CARLISLE PA 17013					
d Employee's federal ID number 195-62-2256					
e Employee's name, address, and ZIP code DAWN L RETORICK 806 GRASSFLAT AVE MORRISDALE PA 16858					
7 Social security tips		4 Allocation type		9 Advance EIC payment	
10 Dependent care benefits		11 Nonqualified plans		12a Health, Accident, and Life Ins D 2356.12	
13a Standby employer <input checked="" type="checkbox"/> Part-time plan <input checked="" type="checkbox"/> Third-party sick pay		14 Other INS 3625.48		12b Code C 14.40	
15a State Employer's state I.D. no. PA 251887146		16 State wages, tips, etc. 74286.39		17 State income tax 2380.01	
18 Local wages, tips, etc. 77641.45		19 Local income tax 776.29		20 Locality name CARLISLE	

Dept. of the Treasury IRS

GUIDANCE ASSOCIATES OF PENNSYLVANIA

412 Erford Road, Camp Hill, PA 17011 (717) 732-2917; FAX: (717) 732-5375 Stanley E. Schneider, Ed.D.
20 Briarcrest Square, Suite 205, Herthely, PA 17033 (717) 533-4342 Director

CURRICULUM VITAE

Stanley E. Schneider, Ed.D., CAC, RCE

412 Erford Road
Camp Hill, PA 17011

(717) 657-0656 Home
(717) 732-2917 Office

PROFESSIONAL EXPERIENCE:

Guidance Associates of Pennsylvania (1973-present)
Camp Hill, PA Owner, Clinical Director, Psychologist

Pennsylvania Licensed Psychologist; Certified Addictions Counselor; Diplomate, Professional Academy of Custody Evaluators; Custody mediator; Expert testimony in civil and criminal cases; Litigation support; Continuing education to attorneys, judiciary, and practitioners on forensic psychology issues.

Forensic Psychology experience in:

Competency	Criminal Responsibility
Psychic Trauma	Workmen's Compensation
Personal Injury	Traumatic Reactions
Megan's Law	Child Custody Evaluations
Malingering/Deception	Social Security Disability
Child Abuse/Neglect	Termination of Parental Rights

Guidance Associates of Pennsylvania – Clinical Director

Supervise and coordinate programs and services provided by Guidance Associates:

Employee Assistance Programs. Contracts with local industry to provide counseling services to employees related to substance abuse and other problems affecting employee performance.

Outpatient Mental Health Services. Individual, family and marital therapy privately and contracted through insurance carriers.

Curriculum Vitae: Stanley E. Schneider

Page 2

Pennsylvania Department of State Bureau of Professional and Occupational Affairs Harrisburg, PA	(2004-present) Expert Witness
Social Security Administration Office of Hearings and Appeals Harrisburg, PA	(1985-present) Medical Advisor/Expert Consultant
Provide expert testimony as requested by Administrative Law Judge.	
Bureau of Disability Determination Harrisburg, PA	(1985-present) Clinical Evaluator
Harrisburg State Hospital Harrisburg, PA	(1980-1984) Chief Psychologist
Plan, organize and direct institutional psychological services.	
Harrisburg State Hospital Geriatric Treatment Center Harrisburg, PA	(1978-1980) Psychological Services Manager
Head psychologist in geriatric treatment units.	
Harrisburg State Hospital Extended Care Center Harrisburg, PA	(1974-1977) Director
Design, development, implementation and total administration of a 145 bed psychiatric unit.	
Pennsylvania Department of Welfare Harrisburg, PA	(1972-1974) Deputy Commissioner for Mental Retardation
Create and implement statewide service delivery system for mentally retarded, institutional and community-based program services.	
Medical College of Pennsylvania Department of Psychiatry	(1971-1972) Mental Retardation Coordinator
Southeastern Region of PA Social Systems Analysis Project	(1970-1971) Program Associate
Philadelphia Association for Retarded Children Philadelphia, PA	
Director, Professional Services	(1970-1971)
Coordinator of Rehabilitation Services	(1969-1970)
Occupational Evaluation and Training Workshop Milford, Massachusetts	(1965-1967) Director

Curriculum Vitae: Stanley E. Schneider

Page 3

RELATED EXPERIENCE:

Member, Highmark Behavioral Health Quality Improvement Committee (2003 – present)

Faculty, National Business Institute, Eau Claire, Wisconsin (2003 – present)

Adjunct Faculty, National College of the State Judiciary, University of Nevada, Reno, Nevada (1988-1990)

Faculty, Professional Education Systems, Incorporated, Eau Claire, Wisconsin (1988)

Hearing Officer, Pennsylvania Right to Education, Pennsylvania Department of Education (1975-1983)

Instructor, Hershey Medical Center, Department of Behavioral Science, Continuing Education (1975-1980)

Vice President, Dauphin County Mental Health/Mental Retardation, North Base Service Unit, Administrative Board (1974-1975)

Associate Professor, Burlington County Community College, New Jersey (1970-1971 Winter)

Instructor, Temple University, Department of Educational Psychology (1969-1970 academic year)

School Psychologist, Burlington County Vocational-Technical High School, Mt. Holly, New Jersey (1970-1971 academic year)

Consultant, Alexandria Community Mental Health Center, Alexandria, Virginia (1968-1969)

EDUCATION:

University of Maryland, Department of Counseling and Personnel Services, College Park, Maryland, Doctor of Education (1969)
Doctoral Dissertation: "The Effects of Work and Counseling on Chronic Psychiatric Patients with Differing Levels of Ego Strength"

Boston University, Graduate School of Education, Certificate of Advanced Graduate Study in Rehabilitation Counseling (1965)

Boston University, Graduate School of Education, Master of Education in Guidance and Counseling (1965)

University of Maine, Orono Maine, Bachelor of Arts (1962)

Curriculum Vitae: Stanley E. Schneider

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INTERNSHIPS:

Consultation: Alexandria Community Mental Health Center, Alexandria, Virginia (September 1967-January 1968)

Rehabilitation Counseling: Veterans Administration Outpatient Clinic, Day Treatment Center, Boston Massachusetts (January - June 1965)

Rehabilitation Counseling: Massachusetts Rehabilitation Commission, Boston District Office, Boston, Massachusetts (September - December 1964)

Eastern Middlesex Association for Retarded Children, Occupational Training Center, Reading, Massachusetts (January - June 1964)

HONORS AND AWARDS:

Nomination to "Who's Who in the East" 1977-1978 Edition
Election to Outstanding Young Men of America (1970)
Department of Health, Education and Welfare (SRS) Training Grants (1963-1965, 1967-1968)

PROFESSIONAL MEMBERSHIP/AFFILIATIONS:

American College of Forensic Psychology
Association of Family and Conciliation Courts
American Psychological Association
Pennsylvania Psychological Association (Fellow)
Member: Child Custody Determination Project Group

CERTIFICATION:

Pennsylvania Licensed Psychologist (No. PS 272 L)
National Register of Health Service Providers in Psychology (No. 21934)
Registered Custody Evaluator and Academy Fellow,
Professional Academy of Custody Evaluators (No. 10158)
Diplomate, American College of Forensic Examiners (No. 17445)
Diplomate, American College of Certified Forensic Counselors (No. F19306)
Association of State and Provincial Psychology Boards, Professional Qualification in Psychology (No. 2534)
Certified Addictions Counselor Diplomate (PA No. 1640)
Permanent Certification, School Psychologist, New Jersey (June 1971)

Curriculum Vitae: Stanley E. Schneider

Page 5

PROFESSIONAL DEVELOPMENT:

Extensive participation in various symposia, conferences, task forces, steering committees, and professional meetings.

PRESENTATIONS AND PUBLICATIONS:

"Psychological Factors in Child Abuse"; presented at Medical and Scientific Evidence Course, National Judiciary College, Reno Nevada, Fall, 1988

"Facilitating Settlement and Litigation: Utilization of Psychological Evaluation in Assessing the Validity and Viability of Symptoms" presented to Attorneys, Seminar for Guidance Associates of Pennsylvania, Spring, 1988

Zeigler, P. L., Hampton, M. J., Rapkin, W.R., Rothman, S.A., Schneider, S.E., Pennsylvania Worker's Compensation Law and Practice, Professional Education Systems, Eau Claire, WI, 1988

"Psychology of Workmen's Compensation Cases", presented at Seminar: Pennsylvania Worker's Compensation Law and Practice, Professional Education Systems, Pittsburgh, Harrisburg, Philadelphia, Fall 1988

"The MMPI: Its Use, Abuse and the Secrets Behind It" presented to the Dauphin County Bar Association Family Law Section, Harrisburg, PA, November, 1988

"What Every Estate Planner Needs to Know About Death and Dying, and Those Who Have Experienced Loss, Grief and Mourning", Real Property, Probate and Trust Law, Fall, 1988

"Special Stresses in Medical Practices" presented to Medical Office Managers' Network, Camp Hill, PA, November, 1989

"Occupationally Related Stress Factors" presented to Pennsylvania Shorthand Reporters Association, Camp Hill, PA, February, 1990

"The HR - EAP Interface" presented to Harrisburg Area Personnel Association, Camp Hill, PA, March, 1990

"Our Schools and Community...Partners in a Drug-Free Environment" presented to Albert Gallatin Area School District, Masontown, PA, April, 1991

"Employee Involvement Programs" presented to Harrisburg Area International Personnel Management Association and The American Society for Public Administration, Mechanicsburg, PA, May, 1991

Curriculum Vitae: Stanley E. Schneider

Page 6

"Healthy Family Living - A Plan for the Nineties" presented to The Underwriter's Group, Harrisburg, Pa, September 1991.

"Employee Assistance Program" presented to USDA Soil Conservation Service, Harrisburg PA, November 1991.

"Family Assistance Programs", presented to GPU System Human Resources Conference, Reading, PA, December, 1991.

"Work Related Stress Management Strategies", presented to Pennsylvania Hospital Insurance Company, Mechanicsburg, PA, January, 1992 and to The Underwriters Group, Harrisburg, PA, May, 1992.

"Psychological Aspects of Retirement", presented to General Public Utilities, Three Mile Island, Middletown, PA, March, 1992.

"Dealing with Stress in the Workplace", presented to Rotary International, Mechanicsburg, PA, May, 1993.

"Keeping Ourselves Together: Self Esteem and Stress Management", presented to B'nai B'rith Senior Housing International Conference, Harrisburg, PA, October, 1993.

"The Economics of Mental Health, 1993", presented to Health America/Mainstay Conference, Hershey, PA, October, 1993.

"Stress and Violence in the Workplace", presented to Carlisle Area Personnel Association, Carlisle, PA, November, 1993.

"The Custody Mediation System", presented to York County Bar Association, York, PA, November, 1993.

"Domestic Relations Practice: Hard Issues Faced Daily", presented to the Pennsylvania Trial Lawyers Association, Harrisburg, PA, May, 1994.

"Dealing with Stress from a Changing Work Environment", presented to GPU Administration and Finance Division, Harrisburg, PA, May, 1994.

"Courts, Custody and Conflict Resolution", Domestic Relations Practice: Hard Issues Faced Daily, Pennsylvania Trial Lawyers Association, 1994, pp.37-52.

"The Employee Assistance Program: It's Scope and Use", presented to the GPU Fitness for Duty Association, Middletown, PA, Spring 1994.

"Handling Holiday Stress", presented to Camp Hill Mall Merchant's Association, Camp Hill, PA, October, 1995.

"The Role of a Psychologist in Custody Disputes", Custody Seminar, Camp Hill and Carlisle, PA, October, 1995.

Curriculum Vitae: Stanley E. Schneider

Page 7

"Increasing productivity and Managing Stress", presented to Home Builders Association of Metropolitan Harrisburg, Camp Hill, PA, May, 1996.

"Custody Evaluations: A Reprise", presented to Cumberland County Bar Association, Carlisle, PA, June 12, 1998.

"Custody Evaluations and the Conciliation Process", presented at Cumberland County Bench-Bar Conference, Allentown, PA, October 15, 1998.

"Children's Suggestibility in Child Sex Abuse Cases", 1999 Joint Annual Meeting of the Pennsylvania Association of Criminal Defense Lawyers and the Public Defenders Association of Pennsylvania, Grantville, PA, September 17, 1999.

McKenna, E.L., Cohen, C., Schneider, S.E., Crisis Management and Response Team Manual, Pennsylvania School Boards Association, New Cumberland, PA, 1999.

"The Myers-Briggs Type Indicator and Its Use in Attorney Relationships, Negotiating Styles, Witness Orientation and Jury Selection", Cumberland County American Inn of Court, Dickinson Law School, Carlisle, PA, March 2, 2000.

"Economic Perspectives and Behavioral Health Care", Duquesne University, October 30, 2001.

"The Nuts and Bolts of a Custody Evaluation," Cumberland County Bar Association, Carlisle, PA, June 14, 2002.

"The Nuts and Bolts of a Custody Evaluation," Lebanon County Custody Conciliators, Lebanon, PA, December 27, 2002.

"Sex & Suggestibility: The Puzzling Arena of Abuse," York County Bar Association, York, PA, February 24, 2003

Boyle, C.A., Schneider, S.E., Wagenseller, D., Child Custody and Shared Parenting in Pennsylvania, National Business Institute, Inc., Eau Claire, WI, 2003

"Role of Development in Determining Children's Needs in Divorce," National Business Institute, Harrisburg, PA, June 5, 2003.

"Dealing with Difficult Divorce Cases from a Child Psychologist's Perspective," National Business Institute, Harrisburg, PA, June 5, 2003.

Boyle, C.A., Schneider, S.E., Wagenseller, D., Child Custody and Shared Parenting in Pennsylvania, National Business Institute, Inc., Eau Claire, WI, 2004

"Role of Development in Determining Children's Needs in Divorce," National Business Institute, Harrisburg, PA, May 24, 2004.

Curriculum Vitae: Stanley E. Schneider

Page 8

"Practical Issues in the Treatment of High Conflict Families", Pennsylvania Psychological Association, Annual Convention, Harrisburg, PA, June 16, 2006.

"Change: The Only Constant;" Pennsylvania-Delaware Affordable Housing Management Association, Lancaster, PA, October 12, 2006.

March 26, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

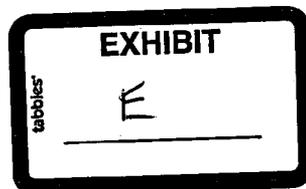
VIA FAX (717) 234-7517
and U.P.S. EXPRESS

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your recent correspondence. As a follow-up on two issues which I raised in my letter of March 20, 2007, could you advise whether you consent to allowing our psychiatrist to examine the plaintiffs? He is available to do so this weekend and will, of course, go to Clearfield for the examinations. We would like to schedule the examinations for Saturday, March 31, at 10:00 a.m. If plaintiffs are not available on Saturday, our psychiatrist is available on Sunday, April 1. Please advise if this is acceptable to you and whether the schedule works for plaintiffs. If I do not hear from you by tomorrow afternoon, I will go ahead and schedule a motion to be heard by the Court requesting an order to have the plaintiffs examined by our psychiatrist.

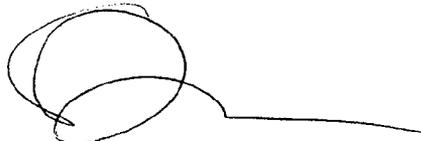
Concerning the close of discovery, we do not believe there is any doubt that discovery in this case was not closed simply because we filed a summary judgment motion. We have never received a contention such as this from counsel. As I discussed in my previous correspondence, the practice in Clearfield County is that counsel agrees on a date for the close of discovery. If they cannot agree upon a date, the Court will hold a status conference and set a date. I would also note that the great majority of discovery that has been done since our summary judgment motion concerns plaintiffs' alleged damages which were not addressed in our motion. Could you let us know if you will agree that discovery in this matter has not closed? If so, we would like to come to an agreement with you as to a date for the close of discovery. If we cannot agree upon a date, we could request the Court to determine a date for the close of discovery during our conference with the Court on April 20. If you will not agree that discovery is not closed in this matter, we will file a praecipe with the Court on Wednesday to request a status conference to determine a date for the close of discovery in this case.



March 26, 2007
Page 2

As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal tail extending to the right.

S. Elaine Diedrich

SED/mfh

cc: John K. Gisleson, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2007, a true and correct copy of the foregoing Preacipe for Status Conference with the Court was sent, via facsimile and U.S. First Class Mail, postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich (PA Id. No. 84077)

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

FRANCES SELVAGE and
DAWN L. RETORICK,
Plaintiffs

vs.

CLEARFIELD HOSPITAL, LOIS EISENMAN,
Director of Nursing, JACKIE STONE, Vice-President
Vice-President of Nursing, THELMA STRATTON,
ICU Unit Manager,
Defendants

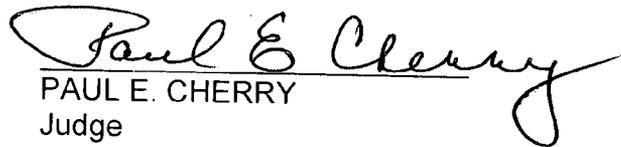
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NO. 03-393-CD

ORDER

NOW, this 29 day of March, 2007, upon the Court's receipt and review of the Defendants' Motion for Status Conference and Motion to Compel Plaintiffs to Submit to Mental Examination by Physician, it is the ORDER of this Court that a status conference and argument on the Motion to Compel will be held on the **3rd day of April, 2007**, **immediately following Civil Call**, which commences at 11:00 a.m., in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


PAUL E. CHERRY
Judge

FILED

014:0031
MAR 29 2007

William A. Shaw
Prothonotary/Clerk of Courts

rec Atty's:
J. West
E. Smith
CR

FILED

MAR 29 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3/29/07

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:

CA

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

FRANCES SELVAGE, DAWN RETORICK :
VS. : NO. 03-393-CD
CLEARFIELD HOSPITAL, LOIS :
EISENMAN, JACKIE STONE and :
THELMA STRATTON :

O R D E R

AND NOW, this 3rd day of April, 2007, following argument on the Motion to Compel and Status Conference; the Court being advised that the parties have reached an agreement, it is the ORDER of this Court that discovery shall close by July 31, 2007. Both parties shall be permitted to conduct mental examination of Plaintiffs as they choose, as well as depositions taken, to be made as agreed upon by counsel. Counsel shall be permitted to attend the mental examination of Plaintiffs, if available, and shall not interrupt the examination at any time.

Pretrial conference shall be held at 1:00 p.m. on Friday, August 24, 2007, with Jury Selection to be at 9:00 a.m. on August 28, 2007. Trial shall be held on October 15th through the 23rd, 2007. Counsel are not required to appear for Civil Call on July 26, 2007.

BY THE COURT

Paul E. Cherry
Judge

FILED
APR 05 2007

2cc
Attys: West
E Smith
Ⓢ

William A. Shaw
Prothonotary/Clerk of Courts

FILED

APR 05 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/5/07

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:

[Handwritten mark]

2. In addition to responding to plaintiffs' expert report,¹ defendants seek to have their expert examine plaintiffs for the purpose of analyzing any pre-existing conditions of plaintiffs. Further, if plaintiffs intend to seek damages to include emotional distress damages post-dating their date of departure from Clearfield Hospital, defendants would like their expert to examine plaintiffs concerning this issue as well.

3. Concerning the timing of the mental examinations, defendants' expert report in this matter is due to be filed with its pretrial statement on April 13. As such, on March 20, defense counsel sent a letter to plaintiffs' counsel requesting whether plaintiffs' would consent to a mental examination. A copy of this letter is attached to defendants original Motion to Compel Mental Examinations of the Plaintiffs as Exhibit "B." After receiving no response, on March 26, another letter was sent requesting whether plaintiffs could be available on Saturday, March 31 for the examination or, in the alternative, Sunday April 1. A copy of the March 26 letter is attached to defendants original Motion as Exhibit "C."

4. After plaintiffs' counsel advised that his clients would not be available on Saturday, March 31, defense counsel requested the examinations take place on Sunday, April 1, or Wednesday, April 4. A true and correct copy of defense counsel's letter dated March 28, 2007, is attached hereto as Exhibit "A." Plaintiffs' counsel responded advising that his clients were not available through a letter dated March 28, which is attached hereto as Exhibit "B." In

¹ Plaintiffs' expert analyzed whether plaintiffs suffered emotional distress while at Clearfield Hospital and whether this emotional distress was the direct and proximate result of defendants' alleged conduct. He states that in response to a third question posed, that he believed in his clinical judgment that being in the environment at Clearfield Hospital would result in a reasonable nurse leaving their position and that their decisions were in theirs and their patients' best interests. Plaintiffs' expert report is attached to defendants' Motion to Compel Mental Examinations of plaintiffs as Exhibit "A."

addition, plaintiffs' counsel advised that his clients are only available on Tuesdays. Defendants' expert teaches a course on Tuesdays and cannot conduct the examinations on that day.

5. As Such, defendants respectfully request that plaintiffs be required to make themselves available on a Saturday or Sunday, April 7 or 8, due to the impending date of defendants' expert reports.

6. In the event that plaintiffs cannot be made available on those dates, defendants respectfully request an extension of time to file the expert report of their psychiatrist expert, Dr. Paul Bernstein.

II. Additional facts concerning Motion for Status Conference

7. The great majority of information currently being sought in this matter by defendants concerns plaintiffs' damages and items that defendants have been attempting to obtain from plaintiffs for several years.

8. Discovery in this case resulted in various discovery disputes between the parties as defense counsel has been forced to chase documents responsive to its discovery requests which were as elementary as plaintiffs' medical records and income information.²

A. Plaintiffs' failure to produce income and medical records in response to Defendants' repeated requests for this information has unreasonably resulted in defendants being forced to expend great time and efforts to obtain this information.

9. On November 3, 2004, Defendants served their First Request for Production of Documents on Plaintiffs requesting, *inter alia*, plaintiffs' income tax returns, together with all W-2s, schedules and attachments from 1999 to the time of trial (request 4), requested that

² Plaintiffs claimed damages include, *inter alia*, front pay, expenses of finding and engaging in other employment, amounts for emotional harm, pain and suffering and medical expenses.

plaintiffs each sign an authorization to release transcripts of their tax forms (request 25), an authorization to request social security earnings information (request 26), and medical authorizations (request 27). A true and correct copy of defendants First Request for Production of Documents is attached hereto as Exhibit "C".

10. In response, plaintiffs' counsel objected to and refused to have his clients sign the authorizations for tax, social security and physicians records on the grounds that they were "not authorized by the Rule governing production of documents that already exist" and asserting that the requests to sign authorizations were "unreasonable". A true and correct copy of Plaintiffs' Response to Defendants' First Request for Production of Documents is attached hereto as Exhibit "D."

11. Despite many calls and correspondence from defense counsel to plaintiffs' counsel and promises from the plaintiffs concerning the production of these records, plaintiffs never produced all of the information requested in defendants' discovery requests. This resulted in several of the items currently being sought.

12. In addition to refusing to sign authorizations provided to plaintiffs in November 2004 to obtain their income information, plaintiffs failed and/or refused to produce items as simple as copies of their W-2 forms.

13. On June 6, 2005, plaintiffs finally produced tax records in response to defendants' First Request for Production of Documents. However, the records produced included only their joint tax returns with their husbands, with no attachments, so that their incomes could not be determined. These were therefore useless to determine plaintiffs' incomes during and after leaving Clearfield Hospital.

14. On September 27, 2005, defense counsel sent a letter to plaintiffs' counsel identifying the problems with the tax records produced and again requesting plaintiffs' W-2 Forms so their incomes could be determined. A true and correct copy of this letter is attached hereto as Exhibit "E."

15. In responding to this request, on October 7, 2005, plaintiffs' counsel produced only Retorick's W-2 forms for 1999-2004, and failed to produce Selvage's W-2s. Plaintiffs' counsel claimed in that letter that he was providing Retorick's W-2s and that these "should enable you to delineate the income of all plaintiffs from their spouse's income based on the records that have been produced." A true and correct copy of plaintiff's counsel's October 7, 2005 letter is attached hereto as Exhibit "F."

16. In preparing for trial, it was discovered that plaintiffs had actually never produced Selvage's W-2 forms and that they still did not know her income after she quit her position with Clearfield Hospital. On March 20, 2007, defense counsel *again* sent a letter to plaintiffs' counsel requesting, *inter alia*, Selvage's W-2 forms that had never been provided. A true and correct copy of defense counsel's March 20, 2007 letter is attached to defendant's Motion for Status Conference as Exhibit "C."

17. The next day, on March 21, 2007, over 3 years after they were originally requested, plaintiffs' counsel finally produced Ms. Selvage's W-2 forms. The reason why plaintiffs were able to produce these records the next day after being requested at least three times was not explained by plaintiffs' counsel. A true and correct copy of plaintiffs' counsel's March 21, 2007 letter with attachments is attached to defendants' Motion for Status Conference as Exhibit "D."

18. Selvage's W-2s produced on March 21, 2007, revealed that Selvage was earning *substantially* more money at Carlisle Hospital than at Clearfield Hospital. Selvage is now earning over \$94,000 compared to her income while at Clearfield (which was approximately \$60,000).

19. Moreover, Selvage is making substantially more money than Retorick - Retorick is earning \$81,000 per year at Carlisle. Thus, despite plaintiffs' counsel's October 7 representation, there was no way for defendants to determine Selvage's income from Retorick's W-2 forms.

20. Thus, the reason why plaintiffs would try to play "hide the ball" concerning Selvage's income is understandable, but certainly not excusable. Clearly, obtaining and producing W-2 forms for Selvage was not difficult, as plaintiffs' counsel was able to produce these records the day after they were requested on March 20th.

21. Moreover, with respect to plaintiffs' medical records, in addition to refusing to provide authorizations for plaintiffs' physicians in response to defendants' requests, plaintiffs' counsel refused to produce *any* of plaintiffs' medical records prior to 1999 - despite plaintiffs' alleged damage claims for emotional distress and defendants' right to examine plaintiffs' medical records for preexisting conditions.

22. A Second Request for Production of Documents requesting plaintiffs' medical records was served on plaintiffs on January 25, 2007. A true and correct copy of defendants' Second Request for Production of Document is attached hereto as Exhibit "G."

23. Letters to plaintiffs' counsel objecting to plaintiffs' proposed production of limited medical records dating back to 1999 were sent by defense counsel on January 5 and 25, 2005, and a telephone call was made to plaintiffs' counsel by defense counsel on February 10,

2005. Defense counsel bent over backwards to work with plaintiffs' counsel to obtain the medical records, including agreeing to enter into a confidentiality agreement and limiting the medical records request to records dating back to 1980. Plaintiffs' counsel finally agreed to produce plaintiffs' medical records dating back to 1980. True and correct copies of the exchange of correspondence between plaintiffs' and defendants' counsel concerning medical records are attached hereto as Exhibit "H."

24. However, after agreeing to this, when medical records were finally produced by plaintiffs, they were only produced for plaintiff Retorick dating back to 1996 and for Selvage dating back to 1999.

25. In a letter dated September 27, 2005, defense counsel again requested full responses to the medical records requests. Plaintiffs' counsel provided authorizations for some, but not all, of plaintiffs' physicians. An authorization for Selvage's primary care physician, Dr. Cardamone, was omitted. See Exhibits "E" and "F."

26. These authorizations were received while defense counsel was on maternity leave. When they were sent out to physicians, they were either not responded to by the physicians because the physicians required their own specific releases or they were stale.

27. As a result, in letters dated March 12 and 20, 2007, plaintiffs were simply requested to re-sign authorizations for these records, defendants again requested for Selvage's W-2 Forms, Selvage was requested to sign a first authorization for her primary care physician, Dr. Cardamone, and plaintiffs' were again requested to sign authorizations for their income tax and social security records (given the lack of information ever produced by them).

28. Ironically, it is with these requests that plaintiffs' counsel began asserting that discovery was closed in this case with the filing of defendants' motion for summary judgment.

29. The discovery being sought by the defendants deals largely with damages as well as several outstanding documents requested from plaintiffs long ago.

30. Further, prior to the filing of defendants' motion for summary judgment in March 2006, substantial discovery had been undertaken.

31. Specifically, all of the defendants' depositions had been taken, plaintiffs' depositions had been taken and two third-party witnesses' depositions had been taken. In addition, plaintiffs had served four requests for production of documents and one set of interrogatories, all of which were responded to by defendants. Defendants had served two sets of document requests and interrogatories.

32. Plaintiffs were granted an extension of time to respond to defendants motion for summary judgment and filed an expert report with their response.

33. Clearly, if a party files a summary judgment motion, it does not prohibits further discovery in the absence of a court order or agreement of the parties providing for the close of discovery.

34. The parties have not entered into any agreements as to the close of discovery in this matter and there has been no order of court setting a date for the close of discovery.

WHEREFORE, Defendants respectfully request that this Honorable Court grant its Motion to Compel Mental Examinations of Plaintiffs to include examination of plaintiffs for the purpose of responding to plaintiffs' expert report, to analyze any pre-existing conditions of plaintiffs and emotional distress experienced by plaintiffs post-dating their departure from Clearfield Hospital, if applicable. Moreover, defendants respectfully request that this Honorable Court schedule plaintiffs' examinations for a time in the immediate future or grant an extension of time for defendants to file an expert report by their expert, Dr. Paul Bernstein. Finally,

defendants respectfully request that this Honorable Court schedule a status conference to determine a date for the close of discovery or, in the alternative, schedule a date for the close of discovery in this matter.

Respectfully Submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By: 
John K. Gisleson (PA Id. No. 62511)
S. Elaine Dieddrich (Pa Id. No. 84077)
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton

March 28, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Pursuant to our discussion yesterday evening, Dr. Bernstein can also make himself available on Sunday, April 1, to examine the plaintiffs. He may also be available on Wednesday, April 4. If either of those days works better for your clients or another day, please let me know and we will try to work it out.

It is my understanding that you will contact your clients today and request whether they will consent to an examination by Dr. Bernstein. It is my understanding that your clients object because they want to move on with the case and go to trial. As I explained, we do not intend to delay the trial in any way, but are simply attempting to have our expert examine the plaintiffs (as we are entitled to do) and be able to file a report on April 13 with our pretrial statement when expert reports are due. Also, I reiterate that our original request to whether you would consent to this examination was made on March 20. We did not receive a response from you and again requested this information on March 26.

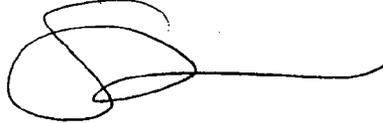
Concerning your issue with the close of discovery, I reiterate that we do not agree with your position that Rule 1035.2 concerning summary judgment provides that discovery "closes" in a case (thereby prohibiting any further discovery) when a party files a summary judgment motion. Not only does the rule not state this, but I note that the great majority of items we have requested in the past few weeks are not novel items, such as plaintiffs' income information, that we requested in our first request for production of documents, but never received despite correspondence concerning same.



March 28, 2007
Page 2

I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a horizontal line extending to the right.

S. Elaine Diedrich

SED/mfh

cc: John K. Gisleson, Esq.

TRANSMISSION VERIFICATION REPORT

TIME : 03/28/2007 12:02
NAME :
FAX :
TEL :
SER.# : BROM5J406428

DATE, TIME	03/28 12:02
FAX NO./NAME	17172347517
DURATION	00:00:20
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700 PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.765.3858 schnader.com

March 28, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517

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JAMES J. WEST, LLC

105 North Front Street, Suite 205
Harrisburg, PA 17101
Telephone: (717) 233-5051
Facsimile: (717) 234-7517

James J. West

jwest@jwestlaw.com

March 28, 2007

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

VIA FACSIMILE

RE: Retorick/Selvage v. Clearfield Hospital

Dear Elaine:

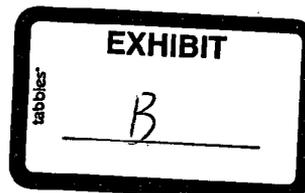
I contacted both Plaintiffs yesterday concerning their positions on the examination. Of course, they are very anxious for trial, felt discovery was closed having noticed the trial back in December, etc. In addition, Fran Selvage is scheduled to work this weekend. Likewise, Dawn Retorick canceled her visit with me. She was recently hospitalized and is still undergoing outpatient wound care. Notwithstanding the issue on whether or not this is a timely Motion, the Plaintiffs are unavailable for this weekend on such short notice.

I received your Motion this morning. I will attempt to discuss it with the Plaintiffs and get back to you but it will probably be this afternoon.

Sincerely,

James J. West

JJW/jmb



Eric T. Smith (PA Id. No. 70491)
S. Elaine Diedrich (PA Id. No. 87044)
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

FRANCES L. SELVAGE and)
DAWN L. RETORICK,)
)
Plaintiffs,)
)
vs.)
)
CLEARFIELD HOSPITAL,)
LOIS EISENMAN, Director of Nursing,)
JACKIE STONE, Vice President of Nursing,)
THELMA STRATTON, ICU Unit Manager,)
)
Defendants.)
)

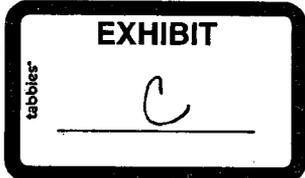
IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

No. 03-393-CD

Civil Action - Law

**FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON PLAINTIFFS**

Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton, by and through their undersigned counsel, Schnader Harrison Segal & Lewis LLP, hereby propound this First Request for Production of Documents upon Plaintiffs, Frances L. Selvage and Dawn L. Retorick, pursuant to the Pennsylvania Rules of Civil Procedure. In accordance with the foregoing rules, Plaintiffs shall respond in writing to this discovery, and produce the requested documents, at the offices of Schnader Harrison Segal & Lewis LLP, Suite 2700, Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, Pennsylvania, 15222-3010, on or before the date required by the Pennsylvania Rules.



11/3/04

DEFINITIONS

As used herein, the following terms have the meanings indicated below:

1. **And** as well as **Or** shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of this Discovery all documents, information or other responses that might otherwise be construed to be outside the scope thereof.

2. **Clearfield Hospital** means Clearfield Hospital a named Defendant herein, and any predecessor, successor, parent, subsidiary, division or affiliate thereof, whether owned wholly or in part, and any present or past officer, director, agent, servant, employee and representative of any of the foregoing.

3. **Communication** means the transfer or transmittal of any information, in or by any form or media, whatsoever, whether oral or written, or formal or informal.

4. **Amended Complaint** means the Amended Complaint filed by Plaintiffs at Civil Action No. 03-393-CD in the Court of Common Pleas of Clearfield County, Pennsylvania.

5. **Concerning** is used in its broadest sense and means regarding, referring to, touching upon, affirming, denying, mentioning, discussing, describing, reflecting, evidencing, containing, constituting or relating to, or relevant to, or likely to lead to, the discovery of admissible evidence.

6. **Defendants** means the named Defendants herein and collectively Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton.

7. **Document**, unless specified otherwise, shall be coextensive with the meaning set forth in the Pennsylvania Rules of Civil Procedure, and means and includes any and all printed, written, typewritten, handwritten or otherwise recorded or graphic

matter, of whatsoever character and however produced, recorded or reproduced, which is in the possession, custody or control of, or is obtainable by the party to whom this discovery request is being made, including, but not limited to, letters, memoranda, interoffice communication, correspondence, minutes of meetings or discussions, notes, diaries, medical records, calendars, date books, brochures, reports, telegrams, records, drawings, plans, specifications, blueprints, graphs, charts, work papers, photographs, slides, motion pictures, phonograph records, recordings, invoices, bills of lading, purchase orders, receipts, checks, transcriptions, transcripts, contracts, agreements, accounting records, microfilms, microfiche, videotapes, advertisements, technical data, test records, computer print-outs, delivery tickets, delivery receipts, other delivery information, sales records, bills, accounting summaries, bulletins, opinions, published articles, investigations, summaries, statements, literature, books, promotional aids, releases, magazines, computer printouts, computer disks, all information and data electronically or magnetically recorded or stored in computers or on tape or cards, any other typewritten, handwritten, or graphic material of any kind or description and any and all drafts or carbon, photostatic, photographic or other copies of any of the foregoing.

10. **Person** means an individual, trust, firm, corporation, association, partnership, consortium, joint venture, or other governmental, commercial, incorporated, unincorporated, or not-for-profit entity or agency.

11. **Refer, referring, relate or relating** are used in their broadest sense to mean and include direct as well as indirect references to, descriptions of, discussions of or commentary on the subject matter of the request.

12. **Plaintiff or Plaintiffs** mean Frances L. Selvage and/or Dawn L. Retorick.

13. **Support** (or a form thereof), shall mean advocate, affirm, aid, allow, bulwark, confirm, contribute, corroborate, demonstrate, embrace, enable, establish, facilitate, foster, justify, permit, maintain, prove, promote, reinforce, sustain, verify or vouch.

14. **You** or **your** mean Frances L. Selvage and/or Dawn L. Retorick.

INSTRUCTIONS

Please adhere to the following instructions, to the extent applicable, in responding to each and every discovery request propounded in this Discovery.

I. This Discovery is to be answered separately, fully, in writing and under oath within thirty (30) days after service to the extent required by the Pennsylvania Rules of Civil Procedure. Furthermore, this Discovery is continuing and any responsive information secured subsequent to the filing of your responses should be supplied by supplemental answers pursuant to the Pennsylvania Rules of Civil Procedure.

II. In preparing your response, the singular shall include the plural and *vice versa*, and the past tense in a verb shall include the present tense thereof, and *vice versa*.

III. If an objection is stated to any request for production please set forth fully your objection and your reason for such objection.

IV. If you claim any form of privilege as a ground for not responding to a request for production or any portion therefore, set forth in complete detail each and every fact upon which the privilege is based, including sufficient facts for the Court to make a full determination whether the claim of privilege is valid.

V. If any document is withheld under a claim of attorney-client privilege or work product doctrine or any other claim of privilege, identify the document withheld by

date; author; sender; recipient, including all persons who were shown, had access to, or received a copy; format; title; present or last known location; a general description of the subject matter of the document; and any other information necessary to support the claim of privilege. State the grounds for the assertion of the privilege in sufficient detail to permit the Court to adjudicate the validity of the claim.

VI. If any document requested herein was formerly in your possession, custody or control, and has been lost or destroyed, or otherwise disposed of, state with respect to each document: (i) the date, subject matter and nature of the document; (ii) the name of the author, the author's employer, and the author's position; (iii) if applicable, the name of the recipient, the recipient's employer, and the recipient's position; (iv) the name of each other person who was shown or furnished the document or a copy or any part thereof, each person's employer, and each person's position; (v) the date on which the document was lost or destroyed; and (vi) if destroyed, the conditions of and reasons for such destruction and the names of the persons requesting and performing such destruction, their employer(s) and position(s).

VII. Each document request seeks the production of each document in its entirety, including each attachment or other matter affixed thereto and all marginal notations.

VIII. If any document cannot be produced in full, produce such document to the extent possible, state the reason for your inability to produce the remainder of the document and, with respect to the remainder, state what information, knowledge or belief you have concerning the portion not produced.

date; author; sender; recipient, including all persons who were shown, had access to, or received a copy; format; title; present or last known location; a general description of the subject matter of the document; and any other information necessary to support the claim of privilege. State the grounds for the assertion of the privilege in sufficient detail to permit the Court to adjudicate the validity of the claim.

VI. If any document requested herein was formerly in your possession, custody or control, and has been lost or destroyed, or otherwise disposed of, state with respect to each document: (i) the date, subject matter and nature of the document; (ii) the name of the author, the author's employer, and the author's position; (iii) if applicable, the name of the recipient, the recipient's employer, and the recipient's position; (iv) the name of each other person who was shown or furnished the document or a copy or any part thereof, each person's employer, and each person's position; (v) the date on which the document was lost or destroyed; and (vi) if destroyed, the conditions of and reasons for such destruction and the names of the persons requesting and performing such destruction, their employer(s) and position(s).

VII. Each document request seeks the production of each document in its entirety, including each attachment or other matter affixed thereto and all marginal notations.

VIII. If any document cannot be produced in full, produce such document to the extent possible, state the reason for your inability to produce the remainder of the document and, with respect to the remainder, state what information, knowledge or belief you have concerning the portion not produced.

IX. The document requests herein seek the production of all non-identical copies, including drafts and copies upon which notes have been made.

X. In responding to any request for production of documents, you are required to furnish such documents and information as are within your personal knowledge, possession, custody and control, as well as that of your representatives, agents, attorneys, partners, investigators or anyone else acting for you, or on or in your behalf.

XI. All documents produced in response to any request for production of documents shall be organized and labeled to correspond with the specific request for production of documents to which they are being produced in response.

XII. To the extent that you consider any of the document requests objectionable, respond to that portion of each document request that is not objectionable in your view, and separately state your objection to that portion of the request and the ground for each such objection.

REQUESTS FOR PRODUCTION

1. Produce each and every document identified or requested to be identified in response to, or to which you referred, in preparing your responses to the First Set of Interrogatories Propounded Upon Plaintiffs by Defendants.

RESPONSE:

2. Copies of all documents concerning, referring or relating to, or otherwise supporting, any allegation made in the Amended Complaint or Plaintiffs' answers to Defendants' First Set of Interrogatories.

RESPONSE:

4. Copies of all income tax returns submitted to the United States, any state and/or local government, together with all W-2's, schedules and attachments prepared or filed by either Plaintiff (or on their behalf) beginning with calendar year 1999 and continuing for each and every successive year until the time of trial.

RESPONSE:

5. Copies of all documents and correspondence pertaining or relating to Plaintiffs' claims.

RESPONSE:

6. Copies of any documents, correspondence, notes, logs, diaries or any other writing which relates in any fashion or manner to any aspect of either Plaintiff's employment with Clearfield hospital.

RESPONSE:

7. Copies of any documents, correspondence, notes, logs, diaries or any other writing which relates in any fashion or manner to retaliation of any sort against any other employee or former employee of Clearfield Hospital.

RESPONSE:

8. Copies of any documents, correspondence, notes, logs, diaries or any other writing that relates in any fashion or manner to any of the Defendants.

RESPONSE:

9. Copies of any documents, correspondence, notes, logs, diaries or any other writing that relates in any fashion or manner to either Plaintiffs' employment with Clearfield Hospital.

RESPONSE:

10. Copies of all written statements or affidavits in any form regardless of who prepared the statement or affidavit by either Plaintiff that relates in any way to this action.

RESPONSE:

11. Copies of all written statements or affidavits in any form regardless of who prepared the statement or affidavit by any other individual that relates in any way to this action.

RESPONSE:

12. Copies of all documents, recordings, or statements from, or information provided by any of Clearfield Hospital's employees or any other person that pertains or relates in any way to this action.

RESPONSE:

13. Copies of all documents provided by any named Defendant herein to either Plaintiff at any time during or after their employment with Clearfield Hospital.

RESPONSE:

14. Copies of all documents that will be used in Plaintiffs' prosecution of this case at trial.

RESPONSE:

15. Copies of all correspondence or documents sent or provided to either Plaintiff from any person, corporation or other entity which relate in any fashion or manner to any aspect of either Plaintiff's employment with Clearfield Hospital or in any way to this action.

RESPONSE:

16. Copies of all correspondence from either plaintiff to any person, corporation or other entity which relate in any way to any attempt by either Plaintiff to secure employment from January 1, 1999 to the present.

RESPONSE:

17. Copies of all correspondence to either Plaintiff from any person, corporation or other entity which relate in any way to any attempt by either Plaintiff to secure employment or the response to said application for employment from January 1, 1999 to the present.

RESPONSE:

18. Copies of all written offers of employment made by any entity to either Plaintiff from January 1, 1999 to the present.

RESPONSE:

19. Copies of all of either of Plaintiff's responses to any written offers of employment made by any entity to either Plaintiff from January 1, 1999 to the present.

RESPONSE:

20. Copies of all check stubs from any salary or wage checks received by either Plaintiff from November 1, 2002 through the present.

RESPONSE:

21. Copies of all versions of any resumes prepared or used by either Plaintiff, and any drafts thereof, since January 1, 1999.

RESPONSE:

22. Copies of all help wanted ads to which either Plaintiff has responded since January 1, 1999.

RESPONSE:

23. Copies of all expert witness reports, written statements or other investigation materials that either Plaintiff intends to use at trial and/or during the prosecution of this case.

RESPONSE:

24. A copy of the curriculum vitae of any expert retained.

RESPONSE:

25. Please complete, sign and return the attached *Request for Copy or Transcript of Tax Form*.

RESPONSE:

26. Please sign and return the attached *Request for Social Security Earnings Information*.

RESPONSE:

27. Please sign and return, in sufficient number, the attached *Medical Authorization*.

RESPONSE:

28. Please sign and return, in sufficient number, the attached *Authorization* for release of employment records.

RESPONSE:

29. Copies of any and all correspondence or documents exchanged between any of the Defendants and either Plaintiff from the commencement of each Plaintiff's employment with Clearfield Hospital through the present time.

RESPONSE:

30. Copies of all correspondence or documents to or from either Plaintiff which relate in any fashion or manner to any aspect of this action.

RESPONSE:

31. Copies of all documents provided at any time by any Defendant to Dawn Retorick, or vice versa, from June 1, 1982 to the present.

RESPONSE:

32. Copies of all documents provided at any time by any Defendant to Frances Selvage, or vice versa, from October 1, 1993 to the present.

RESPONSE:

33. Copies of all correspondence or documents from Plaintiff's to any person, corporation or entity that relates in any fashion or manner to the allegations contained in the Amended Complaint or in any way relates to this action.

RESPONSE:

34. Produce copies of all Plaintiffs' education records including but not limited to, a copy of any degrees or diplomas, transcripts, grade reports, and application materials. This request is for any post-high school education received by either Plaintiff.

RESPONSE:

35. Copies of each and every report, notice, complaint, or document that you provided to Clearfield Hospital that you allege are reports of "wrongdoing and waste" referred to in paragraph 11 of your Complaint.

RESPONSE:

36. Copies of each and every report, notice, or complaint, or any document that refers to a report, notice, or complaint that you provided to Clearfield Hospital during the course of your employment.

RESPONSE:

37. Copies of every document referring or relating to the allegations contained in paragraph 12 of your Amended Complaint.

RESPONSE:

38. Copies of every document referring or relating to the allegations contained in paragraph 14 and each of its subparagraphs of your Amended Complaint.

RESPONSE:

39. Copies of each and every report, notice or complaint that you refer to in paragraph 14(n) of your Amended Complaint that was not attached to your Amended Complaint.

RESPONSE:

40. Any and all documents that refer or relate to any oral reports, notices or complaints that you made while employed with Clearfield Hospital.

RESPONSE:

41. Copies of every document referring or relating to the allegations contained in paragraph 15 of your Amended Complaint.

RESPONSE:

42. Copies of every document referring or relating to the allegations contained in paragraph 16 of your Amended Complaint.

RESPONSE:

43. Copies of every document referring or relating to the allegations contained in paragraph 17 and each of its subparagraphs (a) through (n) of your Amended Complaint.

RESPONSE:

44. Copies of every document referring or relating to the allegations contained in paragraph 18 of your Amended Complaint.

RESPONSE:

45. Copies of every document referring or relating to the allegations contained in paragraph 19 and each of its subparagraphs (a) through (g) of your Amended Complaint.

RESPONSE:

46. Copies of every document referring or relating to the allegations contained in paragraph 29 of your Amended Complaint.

RESPONSE:

47. Copies of every document referring or relating to the allegations contained in paragraph 33 of your Amended Complaint.

RESPONSE:

48. Copies of every document referring or relating to the allegations contained in paragraph 42 and each of its subparagraphs (a) through (h) of your Amended Complaint.

RESPONSE:

49. Copies of every document referring or relating to the allegations contained in paragraph 47 of your Amended Complaint.

RESPONSE:

50. Copies of every document referring or relating to the allegations contained in paragraph 48 of your Amended Complaint.

RESPONSE:

51. Copies of every document referring or relating to the allegations contained in paragraph 50 of your Amended Complaint.

RESPONSE:

52. Copies of every document referring or relating to the allegations contained in paragraph 52 of your Amended Complaint.

RESPONSE:

53. Copies of every document referring or relating to the allegations contained in paragraph 57 of your Amended Complaint.

RESPONSE:

54. Copies of all of Plaintiffs' medical bills/expenses that will be claimed as damages in this action.

RESPONSE:

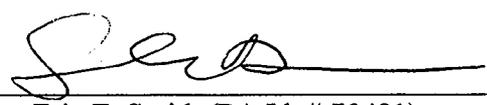
55. All documents prepared or received by either Plaintiff, on either Plaintiffs' behalf or at either Plaintiffs' request, which include or reflect any communications, conversations or meetings with any current or former employee of Clearfield Hospital concerning any of the allegations in Plaintiffs' Amended Complaint.

RESPONSE:

56. Any and all documents that refer or relate to Plaintiffs' "severe emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, irritability, and other alterations of plaintiffs' personalities" referred to in your Amended Complaint.

RESPONSE:

SCHNADER HARRISON SEGAL &
LEWIS, LLP

By: 

Eric T. Smith (PA Id. # 70491)
S. Elaine Diedrich (PA Id. #84077)
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: _____ SSN: _____ DOB: _____

Address: _____ City: _____ State: _____ Zip Code: _____

I. General Release.

I hereby authorize _____ to disclose the information set forth in Section IV of _____
[Name and address of record source: e.g., Employer]

this Authorization for the period from _____, _____ to _____, _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

a.) Person(s) authorized to disclose the information: _____
[Name of the Provider: Hospital, Doctor, Insurance Co.]

b.) Information to be disclosed: The Information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____

c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: _____
[Name of MCS Client]

I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

d.) Purpose of this request: At my request.

e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____.

f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.

g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.

h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Signature of Person Identified Above or his or her Authorized Representative / Guardian Date

By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Car Insurance</u> Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Social Security Benefits</u> Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned individual.</p>
<input type="checkbox"/>	<p><u>School</u> Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>
V. Information Subject to the Health Information Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Pharmacy</u> Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party; from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical Insurance</u> Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical</u> Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>

REQUEST FOR SOCIAL SECURITY EARNINGS INFORMATION

1. From whose record do you need the earnings information?

Print the Name, Social Security Number (SSN), and date of birth below.

Name _____	Social Security Number _____
Other Name(s) Used (Include Maiden Name) _____	Date of Birth (Mo/Day/Yr) _____

2. What kind of information do you need?

Detailed Earnings Information For the period(s)/year(s): _____
(If you check this block, tell us below why you need this information.)

Certified Total Earnings For Each Year. For the year(s): _____
(Check this box only if you want the information certified. Otherwise, call 1-800-772-1213 to request Form SSA-7004, Request for Earnings and Benefit Estimate Statement)

3. If you owe us a fee for this detailed earnings information, enter the amount due using the chart on page 3 A. \$ _____

Do you want us to certify the information? Yes No
If yes, enter \$15.00 B. \$ _____

ADD the amounts on lines A and B, and enter the TOTAL amount C. \$ _____

- You can pay by CREDIT CARD by completing and returning the form on page 4, or
- Send your CHECK or MONEY ORDER for the amount on line C with the request and make check or money order payable to "Social Security Administration"
- DO NOT SEND CASH.

4. I am the individual to whom the record pertains (or a person who is authorized to sign on behalf of that individual). I understand that any false representation to knowingly and willfully obtain information from Social Security records is punishable by a fine of not more than \$5,000 or one year in prison.

SIGN your name here (Do not print) > _____ Date _____

Daytime Phone Number _____
(Area Code) (Telephone Number)

5. Tell us where you want the information sent. (Please print)

Name _____ Address _____
City, State & Zip Code _____

6. Mail Completed Form(s) To: **Exception:** If using private contractor (e.g., FedEx) to mail form(s), use:

Social Security Administration
Division of Earnings Record Operations
P.O. Box 33003
Baltimore Maryland 21290-3003

Social Security Administration
Division of Earnings Record Operations
300 N. Greene St.
Baltimore Maryland 21290-0300

Request for Copy of Tax Return

- ▶ **Do not sign this form unless all applicable parts have been completed.**
Read the instructions on page 2.
- ▶ **Request may be rejected if the form is incomplete, illegible, or any required part was blank at the time of signature.**

OMB No. 1545-0429

TIP: You may be able to get your tax return or return information from other sources. If you had your tax return completed by a paid preparer, they should be able to provide you a copy of the return. The IRS can provide a **Tax Return Transcript** for many returns free of charge. The transcript provides most of the line entries from the tax return and usually contains the information that a third party (such as a mortgage company) requires. See new **Form 4506-T**, Request for Transcript of Tax Return, to order a transcript or you can call 1-800-829-1040 to order a transcript.

1a Name shown on tax return. If a joint return, enter the name shown first.	1b First social security number on tax return or employer identification number (see instructions)
2a If a joint return, enter spouse's name shown on tax return	2b Second social security number if joint tax return : : : :

3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code

4 Address, (including apt., room, or suite no.), city, state, and ZIP code shown on the last return filed if different from line 3

5 If the tax return is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number. The IRS has no control over what the third party does with the tax return.

CAUTION: Lines 6 and 7 must be completed if the third party requires you to complete Form 4506. Do not sign Form 4506 if the third party requests that you sign Form 4506 and lines 6 and 7 are blank.

6 Tax return requested (Form 1040, 1120, 941, etc.) and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, or amended returns. Copies of Forms 1040, 1040A, and 1040EZ are generally available for 7 years from filing before they are destroyed by law. Other returns may be available for a longer period of time. Enter only one return number. If you need more than one type of return, you must complete another Form 4506. ▶ _____

Note: If the copies must be certified for court or administrative proceedings, check here.

7 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506.

_____ / _____ / _____
 _____ / _____ / _____
 _____ / _____ / _____
 _____ / _____ / _____

8 Fee. There is a \$39 fee for each return requested. Full payment must be included with your request or it will be rejected. Make your check or money order payable to "United States Treasury." Enter your SSN or EIN and "Form 4506 request" on your check or money order.	
a Cost for each return	\$ 39.00
b Number of returns requested on line 7	
c Total cost. Multiply line 8a by line 8b	\$

9 If we cannot find the tax return, we will refund the fee. If the refund should go to the third party listed on line 5, check here . . .

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax return requested. If the request applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506 on behalf of the taxpayer.

		Telephone number of taxpayer on line 1a or 2a ()
Signature (see instructions)	Date	
Title (if line 1a above is a corporation, partnership, estate, or trust)		
Spouse's signature	Date	

Sign Here

RECORDS AUTHORIZATION

TO:

This will authorize you to furnish all employment-related information and/or documents, including but not limited to a résumé and application concerning:

JOANNE RACE Social Security Number _____ Date of Birth _____

TO:

Eric T. Smith, Esq.
SCHNADER HARRISON SEGAL & LEWIS, LLP
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222

If there is any charge for the reproduction of the requested documents, the invoice should be forwarded with the documents to SCHNADER HARRISON SEGAL & LEWIS, LLP at the above address.

Date _____

Applicant Signature

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2004, a true and correct copy of the foregoing **FIRST REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED UPON PLAINTIFFS** was sent, via U.S. Mail, first class postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

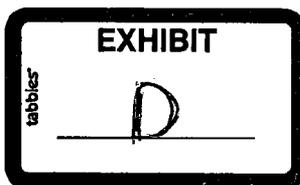
FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

PLAINTIFFS' OBJECTIONS AND ANSWERS TO DEFENDANTS'
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 409 of the Pennsylvania Rules of Civil Procedure the Plaintiffs hereby provide the following objections and responses to the Defendants' First Request for Production of Documents:

GENERAL OBJECTIONS

The Request for Production of Documents are all objected to as being overly broad, burdensome, unreasonable and, in those instances indicated, not calculated to produce relevant evidence within the meaning of the Pennsylvania Rules of Civil Procedure. Moreover, in some instances, such as the request for Plaintiffs to execute various documents and provide them to the Defendants, these requests are unreasonable and not authorized by the Rule governing production of documents that already exists.



1/3/05

Nevertheless, the Plaintiffs have authorized their counsel to copy and turn over all documents they have provided to counsel that are in the nature of witness statements, letters, logs and various contemporaneous notes relating to the retaliation and constructive discharge by Clearfield Hospital. These documents are Bates stamped numbers P1-1 through PL-760.

It should be noted that attorney/client privileged communications and attorney work product is obviously not being turned over but insofar as documents created prior to the retention of counsel and not at counsel's direction, these documents are being made available and represent the known documents in the possession of the Plaintiffs at this point in time which are relevant to this particular case.

REQUESTS

1-2. See general objections made at the beginning of these answers and produced documents Bates stamped P1-1 through PL-760.

4-22. See general objections made at the beginning of these answers and produced documents Bates stamped P1-1 through PL-760.

23. Experts have yet to be retained in this matter and no reports exist at this time.

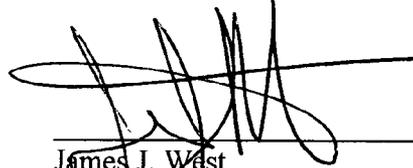
24. See answer to #23 above.

25-28. Objected to as an improper use of a request for production of documents.

29-56. See general objections made at the beginning of these answers and produced documents Bates stamped PI-1 through PL-760.

Respectfully Submitted,

WEST LONG LLC

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

James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

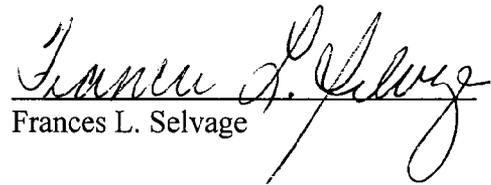
Dated: December 29, 2004

Counsel for Plaintiffs

VERIFICATION

I, Frances L. Selvage, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 12-29-04



Frances L. Selvage

VERIFICATION

I, Dawn L. Retorick, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 12-29-04


Dawn L. Retorick

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of **January, 2005**, a true and correct copy of the foregoing document was served upon the party named below via hand delivery, addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal



September 27, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517
and U.S. MAIL

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

I am writing to follow up on discovery responses that are outstanding in this matter.

We have only received medical records for Ms. Selvage from 1999 to the present. For Ms. Retorick, we have only received records from 1996 to the present. We have, however, requested the plaintiffs' medical records from 1980 to the present. While you previously advised me that you would not produce these records because plaintiffs indicated that there would be no relevant information contained in the records related to their emotional distress damages, the records that we have received regarding Ms. Retorick indicate quite to the contrary. Therefore, I am again requesting that you produce the Ms. Selvage's medical records for the entire time period of 1980 to the present. We have been attempting to obtain these records from you since November 3, 2004 and, despite our continued requests, have not received them. Therefore, unless I receive these complete records from you within the next ten (10) days, I will be filing a motion to compel.

In addition, you have not provided any W-2's for the plaintiffs from 1999 to the present. While you provided the joint tax returns and or joint tax information for the plaintiffs' and their spouses, you failed to provide any attachments to those forms, including the W-2 forms for the plaintiffs. In fact, based upon the information you have provided, there is no way to delineate the income that plaintiffs made versus their spouses. The W-2 forms and attachments to the tax forms were requested in our request for production of documents also served on November 3, 2004. We also requested all paycheck stubs from either plaintiff from November 1, 2002 to the present, but have not received these records. In addition, we have not received any tax information related to Ms. Retorick for tax year 2004. Therefore, I am requesting this additional information be provided within the next ten (10) days. If I do not receive these documents within the next ten (10) days, I will be filing a motion to compel also related to these documents.



September 27, 2005
Page 2

During the plaintiffs' depositions, they referred to a notebook in which they took notes. We would like the original notebook. We will make a copy of the notebook and return the original to you. Finally, upon reviewing the documents that you produced in this matter, bates numbers PL 183-219 are missing. Could you kindly forward these documents to my attention.

If you have any questions, please feel free to contact me.

Very truly yours,

Elaine Diedrich

S. Elaine Diedrich *mfh*

SED/mfh

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jwest@west-long.com

October 7, 2005

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Re: Selvage and Retorick v. Clearfield Hospital, et al.

Dear Elaine:

This is in response to your recent letter raising discovery issues.

The reason you have only received medical records for Ms. Selvage for 1999 to present and for Ms. Retorick for 1996 to present is that those were the only records we were able to obtain. A very substantial effort was made by my paralegals to obtain these records, going back as far as possible, and what you have received is what they were able to obtain. In fairness to you, I've had Fran and Dawn travel to my office and execute Releases for the various doctors involved, and you may feel free to use those Releases to attempt to obtain additional records on condition that you provide us with copies of any records obtained pursuant to them.

In reviewing the transcripts, I did note that Dawn Retorick identified a Dr. Brian Anderson of Hershey Medical Center as providing certain services relating to a dermatology problem. I have included a release for Dr. Anderson and would request that if you obtain documents from Dr. Anderson, I be provided with copies of them.

I am also enclosing herein W2 Forms for Dawn Retorick. This should enable you to delineate the income of all the plaintiffs from their spouse's income based on the records that have been produced. During our meeting, I asked Fran and Dawn to look for any pay stubs that they may have retained and if any are forthcoming, I will provide them but they were extremely doubtful, and I believe that you have the best evidence that is available insofar as income is concerned.



S. Elaine Diedrich, Esquire
Re: Clearfield Hospital

Page 2 of 2

October 7, 2005

Finally, our records show that you were provided with a complete copy of the original notebook referred to in their deposition, and it is presently in your possession. Likewise, we believe that you were forwarded Bates No. 183 through 219, which are now missing. We are providing you with replacement copies to bring your records up to date.

As you are aware, I have requested additional documents from you after the various depositions that occurred in this case. It was my understanding that you were going to produce those documents, but given the tenor of your present letter, I have made my requests into a formal discovery request and I am now serving that request on you so that we have some defined time limits and a vehicle to be used to go to Court to compel discovery. Attached to the discovery request are my letters of July 21, 2005 and August 24, 2005 describing these requests. If you can provide these records before the due date, it would be appreciated.

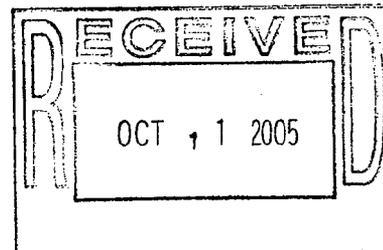
If you have any questions, please do not hesitate to immediately contact me.

Sincerely,

WEST LONG LLC

James J. West

JJW:dlg
Enclosures





ALL STATE LEGAL 800-222-0510 EDS11 RECYCLED



G

DEFINITIONS

As used herein, the following terms have the meanings indicated below:

1. **And** as well as **Or** shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of this Discovery all documents, information or other responses that might otherwise be construed to be outside the scope thereof.
2. **Clearfield Hospital** means Clearfield Hospital a named Defendant herein, and any predecessor, successor, parent, subsidiary, division or affiliate thereof, whether owned wholly or in part, and any present or past officer, director, agent, servant, employee and representative of any of the foregoing.
3. **Communication** means the transfer or transmittal of any information, in or by any form or media, whatsoever, whether oral or written, or formal or informal.
4. **Amended Complaint** means the Amended Complaint filed by Plaintiffs at Civil Action No. 03-393-CD in the Court of Common Pleas of Clearfield County, Pennsylvania.
5. **Concerning** is used in its broadest sense and means regarding, referring to, touching upon, affirming, denying, mentioning, discussing, describing, reflecting, evidencing, containing, constituting or relating to, or relevant to, or likely to lead to, the discovery of admissible evidence.
6. **Defendants** means the named Defendants herein and collectively Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton.
7. **Document**, unless specified otherwise, shall be coextensive with the meaning set forth in the Pennsylvania Rules of Civil Procedure, and means and includes any and all printed, written, typewritten, handwritten or otherwise recorded or graphic

matter, of whatsoever character and however produced, recorded or reproduced, which is in the possession, custody or control of, or is obtainable by the party to whom this discovery request is being made, including, but not limited to, letters, memoranda, interoffice communication, correspondence, minutes of meetings or discussions, notes, diaries, medical records, calendars, date books, brochures, reports, telegrams, records, drawings, plans, specifications, blueprints, graphs, charts, work papers, photographs, slides, motion pictures, phonograph records, recordings, invoices, bills of lading, purchase orders, receipts, checks, transcriptions, transcripts, contracts, agreements, accounting records, microfilms, microfiche, videotapes, advertisements, technical data, test records, computer print-outs, delivery tickets, delivery receipts, other delivery information, sales records, bills, accounting summaries, bulletins, opinions, published articles, investigations, summaries, statements, literature, books, promotional aids, releases, magazines, computer printouts, computer disks, all information and data electronically or magnetically recorded or stored in computers or on tape or cards, any other typewritten, handwritten, or graphic material of any kind or description and any and all drafts or carbon, photostatic, photographic or other copies of any of the foregoing.

8. **Medical** shall mean pertaining, relating or belonging to the study and practice of medicine, or the science and art of the investigation, prevention, cure, and alleviation of disease.

9. **Person** means an individual, trust, firm, corporation, association, partnership, consortium, joint venture, or other governmental, commercial, incorporated, unincorporated, or not-for-profit entity or agency.

10. **Refer, referring, relate or relating** are used in their broadest sense to mean and include direct as well as indirect references to, descriptions of, discussions of or commentary on the subject matter of the request.

11. **Plaintiff or Plaintiffs** mean Frances L. Selvage and/or Dawn L. Retorick.

12. **Support** (or a form thereof), shall mean advocate, affirm, aid, allow, bulwark, confirm, contribute, corroborate, demonstrate, embrace, enable, establish, facilitate, foster, justify, permit, maintain, prove, promote, reinforce, sustain, verify or vouch.

13. **You or your** mean Frances L. Selvage and/or Dawn L. Retorick.

INSTRUCTIONS

Please adhere to the following instructions, to the extent applicable, in responding to each and every discovery request propounded in this Discovery.

I. This Discovery is to be answered separately, fully, in writing and under oath within thirty (30) days after service to the extent required by the Pennsylvania Rules of Civil Procedure. Furthermore, this Discovery is continuing and any responsive information secured subsequent to the filing of your responses should be supplied by supplemental answers pursuant to the Pennsylvania Rules of Civil Procedure.

II. In preparing your response, the singular shall include the plural and *vice versa*, and the past tense in a verb shall include the present tense thereof, and *vice versa*.

III. If an objection is stated to any request for production please set forth fully your objection and your reason for such objection.

IV. If you claim any form of privilege as a ground for not responding to a request for production or any portion therefore, set forth in complete detail each and

every fact upon which the privilege is based, including sufficient facts for the Court to make a full determination whether the claim of privilege is valid.

V. If any document is withheld under a claim of attorney-client privilege or work product doctrine or any other claim of privilege, identify the document withheld by date; author; sender; recipient, including all persons who were shown, had access to, or received a copy; format; title; present or last known location; a general description of the subject matter of the document; and any other information necessary to support the claim of privilege. State the grounds for the assertion of the privilege in sufficient detail to permit the Court to adjudicate the validity of the claim.

VI. If any document requested herein was formerly in your possession, custody or control, and has been lost or destroyed, or otherwise disposed of, state with respect to each document: (i) the date, subject matter and nature of the document; (ii) the name of the author, the author's employer, and the author's position; (iii) if applicable, the name of the recipient, the recipient's employer, and the recipient's position; (iv) the name of each other person who was shown or furnished the document or a copy or any part thereof, each person's employer, and each person's position; (v) the date on which the document was lost or destroyed; and (vi) if destroyed, the conditions of and reasons for such destruction and the names of the persons requesting and performing such destruction, their employer(s) and position(s).

VII. Each document request seeks the production of each document in its entirety, including each attachment or other matter affixed thereto and all marginal notations.

VIII. If any document cannot be produced in full, produce such document to the extent possible, state the reason for your inability to produce the remainder of the document and, with respect to the remainder, state what information, knowledge or belief you have concerning the portion not produced.

IX. The document requests herein seek the production of all non-identical copies, including drafts and copies upon which notes have been made.

X. In responding to any request for production of documents, you are required to furnish such documents and information as are within your personal knowledge, possession, custody and control, as well as that of your representatives, agents, attorneys, partners, investigators or anyone else acting for you, or on or in your behalf.

XI. All documents produced in response to any request for production of documents shall be organized and labeled to correspond with the specific request for production of documents to which they are being produced in response.

XII. To the extent that you consider any of the document requests objectionable, respond to that portion of each document request that is not objectionable in your view, and separately state your objection to that portion of the request and the ground for each such objection.

REQUESTS FOR PRODUCTION

1. Any and all medical documents or records that refer or relate to either Plaintiff from 1980 to the present.

RESPONSE:

SCHNADER HARRISON SEGAL &
LEWIS, LLP

By: 

John K. Gisleson (PA Id. # 62511)
S. Elaine Diedrich (PA Id. #84077)
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2004, a true and correct copy of the foregoing **SECOND REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED UPON PLAINTIFFS** was sent, via U.S. Mail, first class postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

January 6, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517
AND U.S. MAIL

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

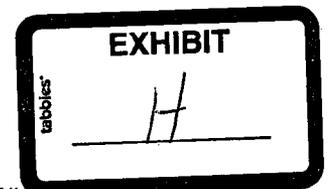
Dear Jim:

Thank you for your cooperation in agreeing that that we will make all reasonable attempts to schedule all of the parties' depositions during the same week and that the depositions will not take place until after I receive plaintiffs' medical records.

Also, thank you for your correspondence dated December 29, 2004 and your discovery responses. I note that you state you will obtain medical records from 1999 to the present from the doctors who have been identified in the plaintiffs' Answers to Interrogatories. However, given the plaintiffs' claims for intentional infliction of emotional distress and claimed injuries for emotional distress, we are entitled to plaintiffs' medical records going further back than 1999. Given the nature of these claims, we are entitled to all of plaintiffs' medical records, without limitation, as the emotional problems of plaintiffs could have arisen at any time during their lifetimes. Thus, plaintiffs' emotional problems may have been preexisting and we are entitled to discovery of this, particularly given the broad scope of discovery permitted. Therefore, we feel that your limitation to only allow us to review records from 1999 to the present is unreasonable.

To allay your clients' concerns regarding privacy, we are willing to enter into a stipulation for protective order regarding confidentiality of documents so plaintiffs can be assured that their medical records will not be seen outside of this litigation. I have also added additional clauses limiting the persons who may view confidential records in the matter. I have enclosed a draft stipulation for protective order for your convenience so that we may be able to resolve this discovery matter.

Please let me know within the next five (5) days your thoughts on the stipulation and whether you will comply with our discovery request for all of plaintiffs' medical records as we need to move on with taking depositions. While I do not wish to do so, I will file a motion to compel the production of these documents if necessary.



January 6, 2005
Page 2

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Elaine Diedrich
mfh

S. Elaine Diedrich

SED/mfh
Enclosure

January 6, 2005
Page 3

bcc: Jon R. Steen, Esq. (w/enc.)
Daniel Burfield (w/enc.)
John K. Gisleson, Esq. (w/enc.)

2. No person shall be given, shown, allowed to examine or shall be privy to any discussions regarding material designated as “confidential” except the following:

- (a) The parties, attorneys for the parties, or employees for the attorneys for the parties, and designated representatives of the parties;
- (b) The Court and any employees of the Court designated by the Court, with or without notice to the parties;
- (c) Any person permitted to review confidential material by Court Order; and
- (d) Experts, consultants and other persons employed by the parties or attorneys for the parties for purposes of this litigation.

3. The inadvertent failure of any party to designate documents, data, oral or written material or information as confidential material shall not constitute, or have the effect of, a waiver of any claim that such material, or any similar material, is confidential within the meaning of this Order, including discovery materials which a party inadvertently fails to designate as confidential at the time of production but which such party subsequently designates as confidential. The treatment by the parties receiving such materials as other than confidential prior to their designation as confidential shall not be construed as a violation of the provisions herein governing the use of confidential materials.

4. The production of documents or other information by the parties pursuant to this Order shall not constitute a waiver of any claim based upon any wrongful use of the confidential material or any use of the confidential material not expressly permitted by this Order.

5. All confidential documents and copies of such documents reproduced pursuant to this Order (other than the “work product” of counsel arising from the examination of such documents), shall be surrendered to or destroyed at the request of the party producing such confidential material at the conclusion of this action, whether by compromise, settlement or final judgment, and the exhaustion of all appellate remedies. Any notes arising from the examination

of confidential material shall continue to be subject to the restrictions set forth herein after the conclusion of this action, whether by compromise, settlement or by final judgment, and the exhaustion of all appellate remedies.

6. This Order shall not limit the parties' right to submit confidential material to the Court as part of their pleadings and to use confidential material at trial provided, however, that either party shall have the right to request that this Court enter a protective order requiring that specified documents, or types of documents, be filed under seal or that a further protective order be adopted by the Court for use at trial.

7. Any disputes concerning the application of any provision of this Order shall be heard by the Court upon application of the aggrieved party.

8. This Order and the provisions herein shall not prejudice the right of any party to seek reconsideration by the Court, upon written application, to modify, extinguish or vacate this Order.

9. If any party objects to the classification or designation of confidential material herein, said party shall first contact the party making such designation or classification and shall confer in good faith within twenty (20) days in an effort to resolve the dispute. If the parties are unable to resolve the dispute, the party objecting to such classification or designation may apply to the Court, by motion or otherwise, for an Order reclassifying or redesignating the confidential material, or any other appropriate Order regarding the treatment of such materials, including, but not limited, to an Order permitting certain specific witnesses and/or parties to review and analyze such confidential material. This Order in no way affects a party's ability to object to the production of documents for any reason permitted under the Pennsylvania Rules of Civil Procedure.

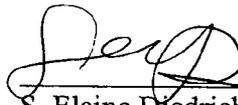
10. Should any person bound hereby receive a subpoena, civil or regulatory investigation demand, or other process from a third party which may be construed to require the disclosure of confidential material in any form, said person shall immediately give notice to the party or his attorney who designated the information sought by the subpoena, demand or other process as confidential. Once notified, it shall be the burden of the party who designated the information confidential to protect the information from disclosure or production pursuant to the subpoena, demand or process.

It is so stipulated.

Dated this _____ day of _____, 2005.

James J. West
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101
ATTORNEY FOR PLAINTIFFS

Dated this 6th day of January, 2005.



S. Elaine Diedrich, PA Id. No. 84077
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
ATTORNEY FOR DEFENDANTS

IT IS SO ORDERED this _____ day of _____, 2005.

J.

MESSAGE CONFIRMATION

01/06/2005 17:25
ID=SCHNADER K2

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
01/06	01'03"	7172347517	CALLING	06	OK 0000

01/06/2005 17:24 SCHNADER K2 → 17172347517 NO.286 001

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700 PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.785.3858 schnader.com

January 6, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

**VIA FAX (717) 234-7517
AND U.S. MAIL**

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your cooperation in agreeing that that we will make all reasonable attempts to schedule all of the parties' depositions during the same week and that the depositions will not take place until after I receive plaintiffs' medical records.

Also, thank you for your correspondence dated December 29, 2004 and your discovery responses. I note that you state you will obtain medical records from 1999 to the present from the doctors who have been identified in the plaintiffs' Answers to Interrogatories. However,

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jbennett@west-long.com

January 13, 2005

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

RE: Selvage and Retorick v. Clearfield Hospital, et al.

Dear Ms. Diedrich:

Enclosed please find the medical records we received regarding Dawn Retorick. We are still awaiting receipt of the records on behalf of Fran Selvage and will forward same to you as soon as they are received.

Thank you for your attention to this matter.

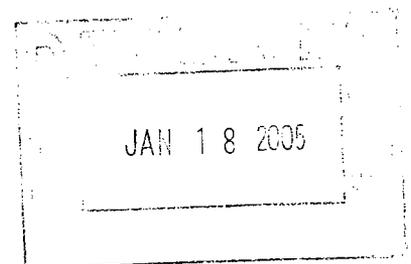
Sincerely,

WEST LONG LLC



Joanne M. Bennett
Paralegal

Enclosure



January 25, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
Direct Fax 412-765-3858
E-mail: sediedrich@schnader.com

VIA FACSIMILE AND FIRST-CLASS MAIL

James L. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

RE: Frances L. Selvage and Dawn L. Retorick v. Clearfield Hospital, et al.

Dear Jim:

Thank you for the medical records of Ms. Retorick that you forwarded on January 13. However, I noticed that Ms. Retorick's medical records only range from the present back to 1996. It is my understanding that additional medical records for Ms. Retorick will not be forwarded as the cover letter which accompanied the records did not state additional records will follow. In my letter dated, January 6, 2005, I requested that you forward *all* of Plaintiffs' medical records without such date restrictions. We are entitled to these records given Plaintiffs' claims for intentional infliction of emotional distress and claimed injuries of emotional distress. In addition, you have not advised me from whom these medical records were requested and for which dates. By this letter, I am requesting this pertinent information.

To alleviate Plaintiffs' concerns regarding privacy, I enclosed in my January 6 letter a proposed Stipulated Protective Order to ensure the confidentiality of documents. As stated in the Order, documents noted as confidential, by any party, would be treated as such during the course of the litigation. I also requested your thoughts regarding the proposed order, but have received no response from you to date.

As a courtesy to you and your clients, I offered to obtain the records myself. To expedite the matter, I sent you a medical records release authorizations with our First Request for Production of Documents on November 3, 2004, to be signed by each Plaintiff. You have advised me that you will not have your client sign these authorizations and that you would obtain the medical records for us. As a result, I am forwarding you a Second Request for Production of Documents. In an attempt to further compromise the matter without the need of court intervention, I request both Plaintiffs' medical records from the present going back only to 1980. I have also enclosed another copy of the Stipulated Protective Order for your convenience.

Please contact me within the next five (5) days with the information regarding Ms. Retorick's medical records that I have requested above and to discuss how you plan to address our concerns.

James L. West, Esq.
January 25, 2005
Page 2

I have attempted to remedy each concern that you and your clients have brought to my attention. It is my hope that we will be able to resolve our issues without court intervention. However, I will, if necessary, file a motion to compel to obtain the documents that we are entitled to pursuant to the Pennsylvania Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



S. Elaine Diedrich

For SCHNADER HARRISON SEGAL & LEWIS LLP

SED/tjg
Enclosure

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jwest@west-long.com

February 1, 2005

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Re: Selvage and Retorick v. Clearfield Hospital, et al.

Dear Ms. Diedrich:

I wanted to bring you up-to-date where we stand. I have written to all of the doctors to get records for the 1999 period up to the present. I will write to them asking if they have any records dealing with any "emotional problems" prior to 1999 and would hope to receive an answer shortly. If there are any such records, I will make them available. We are also working on the tax records and should have something for you shortly.

I have some alternate dates for depositions that I will be calling you to discuss. Those dates are as follows: February 7-9; March 21 and 22; April 4-6; April 18-20; May 2-4; and May 16-18. The only date that is really questionable is the March date, as I commence a jury trial on March 23. I would suggest we use that date only as a last-resort.

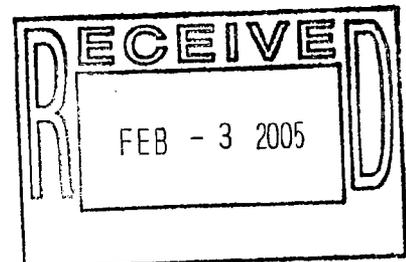
I will be giving you a call shortly so that we can finalize where we're at insofar as discovery is concerned.

Sincerely,

WEST LONG LLC

James J. West

JJW:dlg



February 11, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Mr. West:

Please allow this letter to confirm our discussion yesterday wherein I advised you that I am unavailable for depositions on April 4-6 and May 2-4; I am also unavailable May 17. I will advise you as to my clients' availability for the dates March 21 and 22, April 18-20, and May 16 and 18. In addition, you advised me that you would request all of plaintiffs' medical records from their physicians going back to 1980 and would not limit the request to only records dealing with "emotional problems", but rather, you would request all records from plaintiffs' physicians.

Please contact me after you have obtained the records so that we can discuss how to proceed.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Elaine Diedrich
me
S. Elaine Diedrich

SED/mfh

February 11, 2005
Page 2

bcc: Jon R. Steen, Esq.
John K. Gisleson, Esq.

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jwest@west-long.com

June 6, 2005

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Re: Selvage and Retorick v. Clearfield Hospital, et al.

Dear Ms. Diedrich:

Attached to this letter are:

Exhibit 1 - Medical records received from Dr. Johnson regarding Dawn Retorick;

Exhibit 2 - Medical records received from Dr. Cardamone regarding Frances Selvage;

Exhibit 3 - Medical records received from Dr. Conrad regarding Frances Selvage;

Exhibit 4 - IRS tax information for 1999-2003 regarding John and Dawn Retorick; and

Exhibit 5 - IRS tax information for 1999-2003 regarding Theodore and Frances Selvage.

Thank you for your attention to these matters.

Sincerely,

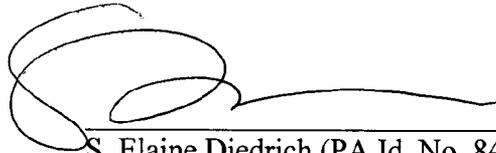
WEST LONG LLC

James J. West

JJW:dlg

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2007, a true and correct copy of the foregoing Supplement to Motion to Compel Mental Examinations of Plaintiffs and Motion for Status Conference was provided via hand delivery to plaintiffs' counsel, James West.



S. Elaine Diedrich (PA Id. No. 84077)

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

FRANCES L. SELVAGE and
DAWN L. RETORICK,
Plaintiffs

NO. 03-393-CD

V.

CLEARFIELD HOSPITAL, LOIS
EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager,
Defendants

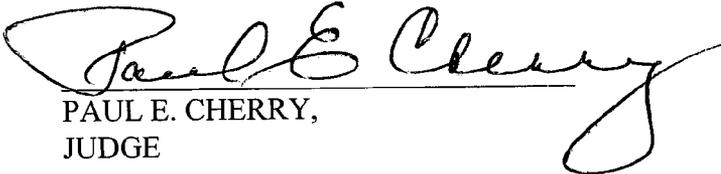
FILED ^{2CC}
Attys: West
E. Smith
0/10:55am
MAY 04 2007 (CK)

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 3rd day of May, 2007, it is the ORDER of this Court that Pre-Trial Conference scheduled on August 24, 2007, beginning at 1:00 P.M. shall be rescheduled to August 24, 2007, beginning at 11:00 A.M. in Judge's Chambers, Clearfield County Courthouse Annex, 230 East Market Street, Clearfield, Pennsylvania.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

Ronda, Please
don't schedule
anything else
this day now.
in afternoon ☺

FILED

MAY 04 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5-4-2007

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:

17A

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

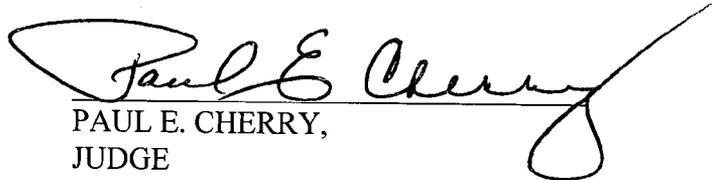
FRANCES L. SELVAGE and	:	NO. 03-393-CD
DAWN L. RETORICK,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
CLEARFIELD HOSPITAL, LOIS	:	
EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU	:	
Unit Manager,	:	
Defendants	:	

ORDER

AND NOW, this 30th day of May, 2007, it is the ORDER of this Court that telephone hearing with regard to Defendants' Motion for Protective Order shall be and is hereby scheduled for June 6, 2007, beginning at 11:30 A.M.

It is the further ORDER of this Court that counsel for Defendants shall initiate said telephone hearing by contacting counsel for the Plaintiff and the Court.

BY THE COURT,



PAUL E. CHERRY,
JUDGE

FILED
0/4:00 PM
MAY 31 2007

2cc
Atty's Smith
West

William A. Shaw
Prothonotary/Clerk of Courts

GB

FILED

MAY 31 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/31/07

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 Circumstances:

UA

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

FRANCES SELVAGE, DAWN RETORICK :
VS. : NO. 03-393-CD
CLEARFIELD HOSPITAL, LOIS :
EISENMAN, JACKIE STONE and :
THELMA STRATTON :

FILED 2cc
0/2:39/201 West
JUN 08 2007 E. Smith

William A. Shaw
Prothonotary/Clerk of Courts

O R D E R

AND NOW, this 6th day of June, 2007, following argument on the Defendant's Motion for Protective Order and upon consideration of same, said Motion shall be and is hereby granted as follows:

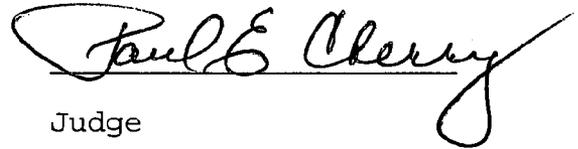
1. The scope of discovery concerning the implementation and enforcement of the MCARE Act at Clearfield Hospital shall be limited to the time period up to the effective date of the Plaintiffs' resignations, and shall be limited to the complaints the Plaintiffs made and how they were addressed.

2. Discovery concerning Clearfield Hospital's JCAHO accreditation shall be limited to the time period from 1998 to 2002, and all surveys and/or evaluations shall be provided to Plaintiffs for said time period if the same deals with nursing issues in the ICU Unit at the Clearfield Hospital.

3. The scope of discovery concerning the 2004

Pennsylvania Department of Health survey of Clearfield Hospital
shall be and is hereby prohibited.

BY THE COURT,

A handwritten signature in cursive script that reads "Paul E. Cherry". The signature is written in dark ink and is positioned above the printed name "Judge".

Judge

FILED

JUN 08 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/8/07

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:

UP

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

FRANCES L. SELVAGE and
DAWN L. RETORICK

vs.

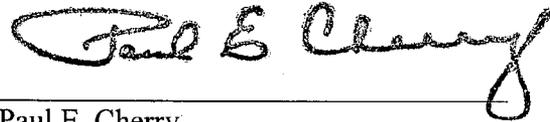
No. 03-393-CD

CLEARFIELD HOPSITAL, LOIS
EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager

ORDER

AND NOW, this 17th day of July, 2007, it is the ORDER of this Court that Pre-Trial Conference in the above captioned matter shall be and is hereby rescheduled from **August 24, 2007 at 11:00 A.M. to Monday, August 27, 2007 at 2:30 P.M.** in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



Paul E. Cherry
Judge

FILED *cc Attys:*
014:00304
JUL 17 2007 *West*
E. Smith

William A. Shaw
Prothonotary/Clerk of Courts

(EK)

FILED

JUL 17 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/17/07

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:

CA

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

FRANCES L. SELVAGE and
DAWN L. RETORICK

-vs-

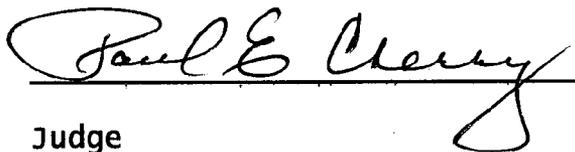
No. 03-393-CD

CLEARFIELD HOSPITAL, LOIS
EISENMAN, Director of
Nursing, JACKIE STONE,
Vice President of Nursing,
THELMA STRATTON, ICU Unit
Manager

O R D E R

AND NOW, this 30th day of July, 2007, following argument on Defendants' Motion for Protective Order and presentation of the issues before the court and upon consideration of same, it is the ORDER of this Court that said Motion for Protective Order shall be and is hereby GRANTED. Plaintiffs are hereby precluded from seeking Discovery as to the reasons Lois Eisenman and Jackie Stone left employment with Clearfield Hospital in October 2004. It is the further ORDER of this Court that Plaintiffs' Notice of Deposition shall be and is hereby quashed.

BY THE COURT,



Judge

FILED

03:50 2cc Atty's:
JUL 30 2007 J. West

William A. Shaw
Prothonotary/Clerk of Courts

E. Smith
@

FILED

JUL 30 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/30/07

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:

John K. Gisleson (Pa Id. No. 62911)
 S. Elaine Diedrich (Pa Id. No. 84077)
 Schnader Harrison Segal & Lewis LLP
 Suite 2700, Fifth Avenue Place
 120 Fifth Avenue
 Pittsburgh, PA 15222
 (412) 577-5200
 Attorneys for Defendants

FILED *NO cc*
01/4:00/ST
 AUG 27 2007

William A. Shaw
 Prothonotary/Clerk of Courts

FRANCES L. SELVAGE and	)	IN THE COURT OF COMMON
DAWN L. RETORICK,	)	PLEAS OF CLEARFIELD COUNTY,
	)	PENNSYLVANIA
Plaintiffs,)	
)	
vs.	)	No. 03-393-CD
)	
CLEARFIELD HOSPITAL,	)	Civil Action - Law
LOIS EISENMAN, Director of Nursing,)	
JACKIE STONE, Vice President of Nursing,)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

**AMENDED
PRETRIAL STATEMENT OF DEFENDANTS**

Defendants, by and through their undersigned counsel, submit this Amended Pretrial Statement.

Clearfield Hospital hereby amends its witness list as follows:

III. Witnesses

Whereas the witness list identified “the Hospital Corporate Representative” with Clearfield Hospital’s address, it should be amended to read:

Clearfield Hospital Corporate Representative/Custodian of Records (Liability and Damages)
 Clearfield Hospital
 809 Turnpike Avenue
 Clearfield, PA 16830

Defendants reserve the right to call other individuals as rebuttal witnesses if necessary, as well as anyone on Plaintiffs' witness list.

II. Defendants add the exhibits on the attached list to those exhibits identified in its Pretrial Statement filed on August 20, 2007. Further, by identifying any exhibits in its exhibit list, Defendants in no way waive their right to object, nor intend to waive their right to object to the use of any exhibits at the time of trial.

SCHNADER HARRISON SEGAL &
LEWIS LLP

By 

John K. Gisleson (Pa Id. #62911)
S. Elaine Diedrich (Pa Id. #84077)
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

DEFENDANTS' AMENDED EXHIBIT LIST

In addition to the exhibits identified on the Exhibit List attached to Defendant's Pretrial Statement filed on August 20, 2007, Defendants may also use any of the following documents as exhibits at the time of trial:

- D-237 Curriculum Vitae of Michelle McGonigal
- D-238 Curriculum Vitae of Dr. Paul Bernstein
- D-239 Chart of ICU position postings and bids 2001-2002
- D-240 Postings for ICU positions for 2001-2002
- D-241 Charts summarizing evidence in case

Defendants reserve the right to use any documents that were marked as exhibits during depositions, or produced by Plaintiffs or Defendants in this matter.

Defendants reserve the right to amend this exhibit list up to and including the time of trial.

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2007, the foregoing **DEFENDANTS' AMENDED PRETRIAL STATEMENT** was hand-delivered to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101

A handwritten signature in black ink, appearing to read 'S. Elaine Diedrich', written over a horizontal line.

S. Elaine Diedrich

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

FRANCES L. SELVAGE and	:	NO. 03-393-CD
DAWN L. RETORICK,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
CLEARFIELD HOSPITAL, LOIS	:	
EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU	:	
Unit Manager,	:	
Defendants	:	

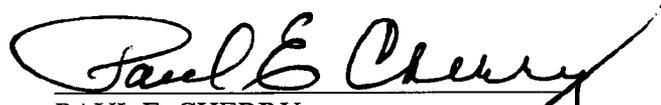
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0/10:18:51 J West
AUG 28 2007 E. Smith

William A. Shaw
Prothonotary/Clerk of Courts (6K)

ORDER

1. Jury Selection in this matter is scheduled for August 28, 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 October 15, 16, 17, 18, 19, 22, 23, 2007, beginning at 9:00 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
3. The deadline for submitting any and all Motions shall be by and no later than thirty (30) days prior to the commencement of trial.
4. Points for Charge shall be submitted to the Court by and no later than thirty (30) days prior to the commencement of trial.
5. Proposed Verdict Slip shall be submitted to the Court by and no later than thirty (30) days prior to the commencement of trial.
6. The parties shall mark all exhibits for trial prior to trial to speed introduction of exhibits.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

AUG 28 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/28/07

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:

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager,
Defendants

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

:
:
: No. 03-393-CD

:
: Civil Action - Law

:
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:
:

ORDER OF COURT

AND NOW, to wit, this ____ day of September, 2007, upon due consideration of the Motion for the case to be removed from the jury list and to be tried non-jury, it is ORDERED, ADJUDGED and DECREED said Motion be and the same hereby is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiffs are voluntarily dismissing the actions set forth for defamation (Count IV) and false lights (Count V) and said Counts are hereby DISMISSED.

BY THE COURT:

J.

LA

JAMES J. WEST LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517

FILED *no cc*
9/11/07
SEP 17 2007 *GR*

William A. Shaw
Prothonotary/Clerk of Courts

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager,
Defendants

: IN THE COURT OF COMMON PLEAS
: CLEARFIELD COUNTY, PENNSYLVANIA
:
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: No. 03-393-CD
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: Civil Action - Law
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**MOTION TO WITHDRAW JURY DEMAND
AND PROCEED NON-JURY AS TO ALL COUNTS**

AND NOW, come the Plaintiffs, Frances L. Selvage and Dawn L. Retorick, by and through their counsel, James J. West, Esquire, and file the following Motion for Non-Jury Trial and, in support thereof, state as follows:

1. As part of their Pretrial Memorandum, the Defendants filed a Memorandum of Law which cited authorities arguing that a jury trial was not appropriate under the Whistleblower Act (Count I) and, by inference, a jury trial would not be available under the MCARE Act (Count II) which incorporates the provisions of the Whistleblower Act.

2. The Plaintiffs have reviewed the cases cited by the Defendants in their brief and believe there is merit to the position put forth and, accordingly, herein indicate that they would agree to proceed on all counts on a non-jury basis if the Court would agree to hear the matter on that basis.

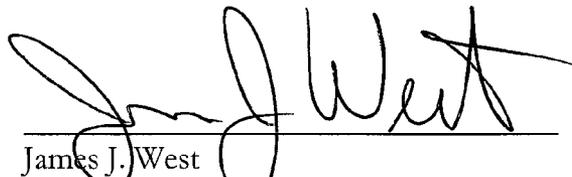
3. As part of the agreement to proceed on a non-jury basis, the Plaintiffs are also willing to dismiss two of their causes of action sounding in defamation and false lights (Counts IV and V) in the interest of simplifying and expediting a non-jury trial

4. A review of the Defendants' Pretrial Statement indicates that in its present posture as a jury trial, the Defendants have listed 36 witnesses and 328 exhibits. It is believed that in a non-jury trial, with a Judge as the finder of fact, the parties will be able to present their respective cases with fewer witnesses and exhibits than are presently set forth in the Pretrial Statements of the parties.

5. In the alternative, the Court has authority to use the jury already selected as an advisory jury to hear all Counts of the Complaint including Counts I and II on which the Defendants contend Plaintiffs are not entitled to a jury trial – the Whistleblower and MCARE Act claims. See Rule 1038.3, Pa.R.Civ.P.; Chapter 46, Standard Pennsylvania Practice 2d, Right to Jury Trial, Generally at §46:8. The use of the previously selected jury to hear the Whistleblower and MCARE Act Counts (Counts I and II) and render an advisory opinion and to decide the remaining Counts would also be an appropriate way to proceed in this case.

Respectfully Submitted,

JAMES J. WEST LLC



James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

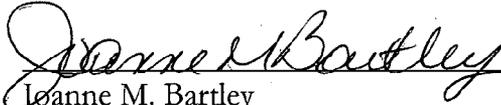
Dated: September 13, 2007

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of **September 2007** a true and correct copy of the foregoing document was served upon the party named below via United States First Class Mail, addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bartley
Assistant to James J. West, Esquire

UP

JAMES J. WEST LLC
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Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517

FILED NOCC
M 11:07/07
SEP 17 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU	:	
Unit Manager,	:	
Defendants	:	

MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF DEFENDANTS' EXPERT WITNESSES

AND NOW, come the Plaintiffs, Frances L. Selvage and Dawn L. Retorick, by and through their counsel, James J. West, Esquire, and respectfully move this Honorable Court for an Order barring the Defendants' expert witnesses from testifying in the above-captioned case and, in support thereof, alleges as follows:

1. The Plaintiffs listed the above-captioned case for trial in December of 2006, four years after filing the action and after extensive delay caused by various motions filed by the Defendant such as preliminary objections and summary judgment.
2. In May of 2007, five months after the case had been initially listed for trial, the Defendants filed a motion to compel both Plaintiffs to submit to a mental examination

G in part. D in part.

Δ exp test of psych

Paul M Bernstein shall be
permitted. ^{Δ are precluded} The ex test ^{from}
of Michelle M McGonigal. ^{offering}
~~shall be + 1~~

basis that the Plaintiffs claimed emotional harm and they desired to have a psychiatrist testify on the Defendants' behalf.¹

3. The mental examination was ordered and on May 21, 2007, both Plaintiffs, in the presence of counsel, were examined by psychologist Paul M. Bernstein, in Clearfield, Pennsylvania.

4. The expert psychologist's report (which is undated) was not provided to Plaintiffs' counsel until August 17, 2007 at approximately 3:30 p.m., the last working day before pretrial statements were due. This occurred notwithstanding numerous requests from Plaintiffs' counsel for such expert report by expert interrogatories filed in 2003 and between the date of examination and the date pretrial statements were due.

5. Likewise, without any forewarning whatsoever, on the same date and time (August 17, 2007) the Defendants disclosed an expert report dated August 1, 2007 from a nurse supervisor from Pittsburgh named Michelle M. McGonigal, who purported to be an expert on ICU Units. This report, again, was not provided until August 17, 2007, the last working day before pretrial statements were to be filed.

6. The Plaintiffs clearly asked for the identities of all expert witnesses in its first set of Interrogatories, served approximately three years ago on October 29, 2004 as follows:

Identify each expert you intend to call as a witness at the trial of this matter and for each expert state:

a. The subject matter about which the expert is expected to testify;

¹ The Defendants' motion referred to a psychiatrist as the person doing the examination but at the actual examination only a psychologist appeared.

b. The substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion;

c. State in detail the facts or information supplied to or obtained by each expert which was used as a basis for forming his or her opinion(s) including all documents, reports or records, statements and reference materials provided to or obtained by each expert for review or inspection.

d. The qualifications of each such expert witness, and in doing so as to each expert list formal education, the schools attended, including years of experience in particular fields, including names and addresses of employers with inclusive years of employment and positions held; teaching positions or other affiliations; and a list of all publications authored by said persons, including the title of the work, the name of the periodical or book in which it was printed, and the date of its printing;

7. The Defendants have failed to comply with the discovery process, answer the interrogatories and have delayed the filing of their expert reports until the last possible moment in an attempt to have a “trial by ambush.” Under Rule 4003.5(b), Pa.R.Civ.P, the testimony of neither expert should be permitted.

8. Moreover, as outlined in the enclosed brief, the testimony of the experts is almost totally irrelevant, prejudicial and aimed at further maligning, embarrassing and humiliating the Plaintiffs so that it can be properly considered part of the retaliation alleged by the Plaintiffs in this particular case.

WHEREFORE, it is respectfully requested that this Honorable Court grant a Motion in Limine barring the expert testimony of psychologist Paul M. Bernstein and nurse Michelle M.

McGonigal based on the untimeliness of their reports as well as the substance of their testimony as reflected in their reports.

Respectfully Submitted,

JAMES J. WEST LLC

A handwritten signature in black ink, appearing to read "James J. West", written over a horizontal line.

James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

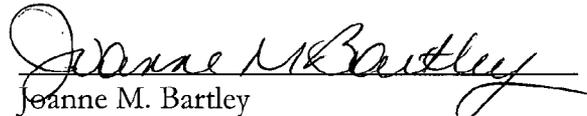
Dated: September 13, 2007

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of **September 2007** a true and correct copy of the foregoing document was served upon the party named below via United States First Class Mail, addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bartley
Assistant to James J. West, Esquire

JAMES J. WEST LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager,
Defendants

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

: No. 03-393-CD

: Civil Action - Law

ORDER OF COURT

AND NOW, to wit, this 24th day of September 2007, upon due consideration of the Plaintiffs' Motion in Limine to Exclude the Testimony of Defendants' Expert Witnesses it is hereby ORDERED, ADJUDGED and DECREED that argument on said Motion shall be heard on the 5th day of **October, 2007** at **1:30 p.m.** in Courtroom No. 2.

BY THE COURT:



FILED ^{2cc}
014'00601 Amy West
SEP 24 2007
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

SEP 24 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/24/07

- 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:

JAMES J. WEST LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517

FILED *no cc*
mll:07/20
SEP 17 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager,
Defendants

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

:
:
: No. 03-393-CD

:
: Civil Action - Law

**PLAINTIFFS' REPLY TO DEFENDANTS' MEMORANDUM
OF LAW ON PRECLUSION OF EVIDENCE ON DAMAGES**

The Defendants contend in Exhibit G to their Pretrial Statement that the "Plaintiffs are not entitled to costs and expenses that they incurred in connection with their subsequent employment." (Def. Brief, Ex. G to Defendants' Pretrial Statement at pg. 3, Section B) They cite in support of this proposition virtually all cases decided under the Federal Age Discrimination in Employment Act, 29 U.S.C. §§600 *et seq.*¹ (ADEA) They also cite one Title VII case (Racial Discrimination in Employment) *Mitchell v. Seaboard Sys. RR.*, 883 F.2d 451, 453

¹ The ADEA cases cited by the Defendants, in order of citation, are: *Sharp v. Today's Man*, 1985 US Dist LEXIS 12356 (ED Pa 1985); *Doherty v. Crow*, 2001 US Dist. LEXIS 8626 (S.D. Ind. 2001); *Lyons v. Allendale Mut. Ins. Co.*, 484 F.Supp. 1343 (N.D. Ga 1980); *Walker v. Ford Motor Co.*, 684 F.2d 1355, 1363-64 and n.12 (11th Cir. 1982); *Thomas v. Cooper Ind.*, 1986 US Dist. LEXIS 29803 (1986); and *Farley v. Miller Fluid Power Corp.*, 1997 US Dist. LEXIS 19006 (ND Ill. 1997). They do indicate that the first four cases are ADEA cases but do not indicate that *Thomas, supra.* and *Farley, supra.* are. A review of them shows that they are, in fact, ADEA cases.

(6th Cir. 1989) as support. Incredibly, they do not inform the Court that the ADEA as well as Title VII were federal statutorily created employment discrimination laws creating a specific statutory remedy and that by statute the damages were limited to that statutory remedy (contrary to the statutory remedy created by Pennsylvania in the Whistleblower Statute that indicates that all damages can be awarded by the Court). Likewise, they fail to inform the Court that the one Title VII case they cite was decided before Title VII was amended to provide for compensatory damages. Accordingly, their citations to these cases are misleading and they have no application at all to the case *sub judice*. We will elaborate briefly on the lack of validity of these cases.

The essence of the ADEA statute (similar to Title VII) was to make it unlawful for employers, employment agencies and labor organizations to discriminate against an individual “because of such individual’s age.” Congress promulgated the ADEA because of its concern that older workers were being deprived of employment on the basis of inaccurate and stigmatizing stereotypes. See *EEOC v. Wyoming*, 460 U.S. 226, 75 L.Ed.2d 18, 103 S.Ct. 1054 (1983). The ADEA provided for compensation for lost wages and fringe benefits that occurred prior to the judgment in the case and, in the case of an employer who would not rehire, loss of future wages. Moreover, it provided for mandatory liquidated damages equal to the amount of unpaid wages awarded which amount is doubled in the event of a “willful violation.” 29 U.S.C.A. §216(b),(c), providing for double damages.

The ADEA did not provide for general compensatory damages and the Courts nearly uniformly declined to award general damages limiting the ADEA strictly to its statutory construction. This included pecuniary losses, emotional injuries, pain and suffering holding to the single and double damage wage loss standard. See *Corel v. Finance America Corp*, 726 F.2d 654 (10th Cir. 1984); *Johnson v. Altech Speciality Steel*, 731 F.2d 143 (2nd Cir. 1984); *Hill v. Spiegel, Inc.*, 708

F.2d 213 (6th Cir. 1983); and numerous other cases cited in Stein on Personal Injury Damages, Third Edition, Volume I, fn 81, §5:12, entitled *Remedies under the ADA*. (There were only a few District Courts that held to the contrary and would award compensatory damages under the ADEA. See, *Buchholz v. Symons Mfg. Co.*, 445 F.Supp. 706 (ED, Wis. 1978); *Bertrand v. Orkin Exterminating Company*, 432 F.Supp. 952 (ND, Ill. 1977).)

As pointed out by one of the leading treatises on damages, the ADEA enforcement mechanisms are tied to the Fair Labor Standard Act and because Section 16 of the Fair Labor Standard Act only authorizes unpaid wages and liquidated damages, the ADEA was not considered as reaching general compensatory damages. Stein on Personal Injury Damages, *supra*. Likewise, the Courts held that punitive damages were taken care of because of the liquidated damage provision (double damages). See, e.g., *Transworld Airlines v. Thurston*, 469 U.S. 111, 83 L.Ed.2d 523 (1985) – liquidated double damages substitute for other damages. Since the Defendants improperly cited cases all involving a statutory remedy which specifically excluded compensatory damages but provided for specific double damages the cases have absolutely no application and are misleading.

We note that the Defendants do cite one Title VII civil rights case, *Mitchell v. Seaboard Sys. RR.*, *supra.*, for their proposition, but we would point out that that case was decided in 1989 at a point in time when Title VII of the Civil Rights Act followed the ADEA and did not provide for compensatory or punitive damages. This was changed after the *Mitchell* case was decided by the Civil Rights Act of 1991, which provided that in Title VII cases compensatory damages, including damages for emotional injuries, were to be awarded. (We note also that the Civil Rights Act of 1991 did not change the ADEA leaving it instead a double damage statute dealing with front loaded and back loaded wage losses explaining the post-1991 denials of compensatory

damages.) The impact of the 1991 Amendments to the Civil Rights Act is shown by Equal Employment Opportunity Commissions, Enforcement Guidance on Compensatory and Punitive Damages indicating that pecuniary losses under Title VII include “moving expenses, job search expenses, medical expenses, psychiatric expenses and other qualifiable out of pocket expenses.” (This section of the policy guide is attached hereto as Exhibit 1 and the quoted language is at page 5 of 20. It is found on the EEOC website and was promulgated in July of 1992 after the 1991 amendments.)

The case law since the 1991 Civil Rights Act amendments insofar as they apply to Title VII cases make it very clear that compensatory damages are now recoverable. See, *EEOC v. Service News Company*, 898 F.2d 958 at 964 (4th Cir. 1990) (plaintiff entitled to unrelated medical expenses when constructive discharge caused her health insurance to lapse) and *Weiss v. Parker Hannifan Corp.*, 747 F.Supp. 1118, 1132 (D. NJ 1990) (employer assessed unrelated medical expenses incurred by employee because job loss resulted in loss of health insurance.)

The Whistleblower Statute itself makes imminently clear that compensatory damages are recoverable in this case by providing:

A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.

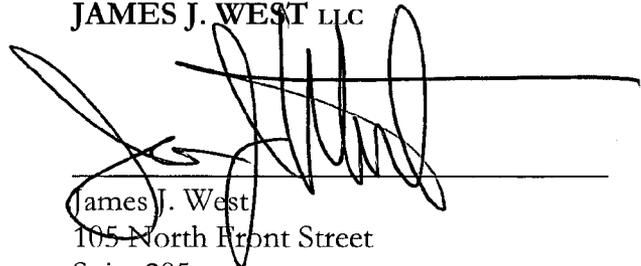
42 P.S. §1425

Likewise, compensatory damages would be available for a retaliatory discharge in violation of public policy. Compensatory damages “may be had for any proximate consequences which can be established with requisite certainty.” 22 M.Jur.2d Damages §45 (1965).

Finally, the Plaintiffs’ proof at trial will be that in order to obtain other employment that paid at least as much as they were making at Clearfield Hospital, it was necessary to travel to Carlisle. The Defendants knew this, their conduct is an intention tort and they are certainly responsible for all proximately caused damages caused by their intentional tort. Whether these are considered actual damages or compensatory damages, they are surely admissible and collectible. These damages will only be mitigated when the Plaintiffs are re-employed in their original positions at Clearfield Hospital under the Whistleblower Act and no longer have to commute to Carlisle.

Respectfully Submitted,

JAMES J. WEST LLC

A handwritten signature in black ink, appearing to read 'James J. West', is written over a horizontal line. The signature is stylized and somewhat illegible.

James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

Dated: September 13, 2007

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of **September 2007** a true and correct copy of the foregoing document was served upon the party named below via United States First Class Mail, addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bartley
Assistant to James J. West, Esquire

subject to any damages. The Commission rejects both interpretations and concludes that all covered employment agencies and labor organizations with 100 or fewer employees are subject to the \$50,000 cap on damages.

When the Commission, or an individual, is pursuing a claim on behalf of more than one person, the damage caps are to be applied to each aggrieved individual. For example, where the Commission files suit on behalf of ten complaining parties, against an employer who has 1000 employees, each complaining party may receive (to the extent appropriate) up to \$300,000. The respondent's total liability for all ten complaining parties may be up to \$3,000,000.8

Because relief recoverable under § 706(g) is not deemed to be compensatory damages, complaining parties may recover full compensation for back pay, interest on backpay, frontpay, or any relief that would have been available under Title VII, § 505 of the Rehabilitation Act, or the ADA, without inclusion in the caps. Although some may contend that frontpay is a "future pecuniary loss" to be included in the caps, the Commission disagrees. Frontpay is a type of "relief authorized under Title VII" and, therefore, is excluded from the definition of compensatory damages and is not included in the caps.9

Past pecuniary losses are also not included in the caps and are fully compensable where actual out-of-pocket losses can be shown. Section 1981A(b)(3) limits only claims that typically do not lend themselves to precise quantification, i.e., punitive damages, future pecuniary losses, and nonpecuniary losses.

Example: Complaining Party is subjected to brutal racial harassment and is subsequently demoted. As a result, she suffers from severe depression. She spends \$20,000 in psychiatric and medical bills for treatment of the depression. Her psychiatrist also testifies that CP will require approximately two additional years of therapy. CP may receive \$20,000 for the medical bills and full backpay and frontpay awards, all of which are fully compensable and not included in the caps. She may also receive damages for the depression (nonpecuniary loss), damages for future psychiatric bills for the next two years (future pecuniary losses), and punitive damages. The respondent has 35 employees. The sum of the damages for the depression, future psychiatric expenses, and punitive damages cannot exceed the statutory cap of \$50,000.

A. Compensatory Damages

Compensatory damages are awarded to compensate a complaining party for losses or suffering inflicted due to the discriminatory act or conduct. See *Carey v. Phipps* 435 U.S. 247, 254 (1978) (purpose of damages is to "compensate persons for injuries caused by the deprivation of constitutional rights"). Compensatory

damages "may be had for any proximate consequences which can be established with requisite certainty." 22 Am Jur 2d Damages § 45 (1965)" Compensatory damages include damages for past pecuniary loss (out-of-pocket loss), future pecuniary loss, and nonpecuniary loss (emotional harm). Compensatory damages are allowed against federal, state, and local governments and private sector employers.

The following section sets forth the legal parameters for computing compensatory and punitive damages where appropriate.

1. Pecuniary Losses

Pecuniary losses include, for example, moving expenses, job search expenses, medical expenses,¹⁰ psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses that are incurred as a result of the discriminatory conduct. To recover damages, the complaining party must prove that the employer's discriminatory act or conduct was the cause of his loss. The critical question is whether the complaining party incurred the pecuniary losses as a result of the employer's discriminatory action or conduct.

Section 1981A distinguishes past and future pecuniary losses, in that future pecuniary losses are subject to the caps, while past pecuniary losses are not. The Commission concludes that past pecuniary losses are out-of-pocket losses that occurred prior to the date of the resolution of the damage claim, i.e., conciliation, settlement, or the conclusion of litigation. The amount to be awarded for past pecuniary losses can be determined by receipts, records, bills, cancelled checks, confirmation by other individuals, or other proof of actual losses and expenses. Damages for past pecuniary losses will not normally be sought without documentation.

Future pecuniary losses are out-of-pocket expenses that are likely to occur after conciliation, settlement, or the conclusion of litigation.¹¹ As noted previously, future pecuniary losses are subject to the caps and do not include frontpay. Future pecuniary losses include the same expenses listed above, if these losses will continue after settlement, conciliation or litigation.

The complaining party has a duty to mitigate his/her damages. A complaining party may not recover damages for any harm that (s)he could have avoided or minimized with reasonable effort. See Restatement (Second) of Torts, § 918(1).¹² However, the respondent has the burden of showing that the complaining party failed to exercise reasonable diligence to mitigate his/her damages. Cf., e.g., *Weaver v. Casa Gallardo, Inc.*, 922 F.2d 1515, 1527, 55 EPD Par. 40,540 (11th Cir. 1991) (employer has the burden of showing that the plaintiff failed to make reasonable efforts to find work to mitigate his damages when seeking backpay); *Fleming v. County of Kane, State of Ill.*, 898 F.2d 553, 560 (7th Cir. 1990) (the burden is on the employer to prove, as an affirmative defense, that the employee failed to

mitigate damages when seeking lost wages); *Woolridge v. Marlene Industries Corp.*, 875 F.2d 540, 548, 53 EPD Par. 39,772 (6th Cir. 1989) (defendant has the burden of producing sufficient evidence to establish the amount of interim earnings or lack of diligence in mitigating damages on the part of the plaintiff). Therefore, if the respondent can prove that the complaining party failed to exercise reasonable diligence to mitigate his/her damages and could have avoided or minimized such damages with reasonable effort, the damages may be reduced accordingly.

Example: Complaining Party is a nurse in New York City, which has a critical nursing shortage. CP was fired when she rejected the sexual advances of the hospital administrator. CP has been unemployed for over a year. She seeks recovery for past pecuniary losses, which include, among other losses, moving expenses to California and job search expenses in California. CP maintains that it was necessary to move to California to find another nursing position. The respondent proves that CP could have found a comparable nursing position in New York City with reasonable diligence within a matter of weeks and that her New York job search expenses would have been minimal. Therefore, CP's recovery of damages for her moving expenses and job search expenses in California may be limited to the amount of the job search expenses she would have incurred in New York City. Backpay and damages sought for the other pecuniary losses incurred during her year-long unemployment may also be reduced, since the respondent has proved that she could have found another job within a few weeks.

2. Nonpecuniary Losses

Damages are available for the intangible injuries of emotional harm such as emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life. Other nonpecuniary losses could include injury to professional standing, injury to character and reputation, injury to credit standing, loss of health, and any other nonpecuniary losses that are incurred as a result of the discriminatory conduct. Nonpecuniary losses for emotional harm are more difficult to prove than pecuniary losses.¹³ Emotional harm will not be presumed simply because the complaining party is a victim of discrimination.¹⁴ The existence, nature, and severity of emotional harm must be proved. Emotional harm may manifest itself, for example, as sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self esteem, excessive fatigue, or a nervous breakdown. Physical manifestations of emotional harm may consist of ulcers, gastrointestinal disorders, hair loss, or headaches.

An award for emotional harm is warranted only if there is sufficient causal connection between the respondent's illegal actions and the complaining party's injury. See *Gore v. Turner*, 563 F.2d 159, 164 (5th Cir. 1977). The discriminatory act or conduct must be the cause of the emotional harm. The claim of

DATE: 9-19-07

- You are responsible for serving all appropriate parties.
- The Prothonotary's office has provided service to the following parties:
 - Plaintiff(s)
 - Defendant(s)
 - Plaintiff(s) Attorney
 - Defendant(s) Attorney
 - Other
- Special Instructions:

FILED

SEP 19 2007

William A. Shaw
Prothonotary/Clerk of Courts

WT

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SEP 14 2007
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Attorneys for Defendants

FRANCES L. SELVAGE and)	IN THE COURT OF COMMON
DAWN L. RETORICK)	PLEAS OF CLEARFIELD COUNTY,
Plaintiffs,	)	PENNSYLVANIA
)	
vs.)	
)	
CLEARFIELD HOSPITAL,)	
LOIS EISENMAN, Director of Nursing,	)	No. 03-393-CD
JACKIE STONE, Vice President of Nursing,)	
THELMA STRATTON, ICU Unit	)	Civil Action – Law
Manager)	
Defendants.)	

**DEFENDANTS' MOTION IN LIMINE TO PRECLUDE
PLAINTIFFS FROM INTRODUCING EVIDENCE THAT
AFTER THEY RESIGNED THEIR EMPLOYMENT,
THELMA STRATTON DID NOT RECOMMEND THEM FOR REHIRE**

Defendants submit this Motion In Limine to Preclude Plaintiffs from Introducing Evidence that After They Resigned Their Employment, Thelma Stratton Did Not Recommend Them for Rehire, as such evidence is irrelevant to any of Plaintiffs' claims, would cause unfair prejudice to defendants, would mislead the jury and would cause confusion of the issues.

1. Defendants have indicated that they intend to use as evidence of retaliation two forms that Defendant Thelma Stratton filled out after plaintiffs' resigned that indicated she would not recommend them for rehire.
2. Plaintiff Retorick resigned her employment on October 11, 2002 and Plaintiff Selvage resigned her employment on October 16, 2002.

3. On October 25, 2002, Thelma Stratton filled out a form employment termination document for each plaintiff that described that the plaintiffs had resigned. This form also requested whether the individual filling out the form would recommend rehire. Thelma Stratton marked that that she would not recommend the plaintiffs for rehire. These documents for Retorick and Selvage are plaintiffs' trial exhibits 28 and 31. A true and correct copy of these documents are attached hereto as Exhibit "A."

4. Plaintiffs are prohibited under the Whistleblower Law and MCARE Act from recovering for any alleged retaliation occurring prior to September 21, 2002.

5. It is believed that plaintiffs intend to offer this evidence in support of alleged "retaliation" occurring after September 21, 2002.

6. Plaintiffs' remaining claims are claims under the Pennsylvania Whistleblower Law, the MCARE Act, and a common law claim for Constructive Discharge.

7. These documents, including any evidence concerning Thelma Stratton marking on these forms that she would not recommend plaintiffs for rehire, should be precluded under Pennsylvania Rules of Evidence 401 and 402, as this evidence is entirely irrelevant to any of plaintiffs' remaining claims.

8. To recover for a claim of constructive discharge a plaintiff must show that the conduct complained about created working conditions so unpleasant or intolerable that a reasonable person in their shoes would resign. *Gray v. New York Newspapers Inc.* 957 F.2d 1030 (3d Cir. 1992) (emphasis added); *Highhouse v. Avery Transp.*, 443 Pa. Super. 120, 660 A.2d 1374, 1376 (Pa. Super. 1995). "[I]ntolerability . . . is assessed by the objective standard of whether a reasonable person in the employee's position would have felt compelled to resign --

that is, whether he would have had no choice but to resign." *Connors v. Chrysler Financial Corp.*, 160 F.3d 971, 976 (3d Cir. 1998).

9. Of course, the forms filled out by Thelma Stratton occurred weeks after plaintiffs had already resigned. They could not have formed the basis for their resignation and, hence, does not support their constructive discharge claims. Thus, these forms are entirely irrelevant to whether or not plaintiffs can recover for constructive discharge. Further, plaintiff's never reapplied for employment and never even knew this notation existed until the documents were produced in this litigation years later. *See e.g. Hay v. GMAC Mortgage Co.*, 2003 U.S. Dist. LEXIS (E.D. Pa. 2003) (assertion by plaintiff that she was advised that something concerning her employment was going to happen, but did not happen, "could not have affected plaintiff's terms and conditions of employment."). Thus, this notation never affected plaintiff's terms and conditions of employment.

10. This evidence is similarly irrelevant to plaintiffs' Whistleblower and MCARE Act claims.

11. Plaintiffs may only recover under the Whistleblower Law for retaliation effecting the employee's "compensation, terms, conditions, location or privileges of employment".

12. The Pennsylvania Whistleblower Law provides:

(a) PERSONS NOT TO BE DISCHARGED. -- No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee ... makes a good faith report or is about to report, verbally or in writing, to the employer or appropriate authority an instance of wrongdoing or waste.

43 P.S. § 1423(a) (emphasis added). The MCARE act incorporates by reference these provisions of the Whistleblower Law. See Section 1303.308(c) (A health care worker who reports the occurrence of a serious event or incident in accordance with subsection (a) or (b) shall not be

subject to any retaliatory action for reporting the serious event or incident and shall have the protections and remedies set forth in . . . Whistleblower Law.).

13. Evidence of a notation made by Stratton on forms filled out after plaintiffs already resigned their employment is entirely irrelevant to plaintiffs' Whistleblower and MCARE Act claims.

14. First, the marking on plaintiffs' employment forms that Stratton would not recommend them for rehire in no way effected their compensation, terms, conditions, locations or privileges of employment. Plaintiffs were not entitled to rehire after they resigned and plaintiffs never applied for reemployment after they resigned. Thus, they were never denied reemployment because of this notation on their employment forms. *See e.g. Hay v. GMAC Mortgage Co.*, 2003 U.S. Dist. LEXIS (E.D. Pa. 2003) (discussed *supra*)

15. Indeed, the plaintiffs did not even see these forms until several years later when they were produced in discovery.

16. Moreover, on its face, notations on these forms do not rise to the requisite level under the Whistleblower Law or MCARE Act to constitute changes to an employees compensation, terms, conditions, locations or privileges of employment. Plaintiffs are required to show some adverse employment action to establish a change to their compensation, terms, conditions, locations or privileges of employment. *See O'Rourke v. Pennsylvania Department of Corrections*, 778 A.2d 1194, 1198 (Pa. 2001) (affirming holding of the lower court finding that a various types of harassment from co-workers and inmates did not materially affect plaintiff's compensation, terms, location or privileges of employment and were not compensable under the Whistleblower Law).

17. Because it is entirely irrelevant to any claims of alleged retaliation, and in itself does not constitute a change in the compensation, terms, conditions, locations or privileges of employment of plaintiffs', these forms are entirely irrelevant to plaintiffs' claims.

18. Plaintiffs can only introduce these documents in an effort to unfairly prejudice the defendants. Clearly, their probative value is nonexistent and their danger of unfair prejudice is high.

19. As such, their probative value is outweighed by the danger of unfair prejudice and, therefore, evidence concerning Stratton not recommending plaintiffs for rehire after they already resigned should be precluded under Pennsylvania Rule of Evidence 403.

20. For the same reasons, introduction of this evidence will cause confusion of the issues and would mislead the jury because the jury may believe that these forms can support a claim for Constructive Discharge or retaliation under the Whistleblower Law and MCARE Act (if acting as an advisory jury), when they clearly cannot.

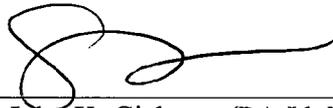
22. In sum, evidence concerning Stratton not recommending plaintiffs for rehire, including marking such on the employment forms should be precluded under Pennsylvania Rules of Evidence 401, 402, and 403.

WHEREFORE, Defendants respectfully request that this Court preclude Plaintiffs from introducing evidence that after they resigned their employment, Thelma Stratton marked on their employment forms that she would not recommend them for rehire as such evidence is irrelevant

to any of Plaintiffs' claims, would cause unfair prejudice to defendants, would mislead the jury and would cause confusion of the issues.

Respectfully submitted,

SCHNADER HARRISON SEGAL &
LEWIS LLP

By: 

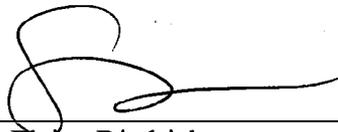
John K. Gisleson (PA Id. No. 62511)
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Attorneys for Defendants, Clearfield Hospital,
Lois Eisenman, Jackie Stone and Thelma
Stratton

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2007, a true and correct copy of the foregoing **Motion In Limine to Preclude Plaintiffs from Introducing Evidence that After They Resigned Their Employment, Thelma Stratton Did Not Recommend Them for Rehire** was sent via U.S. Mail, first class postage prepaid, to the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

EMPLOYMENT TERMINATION

Employee Name Dawn Retorick Effective Date: 11/02/02

Position Title Charge / Staff nurse Department ICU

Reason for Termination: Took a job at another hospital

Resignation*

Discharge

Retire

Other

* Original letter of Resignation must be attached and sent to Human Resources.

Final Evaluation (Circle the number indicating your overall evaluation and briefly describe the employee's overall performance.)

UNSATISFACTORY	MARGINAL		SATISFACTORY		ABOVE AVERAGE		OUTSTANDING	
0	1	2	3	4	5	6	7	8

Comments: This employee has a great deal of knowledge and expertise to offer the less experienced staff, but seems to have difficulty mentoring in a positive manner. She exercises judgement consistent with commonly accepted current nursing practices and has the ability to accept responsibility and make sound decisions.

Would you recommend re-employment?

YES

NO

Department Manager/Supervisor Shelma J. Strutton CV Date 10/25/02

HR Use:

Exit interview scheduled for: _____ Hire Date: _____

ANSOS

TOPPS

Change Summary

CH 0031

EXHIBIT

tabbles

A

EMPLOYMENT TERMINATION

Employee Name FAAN Salvage Effective Date: 11/16/02

Position Title full time staff nurse Department ICU

Reason for Termination: Took a job at another hospital

Resignation* Discharge Retire Other

* Original letter of Resignation must be attached and sent to Human Resources.

Final Evaluation (Circle the number indicating your overall evaluation and briefly describe the employee's overall performance.)

UNSATISFACTORY	MARGINAL		SATISFACTORY		ABOVE AVERAGE		OUTSTANDING	
0	1	2	3	4	5	6	7	8

Comments: This employee has a great deal of knowledge and expertise to offer the younger and less experienced staff, but confront and addresses them in such a manner as to promote a negative atmosphere and produces a disruptive environment

Would you recommend re-employment? YES NO

Department Manager/Supervisor Shelma J. Stratton CI Date 11/25/02

HR Use:

Exit interview scheduled for: _____ Hire Date: _____

ANSOIS BC TOPPS BC Change Summary _____

CH 0086

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit
Manager
Defendants.

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

No. 03-393-CD

Civil Action – Law

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Motion In Limine to Preclude Plaintiffs from Introducing Evidence that After They Resigned Their Employment, Thelma Stratton Did Not Recommend Them for Rehire is hereby GRANTED.

It is FURTHER ORDERED that any evidence concerning the October 25, 2002, employment termination form (Defendants Trial Exhibits 28 and 31), or that Defendant Thelma Stratton did not recommend the Plaintiffs for rehire after they resigned is hereby precluded.

BY THE COURT,

_____, J.

DATE: 9-19-65

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:

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FILED ICC Atty
m/11:45 am
SEP 14 2007
William A. Shaw
Prothonotary/Clerk of Courts

Attorneys for Defendants

FRANCES L. SELVAGE and	)	IN THE COURT OF COMMON
DAWN L. RETORICK	)	PLEAS OF CLEARFIELD COUNTY,
Plaintiffs,	)	PENNSYLVANIA
)	
vs.)	
)	
CLEARFIELD HOSPITAL,)	
LOIS EISENMAN, Director of Nursing,)	
JACKIE STONE, Vice President of Nursing,	)	No. 03-393-CD
THELMA STRATTON, ICU Unit)	
Manager)	
Defendants.	)	Civil Action – Law

DEFENDANTS' MOTION IN LIMINE TO PRECLUDE ARGUMENT OR EVIDENCE CONCERNING THE PLAINTIFFS' DAMAGES

Defendants submit this Motion in Limine to Preclude Argument or Evidence Concerning the Plaintiffs' Damages.

I. Introduction

1. In their Pretrial Statement, plaintiffs claim nine (9) items of damages: (1) back wages; (2) time spent traveling to work in their positions with Carlisle Regional Medical Center ("Carlisle"); (3) expenses related to traveling to work; (4) lodging in Carlisle, Pennsylvania; (5) lost seniority; (6) emotional distress and pain and suffering in the form of loss of time with family; (7) pain and suffering of Retorick for certain leg conditions; (8) punitive damages; and (9) attorneys fees' and costs. Several of these items of damages must be precluded from

evidence as they are not recoverable by plaintiffs under well-established law and/or because plaintiffs have waived the right to recover the item of damages.¹

II. Discussion

A. Plaintiffs cannot recover “back wages” as damages as they made substantially more money in their new positions after their resignations and therefore do not have lost wages.

2. In their Pretrial Statement, plaintiffs, for the first time, make a claim for “back wages.”

3. Plaintiffs have not suffered damages in the form of back wages because they made substantially more income in their new positions at Carlisle. Plaintiffs’ counsel admits that plaintiffs made more money in their new positions at Carlisle and cites no law in support of plaintiff’s claim for back wages. Rather, plaintiffs only generally assert that not awarding back wages to plaintiffs would be “against public policy” and the Whistleblower law does not require mitigation of damages by plaintiffs. As set forth below, plaintiffs’ argument is against well-established law. Plaintiffs have presumably created this claim as they realize that they have not suffered any actual damages for which they may recover.

4. Plaintiffs resigned their positions with Clearfield Hospital in October 2002 after they had already found positions at Carlisle which paid them a \$10,000 signing bonus and substantially higher hourly rates.² Although plaintiffs now earn approximately double what they earned at Clearfield Hospital (Selvage made \$94,326 in 2006 at Carlisle and Retorick made \$81,961), plaintiffs’ Pretrial Statement states they claim “back wages” in the amount of the entire

¹ The preclusion of evidence concerning Retorick’s alleged leg conditions is addressed in a separate motion in limine.

² Retorick and Selvage were paid \$21.50 and \$19.65 per hour respectively when they left Clearfield Hospital and \$27.62 and \$26.13 per hour respectively in their new positions at Carlisle.

salaries they would have earned at Clearfield Hospital for the past five (5) years. This claim totals a staggering \$245,232 for Retorick and \$237,120 for Selvage.

5. To award back wages to plaintiffs would be contrary to the intent and purpose of the Pennsylvania Whistleblower Law (“Whistleblower Law”) and would give plaintiffs a windfall in damages on claims that are not punitive in nature, but rather, where recovery is intended only to be proportionate to the actual harm suffered.

6. The Pennsylvania Supreme Court, in *O’Rourke v. Pennsylvania Department of Corrections*, 778 A.2d 1194 (Pa. 2001), addressed the legislative intent of the damage provisions of the Whistleblower law, holding that the Whistleblower Law is not designed to punish an employer and instead is only a remedial measure with recovery limited to the actual harm suffered:

[W]e believe that the Whistleblower Law is not primarily designed to punish an employer for harboring retaliatory motives, but is, rather, chiefly a remedial measure intended to ‘enhance openness in government and compel the government’s compliance with the law by protecting those who inform authorities of wrongdoing.’ In enacting the statute, the General Assembly aimed to effectuate such design by ensuring that employees are not discouraged from reporting violations of legal or ethical codes. Additionally, recovery under the statute is proportionate to the harm suffered, as punitive damages are not available. Finally, we are unaware of any authority providing that whistleblower statutes are primarily punitive, rather than remedial, in that their chief purpose is to punish employers for harboring bad motives.

O’Rourke, 778 A.2d at 1202-1203 (internal citations omitted) (emphasis added).

7. Here, the plaintiffs have not suffered any harm in the form of back wages, as they have earned substantially more income every year since leaving Clearfield Hospital. Thus, to award plaintiffs back wages would be contrary to well-established Pennsylvania law, as well as the intent and purpose of the Whistleblower law, which is to compensate plaintiffs only for

actual “harm suffered” rather than provide a windfall to plaintiffs in a manner that would be punitive in nature to the employer.

8. The Court in *O'Rourke* further likened the remedies of the Whistleblower Law to those of the federal False Claims Act (“FCA”) and to the whistleblower protections of the Occupational Safety and Health Act (“OSHA”). *O'Rourke*, 778 A.2d at 1203 n.10. In holding that recovery under the Pennsylvania Whistleblower Law is to be “proportionate to the harm suffered” and remedial rather than punitive in nature, the *O'Rourke* Court recognized case law establishing similar purposes of OSHA’s whistleblower protection provision and the FCA’s qui tam provisions. *Id.*

9. In that regard, several courts have held that back pay awards under both the FCA and OSHA are to be reduced by any amounts the plaintiff actually earned or could have earned through the exercise of reasonable diligence. *See e.g., United States ex rel. Falus v. Interamerican College of Physicians & Surgeons, Inc.*, 1999 U.S. Dist. LEXIS 15746 (D.N.Y. 1999) (“One purpose of the False Claims Act is to provide a plaintiff with ‘all relief necessary to make [him] whole.’ An award of back pay that does not offset the earnings of a plaintiff during the relevant period of time, does more than make a plaintiff whole.”). *United States ex rel. Falus v. Interamerican College of Physicians & Surgeons, Inc.*, 1999 U.S. Dist. LEXIS 15746, 2-3 (D.N.Y. 1999): (“The Court . . . does not view the [FCA] as precluding the offset of earnings against lost wages, in assessing back pay damages.”); *Donovan v. Freeway Constr. Co.*, 551 F. Supp. 869, 880 (D. R.I. 1982) (in OSHA matter, recognizing award of back pay must be reduced by the amount of any income from employment earned by complainants during the period covered by the back pay award and finding plaintiffs were entitled to the differential between

their new and old wages); *Marshall v. Commonwealth Aquarium*, 469 F.Supp. 690, 693 (D. Mass. 1979) (same).

10. This rule has been applied to unfair labor practice charges by the United States Supreme Court in claims brought under the National Labor Relations Act, *NLRB v. Gullett Gin Co.*, 340 U.S. 361, 363 (1951) ("The power to command affirmative action is remedial, not punitive. . . In effectuating the policies of the [National Labor Relations] Act, the Board clearly may award back pay to discriminatorily discharged employees. This means that employees may be reimbursed for earnings lost by reason of the wrongful discharge, from which should be deducted net earnings of employees from other employment during the back-pay period and also sums which they failed without excuse to earn.") (internal citations omitted), as well as, claims under Title VII and the ADEA, *Stephens v. C.I.T. Group*, 955 F.2d 1023, 1029 (5th Cir. 1992) (ADEA), *Kolb v. Goldring, Inc.*, 694 F.2d 869, 875 (1st Cir. 1982) (In ADEA action, plaintiff succeeded in finding alternate employment two months after his discharge, and plaintiff was held entitled only to backpay during the period it took his salary at his new job to exceed that which he would have earned at his old job.), *Chesser v. Illinois*, 895 F.2d 330, 338 (7th Cir. 1990) (back pay award must be reduced by income earned during period of back pay award under Title VII).

11. Further, contrary to plaintiffs' assertions in their Pretrial Statement, the requirement to mitigate damages is not limited to tort actions, but rather has been held applicable to claims brought for constructive discharge, under the Pennsylvania Whistleblower Law, 42 U.S.C. § 1983, Title VII, and the PHRA. *Marchese v. Goldsmith*, 1994 U.S. Dist. LEXIS 7940, *18 (E.D. Pa. June 13, 1994) (recognizing in case brought under the Pennsylvania Whistleblower Law and 42 U.S.C. § 1983 for alleged retaliation resulting from reports made by plaintiff that

“the plaintiff’s duty to mitigate damages provides the defendants with some protection from an exorbitant award” and instructing jury on plaintiff’s duty to mitigate); *Edwards-Dipasquale v. Wilfran Agric. Indus.*, 2001 U.S. Dist. LEXIS 21054, 12-13 (E.D. Pa. Dec. 17, 2001) (“Title VII and the PHRA also impose on claimants a duty to mitigate damages. This means that a back pay award is “reduced by any amounts the plaintiff actually earned or could have earned through the exercise of reasonable diligence”) (citing *Robinson v. SEPTA*, 982 F.2d 892, 897 (3d Cir. 1993), *Clarke v. Whitney*, 975 F.Supp. 754, 758 (E.D. Pa. 1997), and *Gallo v. John Powell Chevrolet, Inc.*, 779 F.Supp. 804, 813 (M.D. Pa. 1991)).

12. Finally, likely due to the fact that plaintiffs realized they do not have a claim for back wages, plaintiffs did not claim back wages as an element of damages in their Amended Complaint and never amended their Amended Complaint to include damages for back wages. Rather, plaintiffs’ Amended Complaint only claims punitive damages, front pay, expenses of finding and engaging in other employment, an amount for emotional harm, pain and suffering, medical expenses, damages for loss of reputation, and attorneys fees and costs. *See* Amended Complaint, ¶ 55, 57. As such, plaintiffs have waived any claim for back wages.

13. Based upon the foregoing, plaintiffs cannot be awarded back wages as an element of damages. To award plaintiffs damages in the form of back wages would be to award plaintiffs a “windfall,” would be punitive in nature rather than remedial, and would be contrary to well-established law. As such, plaintiffs should be precluded from introducing into evidence any back wage damages.

B. Plaintiffs cannot be compensated for their time spent traveling to their new jobs, or any alleged increased expenses as a result of taking positions in Carlisle, Pennsylvania.

14. In the alternative, plaintiffs allege in their Pretrial Statement that they should be able to recover damages for the “inconvenience and expense” of traveling from Clearfield to Carlisle for the past five (5) years. At their “average” salary of \$28.33 per hour, plaintiffs seek \$35,412.50 each for time spent traveling to work as damages. Plaintiffs further seek expenses for their travel to Carlisle and lodging while in Carlisle for the past five (5) years.

15. The Court should exclude all of those alleged items of damages for at least 6 reasons. First, these types of consequential damages are not recoverable as a matter of law under the claims asserted by Plaintiffs. Second, plaintiffs failed to itemize or provide a lump sum for these special damages in their Amended Complaint. Third, plaintiffs specifically negotiated higher hourly rates to compensate for their increased living expenses, and they earned at least as much at Carlisle when their living expenses are included as they earned at Clearfield. As a result, Plaintiffs effectively would receive a double recovery if awarded monies from their increased living expenses. Fourth, these alleged damages are too remote and not reasonably foreseeable by defendants’ alleged conduct. Fifth, plaintiffs have not produced any receipts to document the amount of their expenses, rendering any award speculative. Sixth, it would be unfairly prejudicial to award these expenses given the underlying subtext of personal hardship associated with these expenses. Accordingly, the Court should preclude Plaintiffs from offering testimony or evidence on their expenses related to their employment at Carlisle.

1. Plaintiffs are not entitled to their time spent commuting and increased expenses that they allegedly incurred in connection with their subsequent employment.

16. Plaintiffs cannot recover as an element of damages time spent commuting, increased commuting expenses, or living expenses associated with taking jobs in Carlisle, Pennsylvania.

17. Courts have consistently refused to award damages for commuting expenses and increased living expenses. *See e.g., Watkins v. Rite Aid Corp.*, 2006 U.S. Dist. LEXIS 50784, *6-7 (M.D. Pa. 2006) (plaintiff in ADEA, PHRA, and civil conspiracy case may not recover expenses related to post-termination job search); *Sharp v. Today's Man*, 1985 US Dist LEXIS 12356 (E.D. PA. 1985) (same under ADEA); *Doherty v. Crow*, 2001 U.S. Dist. LEXIS 8626 (S.D. Ind. 2001) (Commuting expenses are not recoverable under the ADEA.); *Lyons v. Allendale Mut. Ins. Co.*, 484 F. Supp. 1343 (N.D. Ga. 1980) (Damages such as moving expenses, increased interest rate on new mortgage, and commuting expenses are not recoverable under the ADEA.); *Walker v. Ford Motor Co.*, 684 F.2d 1355, 1363-64 and n.12 (11th Cir. 1982) (Moving expenses are not recoverable under the ADEA.); *Mitchell v. Seaboard Sys. RR.*, 883 F.2d 451, 453 (6th Cir. 1989) (holding that Title VII plaintiff who incurred high mileage and meal expenses to avoid racially biased supervisor could not recover for such expenses.) *cf Thomas v. Cooper Ind.*, 1986 US Dist. LEXIS 29803 (1986).

18. In *Farley v. Miller Fluid Power Corp.*, 1997 U.S. Dist. LEXIS19006 (N.D. Ill. 1997), the court granted defendant's *motion in limine* to exclude evidence of consequential damages such as closing costs, job hunting expenses and finance charges on an equity loan associated with the allegedly adverse action of the employer.

19. Further, in holding that costs associated with finding new employment were not recoverable by plaintiff in an ADEA and PHRA claim, the U.S. District Court for the Middle

District of Pennsylvania in *Watkins, supra*, cited with approval the case of *Lyons v. Allendale Mut. Ins. Co.*, 484 F.Supp. 1343, 1344 (N.D. Ga. 1980), which held that a plaintiff may not recover consequential damages for moving, additional interest on a new mortgage and additional commuting expenses upon securing new employment. *Watkins*, 2006 U.S. Dist. LEXIS 50784 at *7.

20. In the present case, Plaintiffs voluntarily resigned their employment at Clearfield Hospital in order to accept employment with Carlisle. Plaintiffs by no means were forced to work at Carlisle. Indeed, Retorick turned down an offer at a local hospital where she would not have incurred expenses because she did not like the hourly rate.

21. Therefore, plaintiffs' demand that they recover consequential damages for commuting expenses to a job they voluntarily sought out and accepted is improper.

22. With respect to the "value of their time spent traveling" to their new positions, plaintiffs only provided a broad "estimate" of the time each week they spend traveling to their new positions based upon their "average" salaries. They fail to cite any law or cases entitling them to recover for these types of damages. They did not even reliably track the time they spent traveling to their jobs at Carlisle Hospital.

23. Nothing in the Whistleblower Law, and the MCARE Act (by incorporating the remedial provisions of the Whistleblower law) allows recovery for the value of time spent traveling to a new job. The Whistleblower Law specifically limits recovery to "reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies." 43 P.S. § 1425. That result is fully consistent with cases that bar consequential damages.

24. Thus, plaintiffs claims for the value of their time spent traveling are speculative and unsupported by any law.

2. Plaintiffs Have Already Been Compensated For Any Increased Expenses.

25. Although plaintiffs seek their increased expenses as damages, they ignore that they effectively have already been compensated for those expenses. They negotiated their employment terms with Carlisle before leaving Clearfield, and negotiated a higher hourly rate to compensate them for their increased expenses for going to work in Carlisle.

26. Frances Selvage testified as follows:

Q. How does your compensation compare now to what you received at the time you quit Clearfield?

A. What I am making now at Carlisle Hospital, minus my food, my travel, I had to buy a car, minus my rent, is the same as Clearfield Hospital. ...

Q. Did you negotiate a higher salary at Carlisle, or that was the going rate when you joined?

A. We negotiated.

Q. Carlisle agreed to pay you a higher rate in order to compensate you for your car, for your apartment and any other expenses you had; is that right?

A. They were willing to give us more money so we would go there, not, you know, for car expenses. They didn't say that. We just told them we couldn't afford to go there for, you know \$20 an hour.

See Deposition testimony of Frances Selvage, p. 76-77, attached hereto as Exhibit "A."

27. Thus, in connection with their application to Carlisle Regional Hospital, which is approximately 3 hours from Clearfield, plaintiffs specifically negotiated an increase in their hourly rates to compensate them for their travel, lodging, and any other expenses associated with working in Carlisle rather than Clearfield.

28. Consequently, the increased expenses are not damages because plaintiffs have been compensated for them. If permitted to recover these items as damages, plaintiffs will improperly receive a windfall and effectively be compensated twice for their damages.

O'Rourke, 778 A.2d at 1202-1203.

3. Plaintiffs' travel time and increased expenses are not recoverable by plaintiffs as they are too remote and not reasonably foreseeable by defendants.

29. Plaintiffs cannot recover for their travel time and increased expenses for going to Carlisle to work because it was not foreseeable that the conduct allegedly engaged in by defendants would result in plaintiffs quitting their jobs and taking jobs three (3) hours from Clearfield, when there are several Hospitals in the vicinity of Clearfield for which plaintiffs could have worked.

30. Proximate causation is applied by courts to limit liability where the causal chain resulting in a plaintiff's injuries is too remote. *See Mazzagatti v. Everingham*, 512 Pa. 266, 516 A.2d 672 (1986); *Accord Caldwell v. Commonwealth*, 120 Pa. Commw. 358, 362 (Pa. Commw. Ct. 1988). "The proximate-cause limitation serves to ensure that 'a defendant is not answerable for anything beyond the natural, ordinary and reasonable consequences of his conduct.' *Anza v. Ideal Steel Supply Corp.*, 126 S. Ct. 1991, 2003 (U.S. 2006) "If one's fault happens to concur with something extraordinary, and therefore not likely to be foreseen, he will not be answerable for such unexpected result." *Id.*

31. As the Pennsylvania Supreme Court stated in *Mazzagatti v. Everingham*, 516 A.2d 266 (Pa. 1986), "[t]hese principles, which require that the defendant's breach of a duty of care proximately cause plaintiff's injury, have established the jurisprudential concept that at some point along the causal chain, the passage of time and the span of distance mandate a cut-off point for liability. 516 A.2d at 273 (citations omitted). "The term proximate cause or legal cause is applied by courts to those more or less undefined considerations which limit liability even where the fact of causation can be demonstrated. *Id.* (citations omitted).

32. Here, plaintiffs' damages in the form of additional "travel time" to their jobs in Carlisle, Pennsylvania and additional living expenses were not reasonably foreseeable by defendants as a resultant damage of their alleged actions. Indeed, it is not foreseeable that the conduct allegedly engaged in by defendants would result in plaintiffs quitting their jobs and taking jobs 3 hours from Clearfield, when there are several Hospitals in the vicinity of Clearfield for which plaintiffs could have worked.

4. Plaintiffs' failure to identify and either itemize or provide a lump sum for their time spent traveling and additional living and travel expenses in their Amended Complaint is fatal to their claims for such expenses.

33. Plaintiffs' failure to itemize or provide a lump sum of additional living expenses in their Amended Complaint requires that judgment be entered in defendants' favor on those damage claims and, therefore, no evidence of these damages is admissible at trial.

34. In *Hooker v. State Farm Fire and Cas. Co.*, 880 A.2d 70 (Pa. Cmwlth 2005), the Pennsylvania Commonwealth Court held that the trial court committed an error of law in failing to grant a verdict in favor of defendants and instructing the jury on the issue of additional living expenses where the plaintiff failed to specifically plead her special damages of additional living expenses in her complaint by either itemizing or providing a lump sum of those expenses. In so holding, the Court reasoned:

Additional living expenses do not naturally flow from the harm done and are properly considered special damages. See generally *Goodrich Amram* 2d, § 1019(f)(8) (in a claim for extras under a contract, it is sufficient to identify each group of extras and give a lump sum figure for the damages alleged). Furthermore, we find [plaintiff's] contention that [defendant] should be held accountable for additional living expenses because it was aware that she intended to seek said damages prior to litigation to be incredulous. [Plaintiff] has failed to provide any support for her proposition that because a defendant may be aware of possible claims in a lawsuit, the plaintiff is relieved of the duty to properly plead a cause of action and damages.³

³ Pennsylvania Rule of Civil Procedure 1019(f) provides "Averments of time, place and items of special damage

Hooker, 880 A.2d at 78 n. 4.

35. Similarly, in the case *sub judice*, plaintiffs failed to specifically plead their special damages alleged in this case. Rather, plaintiffs merely claimed damages in the form of “expenses of finding and engaging in other employment.” As such, pursuant to *Hooker* and Pennsylvania Rule of Civil Procedure 1019(f), defendants are entitled to judgment on plaintiffs’ claims for additional living expenses and evidence of those damages must be precluded at trial.

5. Plaintiffs Lack Documentary Support For The Alleged Expenses.

36. Even if such costs were recoverable, plaintiffs have presented no evidence to verify the existence of such costs and expenses, such as receipts. Without receipts verifying the costs allegedly incurred as a result of plaintiffs’ employment with Carlisle Regional Hospital, such contentions are purely speculative.

37. Therefore, absent receipts or other documentation verifying plaintiff’s alleged expenses, plaintiffs cannot recover these elements of damages.

6. Pennsylvania Rule of Evidence 403 precludes Plaintiffs from introducing evidence or testimony concerning Plaintiffs’ alleged increased commuting and transportation costs or living expenses associated with their employment at Carlisle Regional Hospital.

38. Pennsylvania Rule of Evidence 403 permits exclusion of evidence if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or needless presentation of cumulative evidence. P.A.R.E. 403.

39. Any testimony concerning plaintiffs’ commuting costs or living arrangements is irrelevant to the matter at hand and only serves to create unfair prejudice to Defendants.

shall be specifically stated.”

40. If plaintiffs were to testify about the alleged hardships associated with traveling to and from Carlisle, such testimony would likely arouse undue sympathy and compassion from a jury, thereby causing the jury to assign blame to Clearfield Hospital because of the plaintiffs' voluntary, albeit new, living and working arrangements rather than because Clearfield Hospital violated any law. *See Farley v. Miller Fluid Power Corp.*, 1997 US. Dist. LEXIS19006.

41. Therefore, such testimony would be unfairly prejudicial to defendants and should be excluded from trial.

C. Plaintiffs cannot recover damages in the form of pain and suffering under the Pennsylvania Whistleblower Law or MCARE Act.

42. The Whistleblower Law and the MCARE Act, by incorporating the remedial provisions of the Whistleblower law, do not allow recovery for emotional damages such as pain and suffering.

43. The Whistleblower Law specifically limits recovery to "reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies." 43 P.S. § 1425. It does not provide for recovery of "emotional damages" or "pain and suffering."

44. In *O'Rourke, supra*, the Pennsylvania Supreme Court left undisturbed the lower court's finding that pain and suffering damages were beyond the scope of remedies afforded under the Whistleblower law. *O'Rourke*, 778 A.2d at 1198 n. 5.

45. The Pennsylvania Supreme Court has also consistently distinguished between "actual damages" and damages for emotional injuries or pain and suffering. *Kovalish v. Smith*, 357 Pa. 219, 222 (Pa. 1947) (Pennsylvania Supreme Court discussing distinction between actual damages and damages for pain and suffering); *Smalls v. Pittsburgh-Corning Corp.*, 2004 PA Super 31, P30 (Pa. Super. Ct. 2004) (same).

46. A similar interpretation has been applied to claims under the Family and Medical Leave Act, where the statute specifically provides for “actual damages” but does not state that it provides for recovery of emotional damages, such as pain and suffering.

47. Courts have held that claims under the FMLA do not entitle a plaintiff to pain and suffering damages. *See e.g., Churchill v. Star Enters.*, 1998 U.S. Dist. LEXIS 6068 (E.D. Pa. 1998) (In assessing the plaintiff's demand for damages, the court determined that the FMLA does not allow recovery for emotional damages such as pain and suffering; “the Act specifically limits damages to actual damages or “any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the [FMLA] violation” as well as interest on this amount.”)(citing 29 U.S.C. § 2617(a)(1)(A));

D. Plaintiffs cannot recover monetary damages for loss of seniority from their positions at Clearfield Hospital to their positions at Carlisle.

48. Plaintiffs claim *monetary* damages for “loss of seniority” in their positions at Carlisle versus their seniority at Clearfield Hospital. As set forth above, the Whistleblower law (and the MCARE Act by incorporation) specifically limit the damages a plaintiff can recover and specifically address seniority.

49. In terms of “seniority,” per the unambiguous language of the statute, a plaintiff can only be given “full reinstatement of fringe benefits and seniority rights” *if* reinstated to their old positions. The statute does not permit a former employee to be paid an amount equal to the seniority of a new position with a new employer versus that of a former employer.

50. Furthermore, plaintiffs have placed no value on their damage claim for “loss of seniority.” This is fatal to plaintiffs’ damages for three reasons. First, plaintiffs failed to claim “loss of seniority” as an element of damages in their Amended Complaint and have, therefore, waived this claim. Second, “loss of seniority” is a “special damage” which required plaintiffs to

specifically plead it in their Amended Complaint. Third, plaintiffs have placed no value on this claim and, therefore, this claim for damages is highly speculative. Its probative value is non-existent and it is likely to cause confusion by the jury based upon its speculative nature. As such, it is barred by Pennsylvania Rule of Evidence 403.

51. As discussed above, in *Hooker v. State Farm Fire and Cas. Co.*, 880 A.2d 70 (Pa. Cmwlth 2005), the Pennsylvania Commonwealth Court held that the trial court committed an error of law in failing to grant a verdict in favor of defendants where the plaintiff failed to specifically plead her special damages in her complaint by either itemizing or providing a lump sum of the special damages.

52. In the case *sub judice*, plaintiffs not only did not itemize or provide a lump sum for these special damages in their Amended Complaint, they did not plead them at all. Defendants are entitled to judgment on these damage claims and plaintiffs are precluded from offering evidence or argument on this subject at trial.

53. Pennsylvania Rule of Evidence 403 provides that evidence may be excluded “if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” Pa. R.E. 403.

54. Plaintiffs have placed no value on their alleged “loss of seniority” damages. Requiring the jury to place a value on “loss of seniority” requires the jury to speculate as to the value of these alleged damages.

55. The danger of unfair prejudice greatly outweighs the probative value of this evidence. The probative value is non-existent since plaintiffs have placed no value on this claim, and introducing evidence on these damages will only cause confusion by the jury. Evidence of “loss of seniority” must be precluded at trial.

E. It is the law of this case that Plaintiffs cannot recover Punitive Damages on their Whistleblower and MCARE Act claims.

56. Defendants filed Preliminary Objections to plaintiffs' Amended Complaint. One of the grounds for defendants' preliminary objections was that neither the Whistleblower Law nor the MCARE Act permitted the recovery of punitive damages.

57. During oral argument on defendants' Preliminary Objections, plaintiffs' counsel conceded that punitive damages could not be recovered under plaintiffs' Whistleblower and MCARE Act claims.

58. Even though the law of this case has been established that plaintiffs may not recover punitive damages for their Whistleblower and MCARE Act claims, they do not specify in their Pretrial Statement that their claims for punitive damages are limited to their Constructive Discharge claims. Defendants assume this is an oversight on the part of plaintiffs.

59. However, inasmuch as it was not acknowledged in plaintiffs' Pretrial Statement, defendants move to have any evidence or arguments in support of punitive damages on plaintiffs' Whistleblower Law and MCARE Act claims precluded.

60. In sum, plaintiffs have asserted several elements of damages for which they either are not entitled to recover under their claims or have waived. These include damages for back wages, the value of their time spent commuting to their new positions, their expenses commuting to and staying in Carlisle, Pennsylvania, emotional distress and pain and suffering, loss of seniority, and punitive damages. As such, plaintiffs should be precluded from introducing evidence on these items of damages at trial.

WHEREFORE, Defendants respectfully request that this Honorable Court grant their Memorandum of Law in Support of their Motion in Limine to Preclude Argument or Evidence Concerning the Plaintiffs' Damages.

Respectfully submitted,

SCHNADER HARRISON SEGAL &
LEWIS LLP

By: 

John K. Gisleson (PA Id. No. 62511)
S. Elaine Diedrich (PA Id. No. 84077)
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants, Clearfield Hospital,
Lois Eisenman, Jackie Stone and Thelma
Stratton

1 together. We have our own separate
2 places.

3 Q. Even with having to pay for an
4 apartment, you still make more money
5 than you did at Clearfield Hospital;
6 correct?

7 A. No.

8 Q. How much do you pay per month
9 in rent?

10 A. \$300.

11 Q. Do you have to pay utilities?

12 A. No.

13 Q. So you're saying you make less
14 now that you did if you factor in
15 rent?

16 A. No, I'm not saying that.

17 Q. Okay. Then I'm sorry, I'm
18 confused. How does your compensation
19 compare now to what you received at
20 the time you quit Clearfield?

21 A. What I am making now at
22 Carlisle Hospital, minus my food, my
23 travel, I had to buy a car, minus my
24 rent, is the same as Clearfield
25 Hospital. And that's what I wanted,

EXHIBIT

SARGENT'S

A

SERVICE, INC.

1 something that would be the same, but
2 I wanted to go somewhere where I could
3 make enough, you know, if I was going
4 to be that far away, because I
5 couldn't afford to make the same and
6 then pay all those things, too.

7 Q. Did you negotiate a higher
8 salary at Carlisle, or that was the
9 going rate when you joined?

10 A. We negotiated.

11 Q. Carlisle agreed to pay you a
12 higher rate in order to compensate you
13 for your car, for your apartment and
14 any other expenses you had; is that
15 right?

16 A. They were willing to give us
17 more money so we would go there, not,
18 you know, for car expenses. They
19 didn't say that. We just told them we
20 couldn't afford to go there for, you
21 know, \$20 an hour.

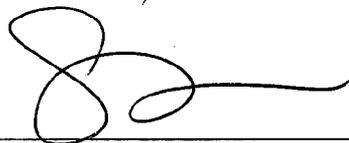
22 Q. How are your benefits now
23 compared to your benefits you received
24 at Clearfield Hospital?

25 A. Probably Clearfield Hospital's

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2007, a true and correct copy of the foregoing **Memorandum of Law in Support of their Motion in Limine to Preclude Argument or Evidence Concerning the Plaintiffs' Damages** was sent via U.S. Mail, first class postage prepaid, to the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

FRANCES L. SELVAGE and	)	IN THE COURT OF COMMON
DAWN L. RETORICK	)	PLEAS OF CLEARFIELD COUNTY,
Plaintiffs,	)	PENNSYLVANIA
)	
vs.)	
	)	No. 03-393-CD
CLEARFIELD HOSPITAL,)	
LOIS EISENMAN, Director of Nursing,	)	Civil Action – Law
JACKIE STONE, Vice President of Nursing,)	
THELMA STRATTON, ICU Unit)	
Manager)	
Defendants.)	

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants’ Memorandum of Law in Support of their Motion in Limine to Preclude Argument or Evidence Concerning the Plaintiffs’ Damages is hereby GRANTED.

It is FURTHER ORDERED that any evidence concerning back wages is hereby precluded.

It is FURTHER ORDERED that any evidence concerning the value of the time Plaintiffs spent commuting to their new positions is hereby precluded.

It is FURTHER ORDERED that any evidence concerning Plaintiffs’ expenses commuting to and staying in Carlisle, Pennsylvania, is hereby precluded.

It is FURTHER ORDERED that any evidence concerning Plaintiffs’ emotional distress and pain and suffering damages, is hereby precluded.

It is FURTHER ORDERED that any evidence concerning Plaintiffs’ loss of seniority, is hereby precluded.

It is FURTHER ORDERED that any evidence concerning punitive damages is hereby precluded with respect to Plaintiffs' Pennsylvania Whistleblower Law and MCARE Act claims.

BY THE COURT,

_____, J.

FILED
SEP 19 2007
Prothonotary/Clerk of Courts
William A. Shaw

DATE: 9-19-07
You are responsible for serving all appropriate parties.
The Prothonotary's office has provided service to the following parties:
 Plaintiff(s)
 Defendant(s)
 Defendant(s) Attorney
 Plaintiff(s) Attorney
 Other
Special Issuances:
 Plaintiff(s)
 Defendant(s)
 Defendant(s) Attorney
 Plaintiff(s) Attorney
 Other

John K. Gisleson (Pa Id. No. 62911)
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Attorneys for Defendants

FILED ICC Atty.
m/11:45 am
SEP 14 2007
William A. Shaw
Prothonotary/Clerk of Courts

FRANCES L. SELVAGE and)
DAWN L. RETORICK,)
)
Plaintiffs,)
)
vs.)
)
CLEARFIELD HOSPITAL,)
LOIS EISENMAN, Director of Nursing,)
JACKIE STONE, Vice President of Nursing,)
THELMA STRATTON, ICU Unit Manager,)
)
Defendants.)

IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

No. 03-393-CD

Civil Action - Law

**DEFENDANTS' MOTION *IN LIMINE* TO PRECLUDE
PLAINTIFFS' EXPERT REPORT AND
EXPERT TESTIMONY OF STANLEY E. SCHNEIDER.**

NOW COME Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton, by and through their counsel, Schnader Harrison Segal & Lewis, LLP, and hereby submits this Motion *in Limine* to Preclude Plaintiffs' Expert Report and Expert Testimony of Stanley E. Schneider. The basis for said Motion is set forth in detail in the Memorandum of Law in support of said Motion which is incorporated herein by reference and is being submitted contemporaneously herewith.

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit Manager
Defendants.

) IN THE COURT OF COMMON PLEAS
) OF CLEARFIELD COUNTY,
) PENNSYLVANIA
)
)
) No. 03-393-CD
)
) Civil Action – Law
)
)
)

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, upon consideration of the Motion *in Limine* and supporting memorandum of law to preclude Plaintiffs' Expert Testimony of Stanley E. Schneider filed on behalf of Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton, and all responses thereto, it is hereby ORDERED, DECREED AND ADJUDGED that Defendants' Motion *in Limine* is GRANTED. Any testimony from Stanley E. Schneider and his report are EXCLUDED.

BY THE COURT:

Cherry, J.

John K. Gisleson (PA Id. No. 62511)
Terri Imbarlina Patak (PA Id. No. 65610)
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
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FILED

SEP 19 2007
9/19/07
William A. Shaw
Prothonotary/Clerk of Courts
Sent to
Gisleson
↓
WAM
(6K)

Attorneys for Defendants

FRANCES L. SELVAGE and)
DAWN L. RETORICK,)
)
Plaintiffs,)

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

vs.)

No. 03-393-CD)

CLEARFIELD HOSPITAL,)
LOIS EISENMAN, Director of Nursing,)
JACKIE STONE, Vice President of Nursing,)
THELMA STRATTON, ICU Unit Manager,)

Civil Action – Law)

Defendants.)

SCHEDULING ORDER

AND NOW, to-wit, this 19 day of September, 2007, it is hereby ORDERED that Defendants' Motion in Limine to Preclude Evidence at Trial Concerning the 2004 Department of Health Survey of Clearfield Hospital and the Reasons for Defendants Eisenman and Stone Leaving Their Employment with Clearfield Hospital in 2004 shall be argued on October 5, 2007, at 1:30 p.m., in Courtroom No. 2.

2) #5
Granted
copy this
one

BY THE COURT,
Paul E. Cherry J.

DATE: 9-19-07

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 Other
Special Instructions:

William A. Shaw
Prothonotary/Clerk of Courts

FILED
SEP 19 2007

3. For the reasons set forth below, any evidence concerning the 2004 DOH Survey should be precluded at trial as it is irrelevant to plaintiffs' claims, will cause unfair prejudice to the defendants, will cause confusion of the issues, and will mislead the fact finder.

4. Moreover, plaintiffs should be precluded from eliciting testimony or admitting other evidence at trial concerning the reasons why Defendants Eisenman and Stone left their employment with Clearfield Hospital in 2004. This issue has also been the subject of a motion for protective order for which the Court ordered that plaintiffs were precluded from engaging in discovery as to the reasons why these two defendants left their employment with Clearfield Hospital in 2004.

II. Discussion

A. Evidence concerning the 2004 Department of Health Survey of Clearfield Hospital should be precluded pursuant to Pennsylvania Rules of Evidence 402 and 403, as it is irrelevant to plaintiffs' claims, will cause unfair prejudice to the defendants, will cause confusion of the issues, and will mislead the jury.

5. On or about May 29, 2007, defendants filed a Motion for Protective Order in response to deposition notices served by plaintiffs which sought discovery into a 2004 Department of Health Survey of Clearfield Hospital.

6. Defendants asserted that discovery should be precluded because evidence concerning the 2004 DOH Survey was not relevant to any of plaintiffs' claims and would cause an undue burden on defendants.

7. On June 8, 2007, following a hearing on the matter, the Court entered an order holding that "The scope of discovery concerning the 2004 Department of Health survey of Clearfield Hospital shall be and is hereby prohibited." A true and correct copy of the Court's June 8, 2007 Order is attached hereto as Exhibit "A."

8. Plaintiffs should be precluded from introducing evidence at trial concerning the 2004 Department of Health Survey pursuant to Pennsylvania Rules of Evidence 402 and 403 as it is entirely irrelevant to plaintiffs' claims, will cause unfair prejudice to the defendants, will cause confusion of the issues, and will mislead the fact finder. Further, due to its irrelevancy, the Survey will cause undue delay and waste time as it is irrelevant to any of plaintiffs' claims.

9. Pennsylvania Rule of Evidence 402 provides:

All relevant evidence is admissible, except as otherwise provided by law.
Evidence that is not relevant is not admissible.

Pa.R.E. 402.

10. Pennsylvania Rule of Evidence 403 provides:

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Pa.R.E. 403.

11. The preclusion of evidence concerning the 2004 DOH Survey is barred by the law of this case, as the Court has already held that discovery was precluded into the 2004 DOH Survey as it was irrelevant to any of plaintiffs' claims.

12. This is supported by the facts of the case as the 2004 DOH Survey is not relevant to any claims asserted by plaintiffs in this action.

13. Plaintiffs both resigned their employment with Clearfield Hospital effective in November 2002.

14. Plaintiffs' Amended Complaint only addresses problems during the plaintiffs' employment with Clearfield Hospital. Further, the Amended Complaint only addresses issues that plaintiffs had with other nurses in the ICU allegedly not being sufficiently qualified to work

in the ICU and with the ICU not having enough nurses on duty at a given time while plaintiffs were employed at Clearfield Hospital. The Complaint does not address any other issues in the hospital or with any other unit of the Hospital other than the ICU, nor does it address a period of time after plaintiffs ended their employment with Clearfield Hospital.

15. The October 2004 DOH Survey does not address any issues with respect to short-staffing or the qualification of nurses in the ICU, which form the basis of plaintiffs' claims.

16. Further, plaintiffs' Amended Complaint alleges events that occurred between 1999 and November 2002. *See*, Amended Complaint ¶¶ 11 and 14. Indeed, both plaintiffs had resigned their employment with Clearfield Hospital by mid-November 2002.

17. The 2004 DOH Survey is remote in time from plaintiffs' employment with Clearfield Hospital because the Survey was conducted by the Health Department in September and October 2004.

18. The Department of Health's inspection involved only events that occurred in 2004, temporally remote from the allegations of Plaintiff's Amended Complaint, which involved events that ended in 2002.

19. Indeed, the DOH inspection began almost two (2) years after the plaintiffs resigned their employment with Clearfield Hospital and did not address any matters prior to 2004.

20. Further, the Department of Health conducts several inspections per year at Clearfield Hospital. In fact, between the end of plaintiffs' employment in 2002 and the October 2004 DOH Survey, the Department of Health had conducted nine (9) inspections or surveys of the Hospital and its satellite clinics, further confirming that the 2004 Survey is remote in time from the events at issue in this lawsuit.

21. The Department of Health conducted a full licensure survey of the Hospital on October 4, 2002 (“October 2002 DOH Survey”), the time period when the plaintiffs *were* employed at, and around the same time that they resigned from, the Hospital.

22. In the October 2002 DOH Survey, the Department of Health found no deficiencies that related in any way to the deficiencies identified in the October 2004 DOH Survey. Further, only one (1) deficiency was found in the October 2002 Survey, and it was unrelated to plaintiffs’ allegations.

23. The portion of the 2004 DOH Survey that deals with the MCARE Act is not relevant to plaintiffs’ claims as it specifically only recognized deficiencies concerning MCARE reports made after June 21, 2004. This is nearly two (2) years after plaintiffs resigned their employment with the Hospital and after several DOH inspections had occurred.

24. Conversely, the October 2002 DOH Survey had found no such deficiencies, although the MCARE Act had gone into effect earlier that year.

25. Thus, evidence concerning the 2004 DOH Survey is clearly irrelevant to any claims alleged by plaintiffs.

26. Moreover, evidence concerning the 2004 DOH Survey should be precluded as its probative value is outweighed by the danger of unfair prejudice to defendants. This is a perfect example of the type of evidence that should be precluded under Pennsylvania Rule of Evidence 403. The probative value of the evidence is non-existent, as it is entirely irrelevant to plaintiffs’ claims, and its danger of unfair prejudice is high. Moreover, it will cause confusion of the issues and mislead the fact finder if it is introduced into evidence.

27. As such, evidence concerning the 2004 DOH Survey should be precluded at trial.

B. Evidence concerning the reasons why Defendants Eisenman and Stone left their employment with Clearfield Hospital in 2004 should also be precluded pursuant to Pennsylvania Rules of Evidence 402 and 403.

28. It is also believed that plaintiffs may attempt to elicit testimony or introduce evidence concerning the reasons why Lois Eisenman and Jackie Stone left employment with Clearfield Hospital in October 2004.

29. This issue has also been the subject of a Motion for Protective Order after plaintiffs sought discovery into the reasons why Defendants Eisenman and Stone left their employment with Clearfield Hospital in 2004.

30. Following a hearing on this Motion in Limine, the Court ordered that discovery into this matter was precluded, holding in pertinent part: “it is the ORDER of this Court that said Motion for Protective Order shall be and is hereby GRANTED. Plaintiffs are hereby precluded from seeking Discovery as to the reasons Lois Eisenman and Jackie Stone left employment with Clearfield Hospital in October 2004.” A true and correct copy of the Court’s July 30, 2007, Order of Court is attached hereto as Exhibit “B.”

31. Accordingly, evidence concerning the reasons that Lois Eisenman and Jackie Stone left their employment with Clearfield Hospital is barred by the law of this case, inasmuch as the Court has already determined that it is irrelevant to any of plaintiffs’ claims.

32. The time period when Eisenman and Stone left Clearfield Hospital – October 2004 – is remote to the time period of any allegation contained in plaintiffs’ Amended Complaint.¹

¹ As discussed above, plaintiffs’ Amended Complaint alleges events that occurred between 1999 and November 2002. *See*, Amended Complaint ¶¶ 11 and 14. Both Plaintiffs had resigned their employment with Clearfield Hospital by mid-November 2002.

33. This evidence is not admissible as it is entirely irrelevant to any claims made by plaintiffs in this matter.

34. Further, its probative value is outweighed by the danger of unfair prejudice. Clearly, the relevancy is non-existent, and the danger of unfair prejudice is great.

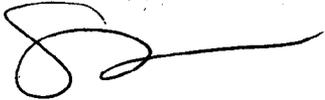
35. Moreover, it will cause confusion of the issues and mislead the finder of fact if it is introduced into evidence.

36. Accordingly, evidence concerning the reasons that Lois Eisenman and Jackie Stone left employment with Clearfield Hospital in October 2004 should be precluded at trial.

WHEREFORE, Defendants respectfully request that this Honorable Court grant their Motion in Limine to Preclude Evidence at Trial Concerning the 2004 Department of Health Survey of Clearfield Hospital and the Reasons for Defendants Eisenman and Stone Leaving their Employment with Clearfield Hospital in 2004.

Respectfully submitted,

SCHNADER HARRISON SEGAL &
LEWIS LLP

By: 

John K. Gisleson (PA Id. No. 62511)
S. Elaine Diedrich (PA Id. No. 84077)
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants, Clearfield Hospital,
Lois Eisenman, Jackie Stone and Thelma
Stratton

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2007, a true and correct copy of the foregoing **Motion in Limine to Preclude Evidence at Trial Concerning the 2004 Department of Health Survey of Clearfield Hospital and the Reasons for Defendants Eisenman and Stone Leaving their Employment with Clearfield Hospital in 2004** was sent via U.S. Mail, first class postage prepaid, to the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

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

FRANCES SELVAGE, DAWN RETORICK :
VS. : NO. 03-393-CD
CLEARFIELD HOSPITAL, LOIS :
EISENMAN, JACKIE STONE and :
THELMA STRATTON :

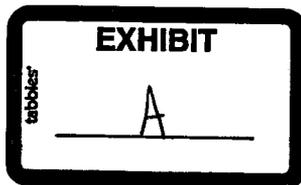
O R D E R

AND NOW, this 6th day of June, 2007, following argument on the Defendant's Motion for Protective Order and upon consideration of same, said Motion shall be and is hereby granted as follows:

1. The scope of discovery concerning the implementation and enforcement of the MCARE Act at Clearfield Hospital shall be limited to the time period up to the effective date of the Plaintiffs' resignations, and shall be limited to the complaints the Plaintiffs made and how they were addressed.

2. Discovery concerning Clearfield Hospital's JCAHO accreditation shall be limited to the time period from 1998 to 2002, and all surveys and/or evaluations shall be provided to Plaintiffs for said time period if the same deals with nursing issues in the ICU Unit at the Clearfield Hospital.

3. The scope of discovery concerning the 2004



6/6

Pennsylvania Department of Health survey of Clearfield Hospital shall be and is hereby prohibited.

BY THE COURT,

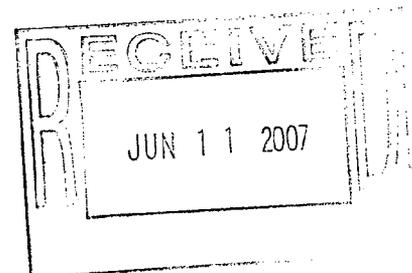
/s/ Paul E. Cherry

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

JUN 08 2007

Attest.

William L. Brown
Prothonotary/
Clerk of Courts



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FRANCES L. SELVAGE and
DAWN L. RETORICK

-vs-

No. 03-393-CD

CLEARFIELD HOSPITAL, LOIS
EISENMAN, Director of
Nursing, JACKIE STONE,
Vice President of Nursing,
THELMA STRATTON, ICU Unit
Manager

O R D E R

AND NOW, this 30th day of July, 2007, following argument on Defendants' Motion for Protective Order and presentation of the issues before the Court and upon consideration of same, it is the ORDER of this Court that said Motion for Protective Order shall be and is hereby GRANTED. Plaintiffs are hereby precluded from seeking Discovery as to the reasons Lois Eisenman and Jackie Stone left employment with Clearfield Hospital in October 2004. It is the further ORDER of this Court that Plaintiffs' Notice of Deposition shall be and is hereby quashed.

BY THE COURT,

/s/ Paul E. Cherry

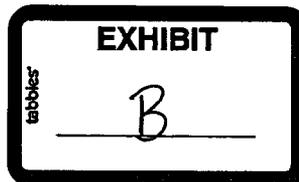
I hereby certify this to be a true and attested copy of the original statement filed in this case.

Judge

JUL 30 2007

Attest.

William L. Shaw
Prothonotary/
Clerk of Courts



7/30

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit
Manager
Defendants.

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

) No. 03-393-CD

) Civil Action – Law
)
)
)
)
)

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Motion in Limine to Preclude Evidence at Trial Concerning the 2004 Department of Health Survey of Clearfield Hospital and the Reasons for Defendants Eisenman and Stone Leaving their Employment with Clearfield Hospital in 2004 is hereby GRANTED.

It is FURTHER ORDERED that any evidence concerning the 2004 Department of Health Survey of Clearfield Hospital is hereby precluded.

It is FURTHER ORDERED that any evidence concerning the reasons for Defendants Eisenman and Stone leaving their employment with Clearfield Hospital in 2004 is hereby precluded.

BY THE COURT,

_____, J.

John K. Gisleson (PA Id. No. 62511)
Terri Imbarlina Patak (PA Id. No. 65610)
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FILED

SEP 19 2007

W.A. Shaw
William A. Shaw
Prothonotary/Clerk of Courts
OK
cfm to Gisleson
WES

Attorneys for Defendants

FRANCES L. SELVAGE and)
DAWN L. RETORICK,)
)
Plaintiffs,)
)
vs.)
)
CLEARFIELD HOSPITAL,)
LOIS EISENMAN, Director of Nursing,)
JACKIE STONE, Vice President of Nursing,)
THELMA STRATTON, ICU Unit Manager,)
)
Defendants.)

IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

No. 03-393-CD

Civil Action – Law

SCHEDULING ORDER

AND NOW, to-wit, this 19 day of September, 2007, it is hereby ORDERED that Defendants' Motion in Limine to Preclude Argument or Evidence on Plaintiff Retorick's Leg Condition or Related Pain shall be argued on October 5, 2007, at 1:30 p.m., in Courtroom No.

2.

BY THE COURT,
Paul E. Cherry
_____ J.

Granted
as is

FILED

SEP 19 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9-19-07
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:

CNA

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S. Elaine Diedrich (PA Id. No. 84077)
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(412) 577-5200

FILED ICC AAsy.
m/11:45 am
SEP 14 2007
(5)

William A. Shaw
Prothonotary/Clerk of Courts

Attorneys for Defendants

FRANCES L. SELVAGE and)
DAWN L. RETORICK)
Plaintiffs,)
vs.)
CLEARFIELD HOSPITAL,)
LOIS EISENMAN, Director of Nursing,)
JACKIE STONE, Vice President of Nursing,)
THELMA STRATTON, ICU Unit)
Manager)
Defendants.)

IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

No. 03-393-CD

Civil Action – Law

**DEFENDANTS’ MOTION IN LIMINE TO PRECLUDE
ARGUMENT OR EVIDENCE ON PLAINTIFF RETORICK’S LEG CONDITION
OR RELATED PAIN**

Defendants submit this Motion in Limine to Preclude Argument or Evidence on Plaintiff Retorick’s Leg Condition or Related Pain.

1. Plaintiff Retorick asserts as an item of pain and suffering damages that travel to Carlisle, Pennsylvania has been “quite painful recently because she suffers from certain conditions of her legs and feet.” *See* Plaintiffs’ Pretrial Statement.

2. Plaintiffs’ counsel is attempting an end-run around the fact that Defendants cannot be held liable for Plaintiff’s leg condition by attempting to recover pain and suffering damages related to this condition.

3. This item of damages is unrecoverable by Retorick for at least four reasons. First, this issue was addressed between counsel for Plaintiffs and Defendant no less than five months ago, with a stipulation in the end that Plaintiffs would not seek damages for Retorick's leg condition. Second, recovery for a leg condition entirely unrelated to any alleged conduct of Defendants that results in pain when driving is so remote from any conduct by defendants that defendants cannot legally be held responsible. Defendants' alleged conduct is neither the cause in fact nor proximate cause of Plaintiff's leg condition and, therefore, Retorick cannot recover from defendants for pain related to her condition. Third, Pennsylvania law mandates that expert testimony is needed to prove the causation of a physical injury or impairment and Plaintiffs have not come forward with any evidence or expert report that Defendants are the cause of Plaintiff's leg conditions or the pain related thereto. Fourth, Plaintiffs never amended their Amended Complaint to include special damages related to Retorick's leg condition.

A. Plaintiffs should be precluded from introducing evidence at trial for pain and suffering related to Retorick's leg condition as defendants have been substantially prejudiced by an agreement by Plaintiffs' Counsel not to pursue these damages and Plaintiffs failed to amend their Complaint to include damages related to Retorick's leg condition.

4. Although Plaintiffs' counsel never amended the Amended Complaint to add a claim for damages related to the alleged leg pain suffered by Dawn Retorick while driving to Carlisle, Pennsylvania, due to a leg condition – and specifically advised defense counsel that he would not be seeking these damages at trial – Retorick now reasserts this damage claim in her Pretrial Statement.

5. In or around April 2007, Plaintiffs' counsel first raised the issue with defense counsel that Plaintiff Retorick may be adding a claim for personal injuries related to her legs which may have been due to Retorick driving to Carlisle, Pennsylvania.

6. A summary of the events that followed is provided in Defense Counsel's May 3, 2007, letter to Plaintiffs' counsel, which stated in pertinent part:

During the hearing before Judge Cherry on April 3, despite your statement to me that you planned on doing so, you did not raise the issue with the Judge that Ms. Retorick may be adding a claim for personal injuries to her legs. Following the hearing, I asked you about this and you advised me that the chances of Ms. Retorick making a claim for these personal injuries were small. However, on April 23, I received your response to my Request to Supplement Discovery Responses. You responded that "Counsel was previously advised that Dawn Retorick has suffered a serious leg condition possibly contributed to, if not caused by, long periods of sitting during commutes from Clearfield to Carlisle. The records and opinions relating to that condition are presently being gathered to be made available. Dawn Retorick has been recently hospitalized and is presently undergoing treatment for this condition. As soon as signed medical authorizations are available, they will be provided."

A motion for leave to amend the Complaint to add a claim for these damages has never been filed and discovery is set to close in fewer than 90 days. You have still not committed to a position as to whether or not you will seek these alleged damages. We will, of course, challenge any attempt to recover these remote damages, and we are entitled to conduct discovery into these alleged damages. The delay in committing to a position on the part of Ms. Retorick is greatly prejudicing my client.

As such, if I do not hear from you affirmatively either way as to whether you will be seeking these damages, I will be filing a motion for partial summary judgment on this issue. I will alternatively be seeking to have the trial continued on the grounds that an entirely new claim is being brought nearly four (4) years into this litigation and at the end of the discovery period. At a minimum, the addition of this claim for damages requires that we re-take Ms. Retorick's deposition on this subject, seek a new round of medical records from at least the four physicians listed in your responses to my requests for supplemental discovery responses, have Ms. Retorick examined by our own physician, and hire additional experts. As I hope that you can understand, at this point, the failure on plaintiff's part to commit to a position on these alleged damages undermines our ability to defend the case.

As such, please also let me know by May 8 if Ms. Retorick will, in fact, seek leave to amend her complaint to add this additional claim for damages. If you need some small additional time to make this determination, please let me know and I would be glad to work with you.

See May 3, 2007 Letter from E. Diedrich to J. West, attached hereto as Exhibit "A" (hereinafter "May 3 Letter").

7. Plaintiffs' counsel responded to this letter on May 15, 2007, advising that:

At the present time, I will not be claiming damages at trial based on Dawn Retorick suffering injuries in the form of blood clots in her legs caused by long hours driving from Clearfield to Carlisle.

See May 15, 2007 letter from J. West to E. Diedrich, attached hereto as Exhibit "B."

8. Plaintiffs' counsel never amended Plaintiffs' Complaint to add a claim for personal injuries related in any way to Retorick's leg condition. It is this alleged leg condition for which Plaintiff Retorick is now allegedly experiencing pain and suffering damages while traveling to Carlisle, Pennsylvania.

9. Plaintiffs should be precluded from introducing evidence of Retorick's leg condition, or any pain related thereto, because Plaintiffs' Counsel's agreed not to pursue these damages.

10. To allow Plaintiffs to add this item of damages at this late stage would substantially prejudice Defendants. This is clear from defense counsel's May 3 Letter to Plaintiffs' counsel setting out what Defendants intended to do to prepare a defense to these alleged damages. Having been reassured by Plaintiffs' counsel that these damages would not be sought, Defendants' counsel did not follow the course of action outlined in the May 3 Letter. As a result, Defendants would be greatly prejudiced if Plaintiffs were allowed to present evidence of and seek these damages at trial.

11. Regardless of Plaintiffs' counsel's agreement not to pursue these damages, Plaintiffs are precluded from introducing evidence of them at trial as they never amended their

Amended Complaint to include this item of special damages. *See Hooker v. State Farm Fire and Cas. Co.*, 880 A.2d 70 (Pa. Cmwlth 2005). Plaintiffs' failure to do so is fatal to these claims.

B. Damages for pain and suffering concerning a leg condition entirely unrelated to defendants' alleged conduct are not recoverable by plaintiffs as they are too remote to the allegedly wrongful conduct of defendants and not reasonably foreseeable.

12. In addition to the back wages claimed by Plaintiffs in their Pretrial Statement – even though they earned substantially more money in their new positions – Plaintiffs have also cooked up damages in the form of “leg pains” suffered by Retorick from this entirely unrelated leg condition.

13. Of course, this is an employment case. Plaintiffs claim they issued reports, were retaliated against by Defendants, and that they then felt “forced” to quit their jobs with Clearfield Hospital. Before quitting, Plaintiffs chose to take positions at Carlisle Regional Medical Center (“Carlisle”), which is approximately three hours from Clearfield, even though there are many medical facilities closer to Clearfield.

14. Retorick, in fact, had an offer from one of those closer facilities. However, by choosing Carlisle Regional, Retorick chose to commute from Clearfield to Carlisle once a week. Now – more than four years after she began commuting – Retorick has leg pains she blames on Clearfield.

15. To hold Defendants liable for these remote damages would stand the law of “causation” on its head. None of the alleged conduct of Defendants was the “direct cause” or “proximate cause” of Retorick’s leg injury or resultant pain.

16. Proximate causation is applied by courts to limit liability where the causal chain resulting in a plaintiff's injuries is too remote. *See Mazzagatti v. Everingham*, 512 Pa. 266, 516

A.2d 672 (1986); *Accord Caldwell v. Commonwealth*, 120 Pa. Commw. 358, 362 (Pa. Commw. Ct. 1988).

17. “The proximate-cause limitation serves to ensure that ‘a defendant is not answerable for anything beyond the natural, ordinary and reasonable consequences of his conduct.’ *Anza v. Ideal Steel Supply Corp.*, 126 S. Ct. 1991, 2003 (U.S. 2006). “If one's fault happens to concur with something extraordinary, and therefore not likely to be foreseen, he will not be answerable for such unexpected result.” *Id.*

18. As the Pennsylvania Supreme Court stated in *Mazzagatti v. Everingham*, 516 A.2d 266 (Pa. 1986), “[t]hese principles, which require that the defendant's breach of a duty of care proximately cause plaintiff's injury, have established the jurisprudential concept that at some point along the causal chain, the passage of time and the span of distance mandate a cut-off point for liability.” 516 A.2d at 273 (citations omitted). “The term proximate cause or legal cause is applied by courts to those more or less undefined considerations which limit liability even where the fact of causation can be demonstrated.” *Id.* (citations omitted).

19. In applying “proximate cause” to a statutory claim, the court in *Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229, 236 (2d Cir. 1999), reasoned:

In everyday terms, the concept might be explained as follows: Because the consequences of an act go endlessly forward in time and its causes stretch back to the dawn of human history, proximate cause is used essentially as a legal tool for limiting a wrongdoer's liability only to those harms that have a reasonable connection to his actions. The law has wisely determined that it is futile to trace the consequences of a wrongdoer's actions to their ultimate end, if end there is. Over the passage of time, however, courts have somewhat clarified the definition of proximate cause by identifying several traditional common law principles limiting liability whose application, in aggregate, formulates the proximate cause analysis.” As noted in *Holmes*, “proximate cause' [is used] to label generically the judicial tools used to limit a person's responsibility for the consequences of that person's own acts.” 503 U.S. at 268; *see also AGC*, 459 U.S. at

532-33, 537-38 (conducting a proximate cause analysis by looking at a "number of... controlling" factors).

Among these "judicial tools," one notion traditionally included in the concept of proximate causation is the requirement that there be "some direct relation between the injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 268.... Holmes emphasized that although the direct injury test "is not the sole requirement of [proximate] causation, it has been one of its central elements." 503 U.S. at 269 (citing *AGC*, 459 U.S. at 540). This language tells us that to plead a direct injury is a key element for establishing proximate causation, independent of and in addition to other traditional elements of proximate cause. Thus, the other traditional rules requiring that defendant's acts were a substantial cause of the injury, and that plaintiff's injury was reasonably foreseeable, are additional elements, not substitutes for alleging (and ultimately, showing) a direct injury.

We also have had occasion to observe that foreseeability and direct injury (or remoteness) are distinct concepts, both of which must generally be established by a plaintiff. For example, in *Kinsman Transit Co. v. City of Buffalo*, 388 F.2d 821, 824-25 & n.8 (2d Cir. 1968), defendant's ship broke loose, crashing into and collapsing a bridge, such that the debris disrupted river traffic and caused damage to plaintiffs' businesses that depended on that traffic. We ruled that even though plaintiffs' injuries were foreseeable, the damages incurred were too remote to permit recovery.

Proximate cause was lacking because those injuries were not "direct" but "occurred only because the downed bridge made it impossible to move traffic along the river"; in other words, the injuries were merely indirect and therefore too remote as a matter of law, since they were wholly derivative of an injury to the property of a third party, the bridge owner. *Id.* at 825; *see also Dundee Cement Co. v. Chemical Labs., Inc.*, 712 F.2d 1166, 1168 (7th Cir. 1983) (regardless of foreseeability, plaintiff had no standing because damages derived solely as a result of injury to the person or property of another).

Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc., 191 F.3d 229, 236 (2d Cir. 1999) (emphasis added).

20. Here, Defendants' alleged conduct was clearly not the direct cause of Retorick's leg condition nor the concomitant pain that goes along with the condition.

21. Retorick has not even attempted to allege that Defendants' conduct in any way led to her leg condition, neither can she establish that Defendants' alleged conduct was the direct cause of pain related to that condition, even if she experienced it in driving to Carlisle for her new job.

22. Simply put, Defendants' alleged conduct has nothing to do with the harm Retorick now alleges she suffers. There is quite clearly no "direct relation between the injury and the injurious conduct".

23. Further, the line of "causation" is so remote that Defendants cannot possibly be held liable for Retorick's alleged leg pains from traveling to Carlisle, Pennsylvania, for more than four years.

24. To get there, Retorick has to show that defendants could have reasonably foreseen:

- (1) that their alleged conduct would lead her to quit her job,
- (2) that Retorick would take a job nearly three hours away in Carlisle, Pennsylvania, even though there are several medical facilities in the vicinity of Clearfield for which Retorick could have worked,
- (3) that Retorick would commute to Carlisle, Pennsylvania for her new job,
- (4) that Retorick would get a leg condition after commuting for more than four years, and
- (5) that Retorick's leg condition would cause her pain while commuting from Clearfield to Carlisle once per week.

25. Any pain experienced by Retorick in her legs from driving to Carlisle was not caused by defendants and could not have been reasonably foreseen by defendants as a resultant damage of their alleged actions.

26. Retorick cannot recover for a personal injury related to a leg condition because it was not the type of harm the Whistleblower Law sought to prevent.

27. In determining standing to bring a claim under a statute, courts look not only to whether the plaintiff is within the class the statute sought to protect, but whether the harm done was one the statute sought to prevent. *Commonwealth v. DeMarteleire*, 22 Pa. D. & C. 3d 747, 754 (1979); *See also Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc.*, 191 F.3d 229, 234 (2d Cir. 1999) (We have previously stated that, in a suit on a statute, it may be preferable to speak not in terms of causation, but rather in terms of whether the plaintiff is within the class the statute sought to protect and whether the harm done was one the statute sought to prevent.) (citing *Abrahams v. Young & Rubicam Inc.*, 79 F.3d 234, 237 (2d Cir. 1996)).

28. As such, plaintiffs should be precluded from introducing any argument or evidence concerning Retorick's leg condition or pain related to traveling to Carlisle, Pennsylvania.

C. Plaintiffs may not introduce evidence of Retorick's leg condition at trial, or the resultant pain, as it is not a type of damage recoverable under the Whistleblower Law or MCARE Act.

29. The Whistleblower Law and the MCARE Act, by incorporating the remedial provisions of the Whistleblower law, do not allow recovery for emotional damages such as pain and suffering.

30. The Whistleblower Law specifically limits recovery to "reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies." 43 P.S. § 1425. It does not allow recovery of pain and suffering for unrelated medical conditions.

31. As such, Retorick should be precluded from introducing at trial any evidence concerning her leg condition or alleged leg pain when driving to Carlisle.

D. Plaintiffs have failed to present the requisite expert testimony that defendants' alleged conduct caused Retorick's leg condition, precluding the introduction of any evidence concerning Retorick's condition.

32. It is well established Pennsylvania law that "expert testimony is necessary whenever the subject matter of the inquiry involves special skill and training not common to the lay person. *Tennis v. Fedorwicz*, 592 A.2d 116, 117 (Pa.Cmwlth. 1990) (citing *Storm v. Golden*, 538 A.2d 61 (Pa. Super. 1988)).

33. It is also well established Pennsylvania law that the causation of a physical injury necessitates proof by expert testimony. In *Kovalev v. Sowell*, 839 A.2d 359, 368 (Pa. Super. Ct. 2003), the court held that the "causal nexus" of a physical injury to the alleged tortious conduct must be proven by "expert medical testimony" in those cases where the "connection is not obvious." In this case the parties had been in an automobile accident, and the plaintiff sued the defendant for negligence. *Id.* at 362. Since the plaintiff's expert witness never appeared, the plaintiff tried to offer medical testimony on his own behalf, which the trial court refused to allow. *Id.* The appellate court affirmed the lower court ruling, because the plaintiff failed to offer any evidence that he had specialized training in orthopedics, radiology, or neurology. *Id.* at 368-69. The court held that expert medical testimony is necessary to prove causation of an injury, due to the "complicated nature of the medical field which is beyond the knowledge of the average juror." *Id.* at 368.

34. Further, in *Giant Eagle, Inc. v. Workers' Compensation Appeal Board*, the employer appealed the decision of a Workers' Compensation Judge who had granted the employee benefits. 725 A.2d 873, 874 (Pa. Commw. Ct. 1999). The court reversed the Judge's

ruling in part, holding that the plaintiff was “not entitled to benefits ... because she did not experience any residual physical injuries caused by her employment once she left the workplace.” *Id.* at 878. The court also noted that “where there is no obvious causal connection between an injury and the claimant's employment, the claimant must establish that connection by unequivocal medical testimony.” *Id.* at 877 (emphasis added).

35. Plaintiffs have not offered any expert report or identified an expert that will testify that Defendants’ conduct caused the leg injury to Retorick. Further, plaintiffs have failed to present any expert report, nor have they identified any expert that will testify that Retorick’s increased pain in her legs is caused by driving to Carlisle, Pennsylvania. If plaintiff desired to introduce such evidence at trial, she was required to obtain an expert that could testify that defendants’ conduct resulted in or caused plaintiffs’ leg pain. Because plaintiff obtained absolutely no expert to support this finding, plaintiffs may not recover for this item of “pain and suffering” damages.

36. To suggest that defendants are responsible for plaintiffs’ leg condition, or corresponding pain, is merely speculative and can only be intended to ask the jury to speculate. As such, plaintiffs must be precluded from introducing evidence of the alleged leg pain suffered by Retorick by driving to Carlisle, Pennsylvania. Finally, to suggest to the jury that defendants should be held liable for Retorick’s leg condition or its concomitant pain, would cause unfair prejudice to the defendants and would likely confuse the jury.

WHEREFORE, Defendants respectfully request that this Honorable Court grant their Motion in Limine to Preclude Argument or Evidence on Plaintiff Retorick's Leg Condition or Related Pain.

Respectfully submitted,

SCHNADER HARRISON SEGAL &
LEWIS LLP

By: _____


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May 3, 2007

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Harrisburg, PA 17101

VIA FAX (717) 234-7517
and U.S. MAIL

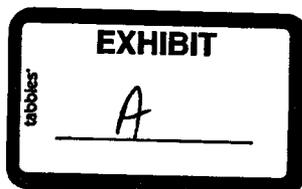
Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

I am writing this letter in follow-up to my letter dated April 17, 2007, in which I discussed the parties coming to a resolution on the scope of the discovery you are now seeking to eliminate the need to file a motion for protective order. These concern the 2004 DOH inspection (already the subject of a previous motion for protective order and ruling by Judge Cherry), the implementation of the MCARE Act and the JCAHO certification. You advised me in response to my April 17 letter that you would check with your clients concerning my proposal; however, I have not heard back from you.

As I previously addressed, with respect to the 2004 DOH inspection, in an attempt to work out this issue, we are willing to agree to discovery consistent with Judge Cherry's May 20, 2005 Order. Concerning the MCARE Act implementation and enforcement, we agree to discovery for the time period ending with the date on which the plaintiffs resigned their employment with the hospital, as any time thereafter would not relate in any way to any incidents which plaintiffs reported and/or any retaliation allegedly received by plaintiffs. Concerning the JCAHO certification, we will not agree to discovery into this matter as it is entirely irrelevant to any claims brought by plaintiffs and is not likely to lead to the discovery of admissible evidence. None of Plaintiffs' complaints while at Clearfield concerned JCAHO and plaintiffs' claimed retaliation has nothing to do with JCAHO certification.

Again, it is my hope that we may be able to avoid disturbing the Court with a motion for protective order. Please let me know of your position on this matter. I would appreciate hearing from you by Tuesday, May 8, so that I can proceed with a motion in the event we cannot come to an agreement.



May 3, 2007
Page 2

During the hearing before Judge Cherry on April 3, despite your statement to me that you planned on doing so, you did not raise the issue with the Judge that Ms. Retorick may be adding a claim for personal injuries to her legs. Following the hearing, I asked you about this and you advised me that the chances of Ms. Retorick making a claim for these personal injuries were small. However, on April 23, I received your response to my Request to Supplement Discovery Responses. You responded that "Counsel was previously advised that Dawn Retorick has suffered a serious leg condition possibly contributed to, if not caused by, long periods of sitting during commutes from Clearfield to Carlisle. The records and opinions relating to that condition are presently being gathered to be made available. Dawn Retorick has been recently hospitalized and is presently undergoing treatment for this condition. As soon as signed medical authorizations are available, they will be provided." You identify 4 physicians that saw Ms. Retorick for this condition. Given your statement following the hearing, I was surprised to see this response.

A motion for leave to amend the Complaint to add a claim for these damages has never been filed and discovery is set to close in fewer than 90 days. You have still not committed to a position as to whether or not you will seek these alleged damages. We will, of course, challenge any attempt to recover these remote damages, and we are entitled to conduct discovery into these alleged damages. The delay in committing to a position on the part of Ms. Retorick is greatly prejudicing my client.

As such, if I do not hear from you affirmatively either way as to whether you will be seeking these damages, I will be filing a motion for partial summary judgment on this issue. I will alternatively be seeking to have the trial continued on the grounds that an entirely new claim is being brought nearly four (4) years into this litigation and at the end of the discovery period. At a minimum, the addition of this claim for damages requires that we re-take Ms. Retorick's deposition on this subject, seek a new round of medical records from at least the four physicians listed in your responses to my requests for supplemental discovery responses, have Ms. Retorick examined by our own physician, and hire additional experts. As I hope that you can understand, at this point, the failure on plaintiff's part to commit to a position on these alleged damages undermines our ability to defend the case.

As such, please also let me know by May 8 if Ms. Retorick will, in fact, seek leave to amend her complaint to add this additional claim for damages. If you need some small additional time to make this determination, please let me know and I would be glad to work with you.

May 3, 2007
Page 3

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal tail stroke.

S. Elaine Diedrich

SED/mfh

May 3, 2007
Page 4

bcc: Anne Joslyn Skidmore, Esq.
Jon R. Steen, Esq.
John K. Gisleson, Esq.

JAMES J. WEST, LLC

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Harrisburg, PA 17101

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James J. West

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May 15, 2007

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

**VIA FACSIMILE AND FIRST CLASS
MAIL**

RE: Retorick/Selvage v. Clearfield Hospital

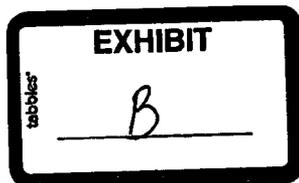
Dear Elaine:

I have reviewed your letter of April 17, 2007 and disagree with your conclusion that discovery relating to the MCARE Act and JCAHO is overly broad and outside the scope of Plaintiffs' claims.

The Plaintiffs' Complaint and attached Exhibits specifically refer to JCAHO and the MCARE Act and it is believed that both provided a motive for the Defendants' attempts to force the Plaintiffs out of their jobs at Clearfield Hospital. Moreover, the results of the Department of Health investigation and the JCAHO documents may shed light on the ability of the Defendants to staff and manage the nursing staff at Clearfield Hospital.

I have also reviewed Judge Cherry's Order in response to your Motion for Protective Order. Clearly the subpoena that was being served on the Department of Health was very broad stating as follows:

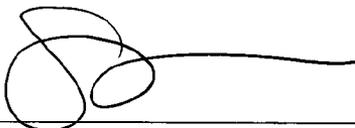
All documents, including, but not limited to, correspondence, electronic mail, witness interview notes, computerized records or databases, memoranda, minutes of meetings, intra and interoffice communications, studies, summaries, analysis, results of investigations, reviews, recommendations, critiques, notices, messages, instructions, notes, notebooks, tape recordings, partial or complete reports of telephone conversations, newspaper or other media releases, public and governmental filings, opinions, and any other writings or documents incident to the survey,



CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2007, a true and correct copy of the foregoing **Motion in Limine to Preclude Argument or Evidence on Plaintiff Retorick's Leg Condition or Related Pain** was sent via U.S. Mail, first class postage prepaid, to the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit
Manager
Defendants.

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

) No. 03-393-CD

) Civil Action – Law
)
)
)
)
)

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby ORDERED,
ADJUDGED and DECREED that Defendants' Motion in Limine to Preclude Argument or
Evidence on Plaintiff Retorick's Leg Condition or Related Pain is hereby GRANTED.

It is FURTHER ORDERED that any evidence concerning Plaintiff Retorick's leg
condition, related pain, or pain allegedly suffered traveling to Carlisle, Pennsylvania is hereby
precluded.

BY THE COURT,

_____, J.

FILED
SEP 19 2007
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9-19-07

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:

John K. Gisleson (PA Id. No. 62511)
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FILED ICC Atty.
m/jl:45 lm
SEP 14 2007
(5)

William A. Shaw
Prothonotary/Clerk of Courts

Attorneys for Defendants

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit
Manager
Defendants.

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

) No. 03-393-CD

) Civil Action – Law
)
)

**DEFENDANTS' MOTION IN LIMINE TO PRECLUDE
EVIDENCE CONCERNING "CHEST PAINS" ALLEGEDLY SUFFERED
BY FRAN SELVAGE IN 2002**

Defendants submit this Motion in Limine to Preclude Evidence Concerning "Chest Pains" Allegedly Suffered by Fran Selvage in 2002.

I. Introduction

1. It is believed by defendants that Plaintiff Selvage will seek to introduce evidence at trial of chest pains that she experienced while at work at Clearfield Hospital in 2002, which she will assert were caused by defendants' alleged conduct. This evidence is inadmissible as Plaintiffs have not identified any expert, nor attached an expert report, to their pretrial statement opining that Selvage's chest pains were caused by Defendants' conduct. Moreover, any recovery

by Selvage for the chest pains that she allegedly experienced while at work in 2002 are barred by the exclusivity provisions of the Pennsylvania Worker's Compensation Act. Further, damages for pain and suffering, such as "chest pains," is not an item of damages recoverable under the Pennsylvania Whistleblower Law or MCARE Act.

II. Discussion

A. **Plaintiffs have failed to present the requisite expert testimony that defendants' alleged conduct caused Selvage's chest pain, precluding the introduction of this evidence at trial.**

2. It is well-established Pennsylvania law that "expert testimony is necessary whenever the subject matter of the inquiry involves special skill and training not common to the lay person. *Tennis v. Fedorwicz*, 592 A.2d 116, 117 (Pa.Cmwlth. 1990) (citing *Storm v. Golden*, 538 A.2d 61 (Pa. Super. 1988)).

3. It is also well-established Pennsylvania law that the causation of a physical injury necessitates proof by expert testimony. In *Kovalev v. Sowell*, 839 A.2d 359, 368 (Pa. Super. Ct. 2003), the court held that the "causal nexus" of a physical injury to the alleged tortious conduct must be proven by "expert medical testimony" in those cases where the "connection is not obvious." In that case, the parties had been in an automobile accident, and the plaintiff sued the defendant for negligence. *Id.* at 362. Since the plaintiff's expert witness never appeared, the plaintiff tried to offer medical testimony on his own behalf, which the trial court refused to allow. *Id.* The appellate court affirmed the lower court ruling because the plaintiff failed to offer any evidence that he had specialized training in orthopedics, radiology, or neurology. *Id.* at 368-69. The court held that expert medical testimony is necessary to prove causation of an injury,

due to the “complicated nature of the medical field which is beyond the knowledge of the average juror.” *Id.* at 368.

4. Further, in *Giant Eagle, Inc. v. Workers' Compensation Appeal Board*, the employer appealed the decision of a Workers' Compensation Judge who had granted the employee benefits. 725 A.2d 873, 874 (Pa. Commw. Ct. 1999). The court reversed the Judge's ruling in part, holding that the plaintiff was “not entitled to benefits ... because she did not experience any residual physical injuries caused by her employment once she left the workplace.” *Id.* at 878. The court also noted that “where there is no obvious causal connection between an injury and the claimant's employment, the claimant must establish that connection by unequivocal medical testimony.” *Id.* at 877 (emphasis added).

5. Plaintiffs did not identify any expert, nor attach any expert report to their pretrial statement to establish that Selvage's chest pains were caused by her employment or Defendants' alleged conduct. If Plaintiff desired to introduce such evidence at trial, she was required to obtain an expert that could testify that Defendants' conduct resulted in or caused Plaintiff's chest pains. Because Plaintiff obtained absolutely no expert to support this finding, Plaintiffs are precluded from introducing evidence concerning Selvage's chest pains at trial.

6. Expert testimony is necessary for the additional reason that Selvage had multiple causes of stress in her life. For example, and without limitation, Selvage's daughter was in a serious automobile accident in 2002 and suffered serious injury that affected her short-term memory. Due to those injuries, Selvage had to take partial custody of her daughter's minor children while working full-time. Expert testimony is necessary to discern the cause (if determinable) of any chest pains.

7. To suggest that Defendants are responsible for Plaintiff's chest pains is merely speculative and can only be intended to ask the jury to speculate. See *Pascal v. Carter*, 436 Pa. Super. 40, 43-44, 647 A.2d 231, 233 (Pa. Super. Ct. 1994) (without expert testimony as to the causes and consequences of an injury, any assumption relating to that injury would be wholly speculative.)

8. As such, Plaintiffs must be precluded from introducing evidence of Selvage's alleged chest pains.

9. Further, to suggest to the jury that Defendants should be held liable for Selvage's chest pains would cause unfair prejudice to the Defendants and would likely confuse the jury. Therefore, evidence of Selvage's chest pains should be precluded at trial.

B. Even if Selvage could establish that her chest pains were caused by defendants' alleged conduct, Plaintiffs should be precluded from introducing this evidence at trial as any recovery is barred by the exclusivity provisions of the Pennsylvania Worker's Compensation Act.

10. As discussed above, it is believed by Defendants that Selvage will seek to introduce evidence at trial that she experienced chest pains while at work at Clearfield Hospital in 2002 due to Defendants' alleged conduct. However, Plaintiff is precluded from bringing any claim related to chest pains she suffered due to her working conditions pursuant to the exclusivity provisions of the Pennsylvania Workers Compensation Act. 77 P.S. § 480 *et seq.*

11. To allow Selvage to introduce evidence of her chest pains at trial would substantially prejudice the Defendants and would mislead the jury into believing that it could award monetary damages for Selvage's chest pains.

12. The exclusivity provisions of the Pennsylvania Workers Compensation Act bars civil actions by employees against their employer for work-related injuries. It provides:

(a) The liability of an employer under this act shall be exclusive and in

place of any and all other liability to such employees, his legal representative, husband or wife, parents, dependents, next of kin or anyone otherwise entitled to damages in any action at law or otherwise on account of any injury or death as defined in section 301(c)(1) and (2) or occupational disease as defined in section 108.

13. 77 P.S. § 481. Section 301(c) (1) of the Act defines the term “injury” or “personal injury” broadly:

(1) The terms "injury" and "personal injury," as used in this act, shall be construed to mean an injury to an employee, regardless of his previous physical condition, arising in the course of his employment and related thereto . . .

77 P.S. § 411.

14. In *Kline v. Arden H. Verner Co.*, 503 Pa. 251, 469 A.2d 158 (1983), the Pennsylvania Supreme Court upheld the exclusivity provision of the Workers Compensation Act on a challenge of unconstitutionality, and, in so doing, observed that the Act "provides the exclusive means by which a covered employee can recover against an employer for injury in the course of his employment." *Id.*, 503 Pa. at 253, 469 A.2d at 159. The Court further stated that, because of this provision, a tort action by an employee against his employer for "any work-related injury" was barred. *Id.*, 503 Pa. at 256, 469 A.2d at 160 (emphasis in original).

15. The Pennsylvania Supreme Court in *Poyser v. Newman & Co.*, 514 Pa. 32, 522 A.2d 548 (Pa. 1987), extended the exclusion to include instances where an employer's intentional wrongdoing has allegedly caused an employee's injuries.

16. In *Rosipal v. Montgomery Ward*, 360 Pa.Super. 570, 521 A.2d 49 (1987), *alloc. granted*, 516 Pa. 635, 533 A.2d 93 (1987), *appeal dismissed*, 517 Pa. 460, 538 A.2d 495 (1988), the Superior Court held that the legal immunity that is afforded to employers under the exclusivity provisions of the Workmen's Compensation Act extends not only to acts of negligence, but also to claims based on intentional, wanton and willful misconduct. *Accord*

Alston v. St. Paul Ins. Cos., 531 Pa. 261, 265-266 (Pa. 1992) (holding when employees sustain injuries during the course of their employment because of an intentional wrongdoing by their employer, the employee's exclusive remedy for the injury itself, or for the handling of the claim, lies within the framework of the Workmen's Compensation Act.)

17. Thus, even if Plaintiff is allowed to introduce evidence that she believes her chest pains were caused by her working conditions at Clearfield Hospital, she is barred from recovering for said injuries. If Selvage is allowed to introduce this evidence at trial, it will mislead the jury into believing that it can award damages for her chest pains -- which it cannot -- and cause unfair prejudice to the Defendants. Thus, this evidence should be precluded under Pennsylvania Rule of Evidence 403.

C. Plaintiffs may not introduce evidence of Selvage's chest pains at trial as it is not recoverable under the Whistleblower Law or MCARE Act.

18. The Whistleblower Law and the MCARE Act, by incorporating the remedial provisions of the Whistleblower law, do not allow recovery for pain and suffering.

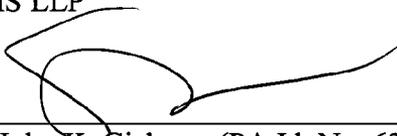
19. The Whistleblower Law specifically limits recovery to "reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies." 43 P.S. § 1425. It does not allow recovery of pain and suffering for "chest pains."

20. As such, Selvage should be precluded from introducing at trial any evidence concerning her chest pains that she experience while working at Clearfield Hospital.

WHEREFORE, Defendants respectfully request that this Honorable Court grant their Motion in Limine to Preclude Evidence Concerning "Chest Pains" Allegedly Suffered by Fran Selvage in 2002.

Respectfully submitted,

SCHNADER HARRISON SEGAL &
LEWIS LLP

By: 

John K. Gisleson (PA Id. No. 62511)
S. Elaine Diedrich (PA Id. No. 84077)
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants, Clearfield Hospital,
Lois Eisenman, Jackie Stone and Thelma
Stratton

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2007, a true and correct copy of the foregoing **Defendant's Motion in Limine to Preclude Evidence Concerning "Chest Pains" Allegedly Suffered by Fran Selvage in 2002** was sent via U.S. Mail, first class postage prepaid, to the following counsel of record:

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit
Manager
Defendants.

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

) No. 03-393-CD
)

) Civil Action – Law
)
)
)
)

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby ORDERED,
ADJUDGED and DECREED that Defendants' Motion in Limine to Preclude Evidence
Concerning "Chest Pains" Allegedly Suffered by Fran Selvage in 2002 is hereby GRANTED.

It is FURTHER ORDERED that any evidence concerning chest pains that Plaintiff Fran
Selvage experienced in 2002 is hereby precluded.

BY THE COURT,

_____, J.

FILED

SEP 19 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9-19-07

You are responsible for serving all appropriate parties.
 The Prothonotary's Office has provided service to the following parties:
 Plaintiff(s)
 Plaintiff(s) Attorney
 Defendant(s)
 Defendant(s) Attorney
 Other

Special Instructions:

John K. Gisleson (PA Id. No. 62511)
S. Elaine Diedrich (PA Id. No. 84077)
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FILED ICC *Att'y.*
m/11:45 am
SEP 14 2007
5

William A. Shaw
Prothonotary/Clerk of Courts

Attorneys for Defendants

FRANCES L. SELVAGE and	)	IN THE COURT OF COMMON
DAWN L. RETORICK	)	PLEAS OF CLEARFIELD COUNTY,
Plaintiffs,	)	PENNSYLVANIA
)	
vs.)	
)	
CLEARFIELD HOSPITAL,)	
LOIS EISENMAN, Director of Nursing,	)	No. 03-393-CD
JACKIE STONE, Vice President of Nursing,)	
THELMA STRATTON, ICU Unit	)	Civil Action – Law
Manager)	
Defendants.)	

**DEFENDANTS' MOTION IN LIMINE TO PRECLUDE
ANY EVIDENCE OF ALLEGED RETALIATION AGAINST PLAINTIFFS
OCCURRING BEFORE SEPTEMBER 21, 2002**

Defendants submit this Motion in Limine to Preclude any Evidence of Alleged
Retaliation Against Plaintiffs Occurring Before September 21, 2002.

I. Introduction

1. The Pennsylvania Whistleblower Law contains a stringent 180-day statute of limitations. By incorporating the remedial provisions of the Whistleblower Law, the MCARE Act similarly has a 180-day statute of limitations.

2. Plaintiffs have voluntarily withdrawn their claims for Defamation and Invasion of Privacy/False Light. This only leaves Plaintiffs' statutory claims under the Whistleblower Law and MCARE Act, and one common law claim for constructive discharge.

3. Pennsylvania law is overwhelmingly clear that Plaintiffs should not be permitted to proceed on their constructive discharge claims for three reasons. First, Plaintiffs were unionized employees covered by a collective bargaining agreement who cannot bring an action for constructive discharge against their employer. Second, Plaintiffs' constructive discharge claims are preempted by the Federal Labor Management Relations Act. Third, a constructive discharge claim cannot be brought by an employee who is otherwise covered by a statute (here, the Whistleblower and MCARE Act).

II. Discussion

A. **Plaintiffs' Whistleblower and MCARE Act claims are subject to a stringent 180-day statute of limitations and no evidence of alleged retaliatory acts occurring prior to this time are admissible at trial.**

4. The statute of limitations for the Whistleblower Law and MCARE Act claims is stringent, only 180 days to bring a claim for retaliation in violation of these laws.

5. Section 1424 of the statute sets out a 180-day statute of limitations for any claims brought under the Law. *O'Rourke v. Pennsylvania Department of Corrections*, 778 A.2d 1194, 1200 (Pa. 2001). It provides:

Section 1424 Remedies

(a) CIVIL ACTION. -- A person who alleges a violation of this act may bring a civil action in a court of competent jurisdiction for appropriate injunctive relief or damages, or both, within 180 days after the occurrence of the alleged violation.

43 P.S. § 1424(a).

6. Pennsylvania Courts have consistently denied any equitable discretion in extending the Whistleblower Law's statute of limitations period beyond 180 days. In *O'Rourke v. Pennsylvania Department of Corrections*, 730 A.2d 1039 (Pa. Cmwlth. 1999), the court determined that many of the acts of retaliation had occurred prior to the 180 days before suit was

filed and, therefore were time-barred. The court granted summary judgment as to all alleged acts of retaliation that occurred prior to 180 days before the claims were brought. In so doing, the court stated "this 180-day time limit is mandatory, and courts have no discretion to extend it." 730 A.2d at 1042.

7. In affirming this decision, the Pennsylvania Supreme Court in *O'Rourke v. Pennsylvania Department of Corrections*, 778 A.2d 1194 (Pa. 2001), recognized that summary judgment had already been granted on all acts of alleged retaliation occurring prior to 180 days before the lawsuit was filed, pursuant to the 180-day statute of limitations contained in the Whistleblower Law. *O'Rourke*, 778 A.2d at 1197 (citing 43 P.S. § 1424(a)). The Supreme Court did not disturb this finding on appeal and held the plaintiff was only permitted to present evidence of events occurring prior to the statute of limitations date for the *limited purpose* of providing background to events that occurred after that date.

8. In *Perry v. Tioga County*, 649 A.2d 186, 188 (Pa.Cmwlt. 1994), the court dismissed plaintiff's Whistleblower Law claims as time-barred under the Law's 180-day statute of limitations. In so doing, the court reasoned:

As to the 180-day filing deadline contained in the Whistleblower Law, Perry contends that it is discretionary and not mandatory, and that the two year tort statute of limitations applies. The Whistleblower Law prohibits a public employer from retaliating against a public employee who reports wrongdoing. Section 4 of the Law states "[a] person who alleges a violation of this act may bring a civil action ... within 180 days after the occurrence of the alleged violation." Under this provision, the trial court correctly held that the use of the permissive term "may" in the statute gives an individual the option of filing a lawsuit, but requires that such must be filed within 180 days of the adverse personnel action. Any contrary interpretation would make this provision meaningless. Not having brought the action within 180 days, Perry's Whistleblower action is time-barred.

649 A.2d at 188. *See also Evancho v. Fisher* 2003 U.S. Dist. LEXIS 26668, (W.D. Pa. 2003), *aff'd*, 423 F.3d 347 (3d. Cir.2005) (refusing to extend the 180-day statute of limitations of the Whistleblower Law).

9. The MCARE Act specifically incorporates Whistleblower Law and provides for the “protections and remedies” set forth in the Whistleblower law. 40 P.S. § 1303.308(d). Thus, the 180-day statute of limitations similarly applies to Plaintiffs’ MCARE Act claims.

10. Plaintiffs filed their writ of summons on March 20, 2003.

11. Therefore, any retaliation received by Plaintiffs must have occurred on or after September 21, 2002 (*i.e.*, 180 days prior to the filing of the writ) for Plaintiffs to recover under the Whistleblower Law or MCARE Act.

12. Thus, Plaintiffs can only recover for any retaliation that occurred after September 21, 2002.

13. Any allegations of retaliation that occurred prior to that date cannot be considered in support of Plaintiffs’ Whistleblower or MCARE Act claims.

14. The only basis Plaintiffs have for introducing evidence of retaliation prior to September 21, 2002, is that their constructive discharge claims which have a longer statute of limitations period.

B. Plaintiffs cannot recover for their constructive discharge claims and therefore no evidence of alleged retaliation is admissible if it occurred before September 21, 2002.

15. In order to analyze the full reason why plaintiffs claims for Constructive Discharge have no support in the law, it is necessary to review the history of a common law claim for constructive/wrongful discharge in violation of public policy.

16. Common law constructive discharge claims were created as a rare exception to the general principal under Pennsylvania law that employment was “at-will,” “meaning an employer could terminate an employee for any reason, unless restrained by contract.”

McLaughlin v. Gastrointestinal Specialists, Inc., 561 Pa. 307, 313 (2000).

17. “This remained the untouched law of the employment relation until [the Supreme Court] decision in *Geary v. United States Steel Corporation*, 456 Pa. 171, 319 A.2d 174 (Pa. 1974), stated that an employee may bring a non-statutory cause of action against an employer for that employee’s termination, under very limited exception.” *Id.* at 313.

18. The *McLaughlin* court set out the history of constructive discharge claims following *Geary*:

Although we ultimately found that *Geary* did not set forth a cause of action, in *dicta* we left open the possibility of a wrongful discharge claim in circumstances where a termination of an employee would violate a clear mandate of public policy. . . . we did not revisit the area until fifteen years later in *Clay v. Advanced Computer Applications, Inc.*, 559 A.2d 917 (Pa. 1989) and proceeded by *Paul v. Lankenau Hospital*, 569 A.2d 346 (Pa. 1990), the following year. This Court reaffirmed the position that the employment relationship is at-will. We stated that there is no common law cause of action against an employer for termination of an at-will employment relationship. Exceptions to this rule have been recognized in only the most limited of circumstances, where discharges of at-will employees would threaten clear mandates of public policy. . . . We then determined in both of these cases that no cause of action for wrongful discharge had been stated, although we recognized that a claim could be brought in Pennsylvania. We did not again address the issue of wrongful termination of an employee until our recent decision in *Shick v. Shirey*, 552 Pa. 590, 715 A.2d 1231 (Pa. 1998). In *Shick*, we continued to recognize that the exception to the employment at-will rule should be applied in only the narrowest of circumstances. However, we determined that an employer who fires an employee in retaliation for bringing a workers’ compensation claim violates the public policy of this Commonwealth and can be liable at common law for wrongful discharge.

From these cases, we glean that, as a general proposition, the presumption of all non-contractual employment relations is that it is at-will and that this presumption is an extremely strong one. An employee will be entitled to

bring a cause of action for a termination of that relationship only in the most limited of circumstances where the termination implicates a clear mandate of public policy in this Commonwealth.

McLaughlin, 561 Pa. at 313-314.

19. Constructive Discharge claims are, by their definition, an exception to the “at-will” employment doctrine. This is why they were created and this is the only reason the claim exists.

20. The claim does not apply to, nor provide recovery for, employees covered by a contract, such as the plaintiffs in this case, and does not cover employees covered by a statute.

21. Since *Geary*, *supra*, several Pennsylvania Courts have recognized this fact. See *e.g.*, *Phillips v. Babcock & Wilcox*, 349 Pa. Super. 351, 503 A.2d 36 (Pa. Super. Ct. 1986) (finding a wrongful discharge suit may not be brought in Pennsylvania by a plaintiff otherwise covered by contract or statute; employees there covered under a contract); *Wolk v. Saks Fifth Avenue, Inc.*, 728 F.2d 221, 223-24 (3d Cir. 1984) (statute; recognizing that “Pennsylvania cases applying the public policy exceptions to at-will employment have done so where no statutory remedies were available.”); *Bruffett v. Warner Communications, Inc.*, 692 F.2d 910, 919 (3d Cir. 1982) (statute; same); *Deramo v. Consolidated Rail Corp.*, 607 F. Supp. 100, 101-103 (E.D.Pa. 1985) (statute; same). This line of authority has been followed almost without question.

1. Plaintiffs were unionized employees covered by a collective bargaining agreement who cannot bring an action for constructive discharge.

22. At all relevant times, Plaintiffs were members of the Pennsylvania Nurses Association, OPEIU, Local 112, and their employment relationship with Clearfield Hospital was governed by a Collective Bargaining Agreement. Accordingly, they were not at-will employees and had a valid contract of employment.

23. Pursuant to the CBA, Plaintiffs were entitled to dispute any change to the terms and conditions of their employment through the grievance procedure in Article 9.

24. Pennsylvania law is well established that a unionized employee (i.e. an employee that is not "at-will") cannot bring an action for constructive discharge.

25. In *Phillips v. Babcock & Wilcox*, 503 A.2d 36 (Pa.Super. 1986), the sole issue before the court was whether a civil action for the tort of wrongful discharge can be maintained by a union employee whose employment relationship is governed by a collective bargaining agreement. 503 A.2d at 37. The court held that employees covered by a collective bargaining agreement could not bring a claim for wrongful discharge. *Id.* at 38. The court reasoned that "because the wrongful discharge action in Pennsylvania was judicially created to protect otherwise unprotected employees from indiscriminate discharge and to provide unorganized workers a legal redress against improper actions by their employers, we hold that an action for the tort of wrongful discharge is available only when the employment relationship is at will." 503 A.2d at 38.

26. In *Henderson v. Merck & Company, Inc.*, the court dismissed plaintiffs' claims for wrongful discharge because plaintiff was a union employee, recognizing "[plaintiff], as a union employee, cannot bring a wrongful discharge action against his former employer under Pennsylvania law." 998 F.Supp. 532, 540 (E.D. Pa. Mar. 16, 1998) (citing *Cairns v. SEPTA*, 538 A.2d 659, 660 (1988), *Searcy v. SEPTA*, 1997 U.S. Dist. LEXIS 3825 (E.D. Pa. Mar. 27, 1997)). *Accord O'Neil v. Montgomery County Cmty. College*, 2006 U.S. Dist. LEXIS 90377 (D. Pa. 2006) (holding "an action for the tort of wrongful discharge is available only when the employment relationship is at will" and union employee may not bring cause of action for wrongful discharge) (citing *Phillips v. Babcock & Wilcox, supra*).

27. In fact, even where a plaintiff's wrongful discharge claim relates to matters not covered by a collective bargaining agreement, Pennsylvania law still precludes a plaintiff who was a union employee covered by a collective bargaining agreement from recovering for wrongful discharge.

28. In *Cairns v. SEPTA*, 538 A.2d 659 (Pa. Cmwlth. 1988), plaintiff was discharged from his employment due to a policy that required dismissal of employees for safety reasons who had experienced a coronary occlusion. 538 A.2d at 659. Plaintiff filed grievances following his discharge. *Id.* Following an arbitrator's award finding against the employee, the employee filed a cause of action in the Court of Common Pleas alleging that his dismissal constituted wrongful discharge in violation of public policy because "the company regulation relation to employees who have suffered from coronary occlusion is against public policy." 538 A.2d at 660.

29. The *Cairns* court recognized that the complaint "in no way alleges that the application of the company regulation was violative of the collective bargaining agreement." *Id.* The court therefore determined that the complaint raised allegations separate and distinct from those raised and decided through the grievance and arbitration process. *Id.*

30. Despite this, the court granted defendant's preliminary objections in the nature of a demurrer for failure to state a cause of action. 538 A.2d at 660. The court stated:

We are persuaded by the reasoning of the Superior Court in *Phillips v. Babcock & Wilcox*, ... which concludes that 'because the wrongful discharge action in Pennsylvania was judicially created to protect otherwise unprotected employees from indiscriminate discharge and to provide unorganized workers a legal redress against improper actions by their employers, we hold that an action for the tort of wrongful discharge is available only when the employment relationship is at will.'

Id.

31. The *Cairns* court held that because the plaintiff was represented by a union which had a Collective Bargaining Agreement with the defendant, the plaintiff was not an at-will employee and could not proceed on a claim for wrongful discharge. 538 A.2d at 660-661.

32. Thus, even if Plaintiffs assert that their issues were not addressed through the grievance process, they are still barred from recovering under *Cairns v. SEPTA*. The decision in *Cairns* makes clear that even when an issue is not one covered under the Collective Bargaining Agreement, a union employee is precluded from bringing a cause of action for wrongful discharge based public policy.

33. Plaintiffs may not assert a claim for wrongful discharge and their claims for wrongful discharge should be dismissed.

2. Plaintiffs' argument that they should be allowed to proceed with constructive discharge claims because they were dissatisfied with the handling of their grievances does not provide them relief.

34. Plaintiffs will likely assert again, as they did in response to defendants' Motion for Summary Judgment on this topic, that they should not be bound by Pennsylvania law because they were dissatisfied with the handling of their grievances and/or that it did not provide them a remedy.

35. Plaintiffs' arguments fail for two reasons. First, the Pennsylvania Superior Court in *Cairns v. SEPTA, supra*, made clear that even when an matter is not one covered under the Collective Bargaining Agreement or is not grieved at all, a union employee is still precluded from bringing a cause of action for wrongful discharge based on the history of the cause of action as an exception to the "at-will" doctrine. 538 A.2d at 660.

36. Second, Plaintiffs' recourse if they were dissatisfied with the grievance process was to appeal the grievance, file a claim under the Federal Labor Management Relations Act

("LMRA"), 29 U.S.C. § 185(a), for breach of the Collective Bargaining Agreement against the Hospital, or to bring a claim under the National Labor Relations Act against the Union for lack of fair representation.

37. With respect to the last two items, the law is well established that if a unionized employee believes that an employer is not complying with the requirements of a collective bargaining agreement, his recourse is solely to file a claim for breach of contract under § 301 of the LMRA.

38. The LMRA, 29 U.S.C. §185, "provides the exclusive remedy for violations of the collective bargaining agreement." *Krushinski v. Roadway Express, Inc.*, 627 F. Supp. 934, 938 (D. Pa. 1985).

39. Section 301(a) of the LMRA, 28 U.S.C. §185(a), provides:

Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce ... may be brought in any district court of the United States having jurisdiction of the parties

28 U.S.C. §185(a).

40. The United States Court of Appeals for the Third Circuit, in *Krashna v. Oliver Realty, Inc.*, 895 F.2d 111, 114 (3d Cir. 1990), recognized that the LMRA civil enforcement provision grants a broad right of action. *Krashna*, 895 F.2d at 114 (citing 29 U.S.C. § 185(a) (1982)¹.

41. It is well established that the LMRA completely preempts claims by unionized employees that the employer has breached a collective bargaining agreement. *See Avco Corp. v. Machinist*, 390 U.S. 557 (1968) (holding that the preemptive force of § 301 is so powerful as to

¹ This section of the LMRA is also known as "§ 301."

displace entirely any state cause of action for violation of contracts between an employer and a labor organization.).

42. Moreover, in a landmark decision, the United States Supreme Court held that an employee's failure to utilize the grievance procedures set forth in the collective bargaining agreement precluded the employee from filing a lawsuit against the employer for breach of the collective bargaining agreement. *Republic Steel Corp. v. Maddox*, 379 U.S. 650 (1965).

43. As a general rule, federal labor policy requires that individual employees who wish to assert a grievance must attempt to use the grievance procedure provided in the collective bargaining agreement as the proper mode of redress. *Id.* "Unless a contract provides otherwise, there can be no doubt that the employee must afford the union the opportunity to act on his behalf." *Id.* at 653.

44. Similarly, in *Krushinski v. Roadway Express, Inc.*, 627 F. Supp. 934, 938 (E.D. Pa. 1985), the court stated:

An employee, protected by such an agreement, may sue his employer only after he has pursued the grievance remedies provided by the contract, and he establishes that his right of fair representation was violated. *Vosch v. Werner Continental, Inc.*, 734 F.2d 149 (3d Cir. 1984). In *Vosch*, our Court of Appeals held that plaintiff-employees had failed to state a cause of action pursuant to Section 301 when they failed to challenge the fairness or adequacy of their union's representation in the arbitration procedure. Here, plaintiff makes no claim that he was denied fair representation. The court concludes that any breach of contract claim must be governed by Section 301 of the Labor Management Relations Act and that plaintiff has failed to state a cause of action.

627 F.Supp. at 938.

45. If an employee believes a union has not fairly represented her, she can file an unfair labor practice charge against the Union with the National Labor Relations Board under the National Labor Relations Act. *Marquez v. Screen Actors Guild*, 525 U.S. 33, 44 (1998).

46. Plaintiffs here have never brought a claim under the LMRA against Clearfield Hospital, nor have they brought a claim against their Union for breach of the duty of fair representation.

47. If Plaintiffs were in any way dissatisfied with the grievance procedure or believed that Clearfield Hospital did not comply with the grievance procedure under the Collective Bargaining Agreement, their recourse was to file a grievance or to bring a claim under the LMRA against Clearfield Hospital for breach of the collective bargaining agreement.

48. To the extent they now assert that they were not satisfied with the grievance procedure, their claims are preempted by the LMRA.

3. Plaintiffs' claims for constructive discharge are preempted by the Labor Management Relations Act.

49. The LMRA, 29 U.S.C. §185, "provides the exclusive remedy for violations of the collective bargaining agreement." *Krushinski v. Roadway Express, Inc.*, 627 F. Supp. 934, 938 (D. Pa. 1985). Several courts have held that the LMRA preempts wrongful discharge claims by unionized employees. In *Krashna, supra*, the Third Circuit recognized that claims for wrongful discharge are preempted by § 301 of the LMRA. The court reasoned:

If viewed as a wrongful discharge claim, we believe the state claim in this case would be completely preempted. First, the claim would be encompassed by the LMRA enforcement provision. As noted, the terms of [plaintiff's] employment were governed by a collective bargaining agreement that permitted termination for just cause. Wrongful discharge, as averred in this complaint, would violate § 301 of the LMRA.

Krashna, 895 F.2d at 115.

50. In *Shafnisky v. Bell Atlantic, Inc.*, 2002 U.S. Dist. LEXIS 21829, *29-30 (E.D. Pa. 2002), the court dismissed the plaintiff's wrongful discharge claim because it was preempted under the LMRA.

51. Similarly, in *Scott v. Sysco Food Services of Phil., Inc.*, 1999 U.S. Dist. LEXIS 9629 (E.D. Pa. 1999), the court dismissed plaintiff's claim for wrongful discharge as preempted by the LMRA. 1999 U.S. Dist. LEXIS 9629 at *6. In holding that plaintiff's wrongful discharge claim was preempted by § 301, the court reasoned that the LMRA "would be frustrated if plaintiff here could end-run the grievance procedure outlined in his collective bargaining agreement by filing a wrongful discharge claim in this court." 1999 U.S. Dist. LEXIS 9629 at *5.

52. Plaintiffs' claims are clearly preempted by the LMRA. If Plaintiffs believed that the Hospital changed the terms and conditions of their employment, or believed that they were being retaliated against, Plaintiffs had an obligation to file a grievance under the CBA.

53. If Plaintiffs were dissatisfied with how the grievance was handled, their recourse was to file a claim for breach of the collective bargaining agreement against the Hospital under the LMRA.

54. If Plaintiffs' concern was their lack of fair representation by the Union, their recourse was to file an unfair labor practice charge against the Union pursuant to the NLRA.

55. Plaintiffs followed none of these proper courses of action. Rather, Plaintiffs simply proceeded into state court on a claim for constructive discharge against Clearfield Hospital.

56. Indeed, both Plaintiffs Retorick and Selvage filed grievances during their employment at Clearfield Hospital.

57. Therefore, they were aware that the Collective Bargaining Agreement provided a vehicle for addressing grievances, and they, in fact, utilized the grievance procedure.

58. Plaintiff Retorick testified during her deposition that she believed the grievance procedure was an effective tool in the event she believed the Hospital had acted inappropriately.

59. Nonetheless, neither Plaintiff chose to use the grievance procedure to address her claim that she was being constructively discharged in violation of the agreement. Moreover, neither of the Plaintiffs brought a claim against the Hospital under the LMRA, which was the proper course of action.

60. Consequently, Plaintiffs are precluded from filing a lawsuit against Defendants for wrongful discharge.

4. Plaintiffs' constructive discharge claims are barred by their statutory claims.

61. Pennsylvania law is also well established that a plaintiff cannot recover for constructive discharge where a statute applies to his claims. “[W]here a Pennsylvania statute announces a public policy supporting, and provides a remedy for, wrongfully discharged employees, no tort cause of action under the common law is available.” *Murray v. Commercial Union Ins. Co.*, 782 F.2d 432, 437 (3d Cir. 1986); *Clay v. Advanced Computer Applications, Inc.*, 522 Pa. 86, 559 A.2d 917, 9181-19 (Pa. 1989); *See also Marchionni v. SEPTA*, 2000 U.S. Dist. LEXIS 814, * (E.D. Pa. 2000) (“Pennsylvania recognizes a cause of action for wrongful discharge ‘only in the absence of a statutory remedy and only when important and well recognized facets of public policy [are] at stake.’”) (quoting *Regginger v. American Can Co.*, 574 F.Supp. 306, 311 (M.D. Pa. 1983).

62. “Plaintiff’s cause of action for constructive/wrongful discharge in violation of public policy may be pursued only if no statutory or contractual remedy is available.” *Darlington v. Gen. Elec.*, 504 A.2d 306, 318 (Pa.Super. 1986).

63. In *Rinehart v. Mt. Penn Borough Municipal Authority*, the United States District Court for the Eastern District of Pennsylvania, interpreting the Pennsylvania Whistleblower Law, held that a cause of action for wrongful discharge “may be maintained only in the absence of a statutory remedy.” *Rinehart*, 2002 U.S. Dist. LEXIS 24727 at *35 (E.D. Pa. 2002)(citing *Freeman v. McKellar*, 795 F. Supp. 733, 742 (E.D. Pa. 1992). *See also Macken v. Lord Corp.*, 402 Pa. Super. 1, 4 (Pa. Super. 1986). The court reasoned that “the Pennsylvania legislature appears to have enacted the Whistleblower Law specifically to protect the interests of public employees” and, therefore, the plaintiffs had an appropriate statutory remedy. *Id.* at *36.

64. Plaintiffs Retorick and Selvage have a remedy under the Whistleblower Law and MCARE Act; therefore, their common law claims for wrongful discharge fail.

5. Plaintiffs cannot show a public policy basis for their Constructive Discharge claims.

65. The Pennsylvania Supreme Court has repeatedly held that a cause of action for wrongful discharge will be recognized only in the rarest of cases. *See McLaughlin v. Gastrointestinal Specialists, Inc.*, 561 Pa. 307, 314 (2000). “An employee will be entitled to bring a cause of action for wrongful discharge only in the most limited of circumstances where the termination implicates a clear mandate of public policy in this Commonwealth.” *Id.* at 314. In *McLaughlin*, the Supreme Court announced that “we declare the public policy of this Commonwealth by examining the precedent within Pennsylvania, looking to our own Constitution, court decisions and statutes promulgated by our legislature. *Id.* at 315 (citations and internal quotations omitted). Thus, no common law cause of action exists for wrongful

discharge of an at-will employee except where a “clear mandate” of public policy is violated.

Bruffett v. Warner Communications, Inc., 692 F.2d 910 (3d Cir. 1982); *Paul v. Lankenau*

Hospital, 569 A.2d 346 (Pa. 1990); *Clay v. Advanced Computer Applications, Inc.*, 559 A.2d 917

(Pa. 1989); *Geary v. United States Steel Corp.*, 319 A.2d 174 (Pa. 1974); *Yetter v. Ward*

Trucking Corp., 585 A.2d 1022 (Pa. Super. 1991). There is no mandate here.

66. “The public policy exception has been most frequently applied when a discharge is a result of the employee’s compliance with or refusal to violate a specific provision of a law.”

Woodson v. AMF Leisureland Centers, Inc., 842 F.2d 699, 701-02 (3d Cir. 1988). *See also*

Perks v. Firestone Tire & Rubber Co., 611 F.2d 1363 (3d Cir. 1979) (recognizing wrongful

discharge claim based on refusal to submit to a polygraph test when statute forbids such testing);

Shick v. Shirey 552 Pa 590, 716 A.2d 1231 (Pa. 1980 (holding that an employee was wrongfully

terminated for filing a workers’ compensation claim.)

67. Plaintiffs failed to cite any Pennsylvania case law supporting a finding that they may bring a claim for constructive discharge based on public policy set out in Nursing

regulations, laws, statutes or ethical codes. As such, plaintiff does not have a cognizable claim for constructive discharge in violation of public policy under Pennsylvania Law.

68. Because Plaintiffs should be precluded from proceeding on their constructive discharge claims, the court should not permit the introduction of any alleged retaliatory acts that occurred prior to 180 days before Plaintiffs commenced their causes of action.

WHEREFORE, Defendants respectfully request that this Honorable Court grant their Motion in Limine to Preclude Any Evidence of Alleged Retaliation Against Plaintiffs Occurring Prior to September 21, 2002.

Respectfully submitted,

SCHNADER HARRISON SEGAL &
LEWIS LLP

By: 

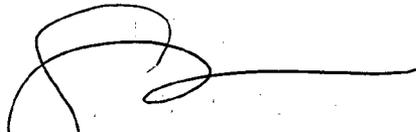
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Attorneys for Defendants, Clearfield Hospital,
Lois Eisenman, Jackie Stone and Thelma
Stratton

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2007, a true and correct copy of the foregoing
**DEFENDANTS' MOTION IN LIMINE TO PRECLUDE ANY EVIDENCE OF
ALLEGED RETALIATION AGAINST PLAINTIFFS OCCURRING BEFORE
SEPTEMBER 21, 2002** was sent via U.S. Mail, first class postage prepaid, to the following
counsel of record:

James J. West, Esquire
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Harrisburg PA 17101



S. Elaine Diedrich

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit
Manager
Defendants.

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

) No. 03-393-CD

) Civil Action – Law
)
)
)
)
)

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby ORDERED,
ADJUDGED and DECREED that Defendants' Motion in Limine to Preclude Any Evidence of
Retaliation Against Plaintiffs Occurring Prior to September 21, 2002 is hereby GRANTED.

out } It is FURTHER ORDERED that Plaintiffs' Constructive Discharge claims are hereby
DISMISSED.

It is FURTHER ORDERED that Plaintiffs may not introduce any evidence of retaliatory
acts or reprisal occurring prior to September 21, 2002. Plaintiffs may only introduce evidence of
events occurring prior to September 21, 2002, for the limited purpose of providing background to
events that occurred after that that date.

BY THE COURT,

_____, J.

FILED

SEP 19 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9-19-07

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:

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FILED ICC *AAH*
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SEP 14 2007 *(S)*

William A. Shaw
Prothonotary/Clerk of Courts

Attorneys for Defendants

FRANCES L. SELVAGE and	)	IN THE COURT OF COMMON
DAWN L. RETORICK	)	PLEAS OF CLEARFIELD COUNTY,
Plaintiffs,	)	PENNSYLVANIA
)	
vs.)	
)	
CLEARFIELD HOSPITAL,)	
LOIS EISENMAN, Director of Nursing,	)	No. 03-393-CD
JACKIE STONE, Vice President of Nursing,)	
THELMA STRATTON, ICU Unit	)	Civil Action – Law
Manager)	
Defendants.)	

DEFENDANTS’ MOTION TO STRIKE PLAINTIFFS’ JURY DEMAND ON THEIR WHISTLEBLOWER AND MCARE ACT CLAIMS OR, IN THE ALTERNATIVE, TO PRECLUDE PLAINTIFFS’ COUNSEL FROM DESCRIBING THE PLAINTIFFS AT TRIAL AS “WHISTLEBLOWERS” OR REFERENCING THE TERM “WHISTLEBLOWER” OR THE “WHISTLEBLOWER LAW”

Defendants submit this Motion to Strike Plaintiffs’ Jury Demand on Their Whistleblower and MCARE Act Claims or, in the Alternative, to Preclude Plaintiffs’ Counsel from Describing the Plaintiffs at Trial as “Whistleblowers” or Referencing the Term “Whistleblower” or the “Whistleblower Law.”

1. Plaintiffs have brought claims under the Pennsylvania Whistleblower Law and the MCARE Act. There is no right to a jury trial under the Whistleblower Law and MCARE Act claims.

2. Every Pennsylvania Court that has passed on the issue has held that a plaintiff is not entitled to a jury trial for claims brought under the Whistleblower Act. *See Wilhelm v. Borough of Braddock*, 28 Pa. D.&C. 4th 211 (Allegheny County, February 5, 1996) (holding plaintiff is not entitled to a jury trial for claims brought under the Whistleblower Law); *Clark v. Lancaster City Housing Authority*, 14 Pa. D.&C. 4th 411 (Lancaster County, March 4, 1992) (same); *Zerbe v. City of Sunbury*, 7 Pa. D.&C. 4th 483, 500-502 (Northumberland County, January 24, 1990) (same).

3. The well-reasoned opinion of the court in *Clark v. Lancaster*, which is premised upon Pennsylvania Supreme Court case law, United States Supreme Court case law and the Pennsylvania Constitution, explains the rationale behind this conclusion:

The Pennsylvania Constitution does not expressly guarantee the right to a jury trial in proceedings involving the Whistleblower law. The Constitution of this Commonwealth, however, does provide that "trial by jury shall be as heretofore, and the right thereof remain inviolate." Pennsylvania Constitution, Article I, § 6. Our Supreme Court has steadfastly pronounced that the term "heretofore" intends to preserve rights existing when our Commonwealth adopted its original Constitution. *Byers and Davis v. Commonwealth*, 42 Pa. 89 (1862). We are aware that our Constitution mandates a jury trial in every case where one would have been so entitled at the time the Constitution of 1790 was adopted. *William Goldman Theatres v. Dana*, 405 Pa. 83, 173 A.2d 59 (1961), *cert. denied*, 368 U.S. 897, 82 S.Ct. 174, 7 L. Ed. 2d 93 (1961). Further, jury trials are not available in proceedings created by statute unless the proceeding has a common law basis or unless the statute expressly or impliedly so provides. *Murphy v. Cartex Corp.*, 377 Pa.Super. 181, 192, 546 A.2d 1217, 1222 (1988); *see also Watson Appeal*, 377 Pa. 495, 105 A.2d 576 (1954), *cert. denied*, 348 U.S. 879, 75 S.Ct. 120, 99 L. Ed. 693 (1954); *Pennsylvania Public Utility Commission v. W.J. Dillner Transfer Co.*, 191 Pa. Super. 136, 149, 155 A.2d 429, 435 (1959); *Commonwealth v. Marco Electric Manufacturing Corp.*, 32 Pa. Commw. 360, 379 A.2d 342 (1977).

The Whistleblower Law involves a statutory remedy passed by the legislature in 1986. As such, the Law and the rights it confers were nonexistent at the time the Pennsylvania Constitution was adopted. Therefore, no right to a jury trial existed which the Constitution could preserve.

Having concluded that plaintiff has no constitutional right to have a jury hear a violation of the Whistleblower Law, we also find as a matter of statutory interpretation that the legislature did not intend to provide a right to demand a jury trial in Whistleblower law violations brought in courts of common pleas. When ascertaining legislative intent, courts must consider the entire statute and avoid according an individual provision an interpretation which does not take into account related sections of the same statute. 1 Pa.C.S. § 1921 (a); *Murphy, supra* at 193, 546 A.2d at 1223; *Causer v. Mandarino*, 338 Pa.Super. 564, 488 A.2d 36 (1985). Section 1425, *Enforcement*, of the Whistleblower Law declares that:

“A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the court determines that the award is appropriate.” 43 P.S. § 1425.

This court finds instructive that the Whistleblower law never refers to a jury decision, but rather to the decision of the trial court. Thus, because the right to a jury trial in a claim for violation of the Whistleblower law is not provided for in the statute, implied by its legislative history or intent, expressly guaranteed by the Constitution or based in common law, we conclude that no such right exists in the present case.

Clark, 14 Pa. D.&C. 4th at 412-14. Thus, plaintiffs are not entitled to a jury trial on their Whistleblower claims.

4. For the same reasons, Plaintiffs do not have a right to a jury trial under the MCARE Act.

5. The MCARE Act was not passed until 2002, it does not contain an express right to a jury trial, and specifically incorporates the Whistleblower remedy provisions.

6. The MCARE Act states that a health care worker bringing a claim under the MCARE Act for retaliation for filing a “serious event” or “incident” “shall have the protections and remedies set forth in . . . [the] Whistleblower Law.” 40 P.S. § 1303.308(d).

7. Further, the claim arises through a statute which does not provide for the right to trial by jury and was not premised in a common law claim before the statute was passed. See,

e.g., *Murphy v. Cartex Corp.*, 377 Pa.Super. 181, 192, 546 A.2d 1217, 1222 (1988); *see also Watson Appeal*, 377 Pa. 495, 105 A.2d 576 (1954), *cert. denied*, 348 U.S. 879, 75 S.Ct. 120, 99 L. Ed. 693 (1954); *Pennsylvania Public Utility Commission v. W.J. Dillner Transfer Co.*, 191 Pa. Super. 136, 149, 155 A.2d 429, 435 (1959); *Commonwealth v. Marco Electric Manufacturing Corp.*, 32 Pa. Commw. 360, 379 A.2d 342 (1977).

8. Failure to move to strike a jury demand does not “entitle” a plaintiff to a jury trial under these statutes.

9. The Court in *Zerbe v. City of Sunbury*, *supra*, held that a defendant’s failure to object to the plaintiff’s request for a jury trial does not *create* the right for a plaintiff. *See Zerbe*, 7 Pa. D.&C. 4th at 501-02 (“Since all of the above are statutory remedies, in the court’s view the absence of a legislative statement that a failure to object creates such a right, is dispositive of the issue.”).

10. Thus, the plaintiffs are not entitled to a jury trial for their Whistleblower Law and MCARE Act Claims.

11. It is defendants’ understanding that plaintiffs have agreed to withdraw their demand for a jury trial on their Whistleblower Law and MCARE Act claims.

12. The Plaintiffs have also agreed to dismiss two of their causes of action for Defamation and Invasion of Privacy/False Light (Counts IV and V).

13. While Plaintiffs have not agreed to withdraw their remaining common law claim (Count III for constructive discharge), the Plaintiffs have agreed to withdraw their jury demand for their constructive discharge claim as well, thus allowing the entire matter to proceed non-jury.

14. It is believed that in a non-jury trial, with a Judge as the finder of fact, the parties will be able to present their cases more expeditiously, saving the Court's and the Parties' resources.

16. If the Court allows plaintiffs' Constructive Discharge claim to be heard by a Jury and have the decision on the Whistleblower and MCARE Act claims be decided by the Court, defendant requests that plaintiffs be precluded from using the terms "Whistleblower" or "Whistleblower Law" or referring to the plaintiffs as "Whistleblowers" as these terms are irrelevant to any claims that will be submitted to the jury. Thus, the use of these terms should be precluded under Pennsylvania Rules of Evidence 401 and 402.

17. Further, the term "Whistleblower" is a highly charged word and allowing plaintiffs' counsel to use this term or refer to the plaintiffs as Whistleblowers would be highly prejudicial to the defendants. Because it is entirely irrelevant to any claims that will be determined by the jury, its probative value is outweighed by the danger of unfair prejudice and, therefore, should be precluded under Pennsylvania Rule of Evidence 403.

WHEREFORE, Defendants respectfully request that this Honorable Court grant their Motion to Strike Plaintiffs' Jury Demand on Their Whistleblower and MCARE Act Claims or, in the Alternative, to Preclude Plaintiffs' Counsel from Describing the Plaintiffs at Trial as "Whistleblowers" or Referencing the Term "Whistleblower" or the "Whistleblower Law."

Respectfully submitted,

SCHNADER HARRISON SEGAL &
LEWIS LLP

By: 

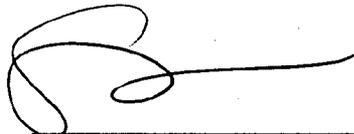
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Attorneys for Defendants, Clearfield Hospital,
Lois Eisenman, Jackie Stone and Thelma
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CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2007, a true and correct copy of the foregoing **Motion to Strike Plaintiffs' Jury Demand on Their Whistleblower and MCARE Act Claims or, in the Alternative, to Preclude Plaintiffs' Counsel from Describing the Plaintiffs at Trial as "Whistleblowers" or Referencing the Term "Whistleblower" or the "Whistleblower Law"** was sent via U.S. Mail, first class postage prepaid, to the following counsel of record:

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Harrisburg PA 17101



S. Elaine Diedrich

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs,

vs.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of Nursing,
THELMA STRATTON, ICU Unit
Manager
Defendants.

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

) No. 03-393-CD
)

) Civil Action – Law
)
)
)
)
)

ORDER OF COURT

AND NOW, to-wit, this _____ day of _____, 2007, it is hereby ORDERED,
ADJUDGED and DECREED that Defendants' Motion to Strike Plaintiffs' Jury Demand on
Their Pennsylvania Whistleblower Law and MCARE Act Claims is hereby GRANTED.

BY THE COURT,

_____, J.

CA

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

FRANCES L. SELVAGE and
DAWN L. RETORICK,
Plaintiffs

: NO. 03-393-CD

V.

CLEARFIELD HOSPITAL, LOIS
EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager,
Defendants

ORDER

AND NOW, this 24th day of September, 2007, upon consideration of the Motion to Withdraw Jury Demand and Proceed Non-Jury As to All Counts, it is the ORDER of this Court that said Motion shall be and is hereby DENIED.

It is the further ORDER of this Court that the Plaintiffs are voluntarily dismissing the actions set forth for defamiation (Count IV) and false lights (Count V) and said Counts are hereby DISMISSED.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

2CC Atty's:
J. West
J. Giesler
E. Smith
FILED
SEP 24 2007 (GR)

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9-24-2007

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:

FILED

SEP 24 2007

William A. Shaw
Prothonotary/Clerk of Courts

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FILED *EW*
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FRANCES L. SELVAGE and)	IN THE COURT OF COMMON
DAWN L. RETORICK,)	PLEAS OF CLEARFIELD COUNTY,
	)	PENNSYLVANIA
Plaintiffs,)	
)	
vs.	)	No. 03-393-CD
)	
CLEARFIELD HOSPITAL,	)	Civil Action - Law
LOIS EISENMAN, Director of Nursing,)	
JACKIE STONE, Vice President of Nursing,)	
THELMA STRATTON, ICU Unit Manager,)	
)	
Defendants.)	

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF DEFENDANTS' EXPERT WITNESSES

Defendants, by and through their undersigned counsel, hereby submit this Response in Opposition to Plaintiffs' Motion in Limine to Exclude the Testimony of Defendants' Expert Witnesses.

I. Introduction

The expert testimony of Dr. Paul Bernstein, Ph.D. ("Dr. Bernstein") and Michelle McGonigal, RN, MSN ("McGonigal") is admissible at trial. Defendants complied with the Pennsylvania Rules of Civil Procedure and Clearfield County Local Rules when they produced the expert reports of Dr. Bernstein and McGonigal. Plaintiffs were well aware that Dr. Bernstein was preparing a report soon after he conducted a mental examination of the plaintiffs on May 21, 2007. Moreover, plaintiffs' counsel was advised that a copy of Dr. Bernstein's report would be

provided as soon as it was received by defendants' counsel. Consistent with this, Defendants' counsel received Dr. Bernstein's expert report on August 16, 2007 and expeditiously produced it on August 17, 2007, to plaintiffs. Defendants received McGonigal's final report on August 16, 2007 and also produced it to plaintiffs the next day, August 17, 2007. Both reports were attached to defendants' Pretrial Statement. These disclosures are timely under the Pennsylvania Rules of Civil Procedure and Clearfield County Local Rules of Court. Defendants were not required to identify McGonigal as an expert until defendants determined they would call McGonigal as an expert. Defendants did not know whether they would call McGonigal to testify until they received her final report and reviewed her opinions on the topics for which she was retained to offer such opinions. Production of expert reports in response to interrogatories requesting expert information is sufficient under the Pennsylvania Rules of Civil Procedure. Moreover, the testimony of both McGonigal and Dr. Bernstein is relevant to the claims and defenses raised in this case and is not unfairly prejudicial to plaintiffs.

II. Procedural Background

In March of 2007, defendants requested plaintiffs' counsel to make his clients available for a mental examination, which, pursuant to Pennsylvania Rule of Civil Procedure 4010, Plaintiffs were required to do. In response, plaintiffs' counsel indicated that he would agree to such an examination, but after repeated requests, refused and/or failed to make his clients available for an examination. A true and correct copy of Defendants' Motion to Compel the Mental Examinations of Plaintiffs is attached hereto as Exhibit "A." Defendants identified several reasons why they sought a mental examination of plaintiffs, which were not limited to rebutting plaintiffs' expert report by Dr. Schneider. Defendants did not request a continuance of

the trial in procuring the mental examination of plaintiffs. At the same time, defendants sought additional items that defendants had requested in discovery, but were never produced by plaintiffs. In response, Plaintiffs' counsel responded that discovery was closed because defendants filed a Motion for Summary Judgment. As a result of these bizarre assertions, defendants were forced to file a Motion for Status Conference requesting the Court to set a date for the close of discovery. A true and correct copy of defendants' Motion for Status Conference is attached hereto as Exhibit "B;" a true and correct copy of Defendants Supplement to their Motion to Compel the Mental Examination of Plaintiffs and Motion for Status Conference is attached hereto as Exhibit "C."

The hearing on these motions was held on April 3, 2007. The Court granted Defendants' Motion to Compel the Mental Examinations of the Plaintiffs. Due to the anticipated length of the trial and the Court's schedule, trial was set for October 15, 2007. The Court did not limit the expert reports that could be obtained by defendants and plaintiffs' counsel never asserted that Defendants were limited in the number or type of expert reports that could be submitted in support of their case. The case was not continued, and no motion to continue the case was filed. The case was set for trial on October 15, 2007.

Following the hearing, plaintiffs took three (3) additional depositions. Pursuant to the Court's Order compelling the mental examination of the plaintiffs, plaintiffs' mental examinations proceeded on May 21, 2007. Defendants' expert, Dr. Paul Bernstein, conducted the plaintiffs' mental examinations.

III. Summary of Facts

Defendants retained two experts in this action, Dr. Bernstein and McGonigal.

McGonigal is a long-time ICU nurse who was retained to opine on issues that have arisen in this case concerning the nature and number of reports submitted by plaintiffs; whether such reports were reportable to the Department of Health; whether nursing administration used appropriate and reasonable standards in supervising plaintiffs', responding to plaintiffs' reports; evaluating plaintiffs, disciplining plaintiffs and managing the intensive care unit; the working conditions and staffing of the intensive care unit and whether such conditions were so unpleasant or intolerable that a reasonable person in the plaintiffs' shoes would resign; and issues concerning precepting, mandation, breaks and lunches, time off to attend seminars and classes, use of licensed practical nurses, supervision of LPNs by an RN and/or charge nurse and the role of the RN and charge nurses in the intensive care unit. Dr. Bernstein was retained to conduct a mental examination of the plaintiffs and opine on, *inter alia*, whether plaintiffs suffer from emotional distress (as alleged in their complaint), how plaintiffs' personalities impact their perceptions and relationships with others, and to respond to plaintiffs' expert, Dr. Schneider's, report.

Following Dr. Bernstein's mental examination of plaintiffs on May 21, 2007, plaintiffs' and defendants' counsel discussed the fact that Dr. Bernstein was preparing a report. Defense counsel assured plaintiffs' counsel that as soon as Dr. Bernstein's report was received, it would be produced. This was memorialized in a letter dated July 20, 2007. Plaintiffs were informed that Dr. Bernstein would be preparing a report, but that the report was not yet completed. Plaintiffs' counsel was assured that a copy of the report would be produced as soon as it was complete. A true and correct copy of the July 20, 2007, letter is attached hereto as Exhibit "D." Defendants' counsel received Dr. Bernstein's Report on August 16, 2007. Defendants have

attached hereto as Exhibit "E" a true and correct copy of the expert report received by Dr. Bernstein on August 16, 2007, with the facsimile transmission date and time at the top of the Report. The report was produced on August 17, 2007, the very next day. In accordance with Clearfield County Local Rule 212.2(5), Dr. Bernstein's Expert Report was attached to defendants' Pretrial Statement.

Similarly, defendants received McGonigal's final report on August 16, 2007. Defendants have also attached hereto as Exhibit "F" a true and correct copy of the expert report received by McGonigal on August 16, 2007, with the facsimile transmission date and time remaining at the top of the report. Defendants produced McGonigal's expert reports to plaintiffs on August 17, 2007, the very next day. McGonigal's report was also attached to defendants' Pretrial Statement.

Plaintiffs' interrogatory number 4 requested defendants to "identify each expert you intend to call as a witness at the trial of this matter." A true and correct copy of plaintiffs' interrogatory number 4 and defendants' response is attached hereto as Exhibit "G." Defendants timely supplemented their responses to this interrogatory once it was determined who defendants would call to testify as experts by producing the expert reports of Dr. Bernstein and McGonigal.

IV. Discussion

A. Defendants timely produced the Expert Reports of Dr. Paul Bernstein, Ph.D. and Michelle McGonigal, RN, MSN.

1. Defendants have Complied with the Pennsylvania Rules of Civil Procedure in Responding to Interrogatories and Producing Expert Reports.

The preclusion of expert testimony is "a drastic sanction, and it should be done only where the facts of the case make it necessary;" the prejudice may not be assumed. *Kemp v.*

Qualls, 326 Pa. Super. 319, 473 A.2d 1369, 1374 (Pa.Super. 1984). Defendants have fully complied with the Pennsylvania Rules of Civil Procedure in responding to plaintiffs' Interrogatories and producing their Experts' Reports a day after they were received.

Interrogatory number 4 of the plaintiffs First Set of Interrogatories requested the following:

Identify each expert you intend to call as a witness at the trial of this matter and for each expert state: a. the subject matter about which the expert is expected to testify

....

See Exhibit "G." Plaintiffs specifically requested the identity of experts that defendants "intended to call as witnesses at the trial of this matter." Therefore, per the language of the interrogatory, defendants had no obligation to identify experts they had retained, identify the subject matter for which they had been retained, or turn over reports of experts that defendants did not intend to call as expert witnesses at trial. Defendants did not, and could not have been expected to, make a determination as to whom they would call as experts until after reviewing the reports of experts that had been retained to opine on certain subjects. Defendants received McGonigal's final report on August 16, 2007 and produced it the very next day.

With respect to Dr. Bernstein, plaintiffs' counsel attended the mental examination conducted by Dr. Bernstein of the plaintiffs on May 24, 2007. Plaintiffs' counsel was subsequently made aware that Dr. Bernstein was preparing a report and was advised that it would be provided to him as soon as it was received by defense counsel. This was memorialized in a letter dated July 20, 2007. See Exhibit "D." A copy of Dr. Bernstein's report was also produced to plaintiffs the day after it was received by defense counsel. See Exhibit "E." It is beyond reason for plaintiffs to now assert that Dr. Bernstein's report was in any way a "surprise."

Moreover, defendants complied with the Pennsylvania Rules of Civil Procedure by timely supplementing their interrogatory responses by producing the expert reports of Dr.

Bernstein and McGonigal. Pennsylvania Rules allow for a party to answer expert interrogatories by serving an expert report. Pennsylvania Rule of Civil Procedure 4003.5(a)(1)(b) provides in pertinent part:

(b) . . . The party answering the interrogatories may file as his or her answer a report of the expert or have the interrogatories answered by the expert. The answer or separate report shall be signed by the expert.

Pa. R.C.P. 4003.5(a)(1)(b). Further, by serving the reports of Dr. Bernstein and McGonigal a day after they were received by defendants, defendants complied with Rule 4007.4 governing supplementing interrogatories.

(1) A party is under a duty **seasonably to supplement** the response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters and the identity of each person expected to be called as an expert witness at trial, the subject matter on which each person is expected to testify and the substance of each person's testimony as provided in Rule 4003.5(a)(1).

Pa. R.C.P. 4007.4.

Clearly, producing expert reports a day after they are received meets the requirement to “seasonably” supplement interrogatory responses concerning expert witness. Accordingly, defendants have complied with Rule 4003.5 and Rule 4007 in responding to plaintiffs’ interrogatories. As a result, Dr. Bernstein’s and McGonigal’s testimony is admissible.

Plaintiffs cite Pennsylvania Rule of Civil Procedure 4003.1 for the proposition that Defendants’ experts should be precluded from testifying because Defendants did not comply with this Rule. However, pursuant to the foregoing, defendants complied with the Pennsylvania Rules of Civil Procedure and the testimony of Dr. Bernstein and McGonigal is admissible.

2. **Pennsylvania case law requires that Dr. Bernstein and McGonigal be permitted to testify at trial.**

Pennsylvania law establishes that even if Rule 4003.5 were not complied with (which is not the case here), defendants must be permitted to present the expert testimony of Dr. Bernstein and McGonigal. Plaintiffs cite no case law in support of their position that defendants' expert reports should be precluded. This is likely due to the fact that the case law strongly favors defendants' position that their expert reports are admissible.

It is well-established that the sanction authorized by Rule 4003.5 is not mandatory. *Corrado v. Thomas Jefferson Univ. Hosp.*, 790 A.2d 1022,1032 (Pa. Super. Ct. 2001). When a discovery violation occurs as a result of a failure to identify an expert witness, "the presiding court must balance the facts and circumstances of each case to determine the prejudice to each party." *Corrado*, 790 A.2d at 1032 (quoting *Feingold v. SEPTA*, 512 Pa. 567, 573, 517 A.2d 1270, 1273 (1986)). The court considers the following factors: (1) the prejudice or surprise in fact of the party against whom the excluded witnesses would have testified, (2) the ability of that party to cure the prejudice, (3) the extent to which waiver of the rule against calling unlisted witnesses would disrupt the orderly and efficient trial of the case or of other cases in the court, and (4) bad faith or willfulness in failing to comply with the court's order. *Id.*

As applied by the courts, the standard for excluding expert testimony is a high one. Pennsylvania Courts have found that even when expert reports are not submitted with a pretrial statement or are submitted on the eve of trial, the expert testimony should not be precluded. In *Kemp v. Qualls*, 473 A.2d 1369 (Pa. Super Ct. 1984), an expert's identity and report was only provided to the opposing counsel thirteen (13) days before the expert was called to testify. The Superior Court upheld the lower court's finding that the expert should be permitted to testify. The Superior Court reasoned "it is apparent that the appellant has not demonstrated any real

prejudice flowing from the appellee[s] untimely disclosure of [the expert's] identity and qualifications." *Id.*, 473 A.2d at 1374. The Court observed that the appellant had thirteen days prior to the expert's appearance in which to investigate the expert's reputation and expertise and that the trial court had expressly offered to accommodate any difficulty caused by the late disclosure. *Id.* See also *Green Construction Co. v. Department of Transportation*, 164 Pa. Commw. 566, 643 A.2d 1129 (Pa. Cmmmw. 1994) (holding that where the identity and substance of expert testimony was disclosed five (5) days before trial, allowing such testimony was not an abuse of discretion where the plaintiff failed to show that it was prejudiced by the dilatory disclosure); *Curran v. Stradley, Ronon, Stevens & Young*, 361 Pa. Super. 17, 521 A.2d 451 (Pa. Super. 1987) (holding that where the plaintiff was notified of the defense expert's identity nine (9) days before trial, but failed to request a continuance or depose the witness prior to trial, this inaction mitigated any real prejudice caused by the untimely disclosure and rendered exclusion of the expert testimony unnecessary).

In *Augustine v. Delgado*, the trial court held that expert testimony was admissible where the opposing party had been aware of the expert, the expert had testified at trial approximately fifty (50) days after the appellants had been informed of his possible participation; the appellants had received reports, slides, and answers; after trial had commenced, the court had provided the appellants with an opportunity to depose the expert; and the appellants had been able to present rebuttal testimony. *Augustine*, 332 Pa. Super. 194, 205-206, 481 A.2d 319, 324-325 (1984) (overruled on other grounds at *Bennett v. Sakel*, 555 Pa. 560, 725 A.2d 1195 (1999)). While appellant asserted the expert testimony should have been precluded because they had been "subjected to and surprised by deviations in his theories and changes in his expert opinion," the court held that the expert testimony had not unfairly prejudiced appellant's preparation or

presentation of their case. *Augustine*, 332 Pa.Super. Ct. at 205-206, 481 A.2d at 324-325. The Court concluded that "appellants had the ability and opportunity to cure any prejudice or surprise and that appellees did not demonstrate such bad faith as to require the drastic sanction of precluding" the expert's testimony. *Id.* at 210, 481 A.2d at 327.

Here, plaintiffs' counsel received the expert reports of Dr. Bernstein and McGonigal sixty (60) days before trial was scheduled to commence and had more than sufficient time to investigate these experts' reputations and expertise. Moreover, plaintiffs had already obtained their own psychologist expert. Further, defendants' expert reports were timely attached to their Pretrial Statement, the only requirement under Pennsylvania Law for the disclosure of expert reports. Moreover, plaintiffs have neither requested a continuance of the trial, nor requested any relief other than to have the expert testimony excluded at trial.

In *Kearns v. DeHaas*, 546 A.2d 1226 (Pa.Super. 1988), plaintiffs re-called an expert witness, who had only testified as a vocational expert, to testify on the last day of trial as an actuarial economist expert after the expert whom they had intended to use became ill. *Kearns v. De Haas*, 377 Pa. Super. 200, 210 546 A.2d 1226, 1231 (1988). The lower court allowed the expert witness to testify. *Kearns*, 377 Pa. Super. at 210, 546 A.2d at 1231. On appeal, the Defendant argued that the trial court should have excluded this testimony because defense counsel had not been supplied with a copy of the expert report before the day on which the expert testified as an actuarial economist. *Id.* Defendant argued that this late disclosure denied him the opportunity for meaningful cross-examination. *Id.* The appellate court upheld the lower court opinion and held there was not an abuse of discretion because there was no bad faith on the part of plaintiffs. *Id.* at 211, 546 A.2d 1231-1232. The court further held that the record did not disclose any prejudice experienced by the Defendant, because defense counsel

x
did not request any additional time to prepare cross examination. *Id.* at 210- 211, 546 A.2d 1231.

Here, again, plaintiffs have received the reports sixty (60) days prior to the trial. Plaintiffs received the reports as soon as defendants received the reports, establishing that there is no bad faith on the part of defendants. Further, there is clearly no prejudice with respect to either witness. As set forth above, plaintiffs' counsel has been aware that Dr. Bernstein was preparing a report since at least July 17, 2007. In fact, the Letter to Jim West of July 20, 2007, advised Mr. West that he would receive a copy of Dr. Bernstein's report as soon as it was received and that, because it had not been received, he should endeavor to do whatever he deemed necessary to protect his clients interests. McGonigal will testify in response to issues that have been raised in the case either in response to plaintiffs' assertions or in defense of plaintiffs' claims. There is certainly no prejudice to plaintiffs and plaintiffs have shown none.

II. Defendants' Experts' Testimony and Reports Are Relevant and Not Prejudicial

Plaintiffs assert in their motion *in limine* that defendants' expert reports and their testimony are irrelevant and, with respect to Dr. Bernstein, more prejudicial than probative. Plaintiffs base their assertion on the premise that defendants' experts do not opinc on what *plaintiffs* consider to be the only liability issue in this case - "did the named Defendants, as representatives of Clearfield Hospital, retaliate against the plaintiffs because they filed problem reports, letters, incident reports and made numerous oral reports relating to staffing and other clinical medical issues." *See* Plaintiffs' Motion *in Limine* pg. 5. Many more issues have arisen in this case that are related to plaintiffs' claims and defendants' defenses which will be addressed at trial. These issues go far beyond the simplistic description set out in plaintiffs' Motion.

Plaintiffs' argument that the testimony of Dr. Bernstein and McGonigal should be excluded fails for three reasons. First, there are several elements to the prima facie case plaintiffs must establish under all three remaining claims and to which defendants must respond. Second, plaintiffs have alleged several acts of alleged retaliatory conduct on the part of defendants to which defendants intend to respond, in part, through the testimony of Dr. Bernstein and McGonigal. Third, the expert testimony of Dr. Bernstein and McGonigal is directly relevant to plaintiffs' alleged damages.

Plaintiffs' Amended Complaint alone lists numerous allegations to which defendants will respond. These include that they submitted reports of "wrongdoing" and "waste" and reported "incidents" under the MCARE Act while at Clearfield Hospital. As a result of submitting these reports, plaintiffs allege a laundry list of alleged retaliatory conduct by defendants to which defendants will respond, in part, through the expert testimony of Dr. Bernstein and McGonigal.

A. Dr. Bernstein's testimony is relevant and not unfairly prejudicial to plaintiffs.

Dr. Bernstein was retained by defendants to conduct a mental examination of the plaintiffs and opine on, *inter alia*, whether plaintiffs suffer from emotional distress (as alleged in their complaint), how plaintiffs' personalities impact their perceptions and relationships with others, and to respond to plaintiffs' expert, Dr. Schneider's, report. Clearly these are all subjects that are relevant in this case and not unfairly prejudicial to plaintiffs.

Plaintiffs contend that, "talking about the Plaintiffs' mental health and the 'nursing shortage'" are matters that are totally irrelevant to plaintiffs' retaliation claim. Plaintiffs placed their mental health at issue by alleging that defendants caused them emotional distress that manifested into physical ailments. Dr. Bernstein's testimony will educate the jury as to the current mental health of the plaintiffs for purposes of addressing plaintiffs' damage claims. It is

illogical for plaintiffs to argue that that Dr. Bernstein's opinions on plaintiffs' mental health are not relevant where plaintiffs assert that they suffered emotional distress as a result of defendants' alleged actions. Plaintiffs' argument further fails to acknowledge that Dr. Bernstein's testimony would also educate the jury as to how plaintiffs' mental health and manifestations of their personality could alter the plaintiffs' perceptions of their environment. This evidence is probative in that it would assist the jury in determining whether there were actual "problems" the plaintiffs reported and whether there really was any "retaliation" by Defendants (or if this was only the perception held by the plaintiffs). Further, Dr. Bernstein offers his opinion in response to the opinions offered by plaintiffs' expert, Dr. Schneider.

Plaintiffs further try to exclude Dr. Bernstein's report and testimony alleging it is prejudicial, attacks the credibility of plaintiffs, violates Pennsylvania Rule of Evidence 705, improperly questions plaintiffs' expert, and improperly opines as to the plaintiffs' mental health and motives five years ago. Plaintiffs argue that statements in Dr. Bernstein's report as to Francis Salvage are "highly charged, prejudicial, hurtful and aimed at humiliating the Plaintiffs without giving any information whatsoever that would be helpful to the fact finder...." The plaintiffs quote two excerpts from Bernstein's report to support this supposition. Foremost, plaintiffs misquoted the report alleging Dr. Bernstein opines that Ms. Salvage had a "psychological" disorder. However, this misquotes the report, as Dr. Bernstein never opines that Salvage has a psychological disorder. Rather, he states she may have a *physiological* disorder. The excerpt plaintiffs quote in actuality states, "[c]onversely Ms. Salvage may have a specific *physiological* disorder, as she is observed as complaining, irritable, whining, and preoccupied with her health, dieting, weight, and body functioning." Bernstein does not opine that Salvage

has a psychological disorder. In fact, he specifically states she does not have any mental disorder. See Exhibit "E," Bernstein's Report on Selvage, pg. 10.

Secondly, the excerpts plaintiffs utilize are conclusions based on the tests performed by Dr. Bernstein. Plaintiffs do not attack the methodology, they merely attack the conclusions. This is not enough to claim that the evidence is prejudicial. "The term 'prejudice' does not mean that it is detrimental to a party's case because all evidence offered against a party is 'prejudicial'; rather, it means that the evidence will have an undue tendency to suggest a decision on an improper basis." *Whyte v. Robinson*, 421 Pa. Super. 33, 617 A.2d 380 (1992). Plaintiffs are seeking evidence to be excluded simply because they do not like the result.

Plaintiffs also contend that the Dr. Bernstein's testimony is merely employed to attack credibility of the plaintiffs. However, plaintiffs have mischaracterized Dr. Bernstein's reports. Dr. Bernstein's reports opine on plaintiffs' mental health and the manifestations of their personalities, not their credibility. The cases on which plaintiffs' rely to support their contentions are cases in which the experts testify as to the credibility of the witness (i.e. whether the witness is telling the truth). *Commonwealth v. Crawford* (Expert testimony that repressed memories of witness to crime were not accurate was excluded because jury role to determine if witness testimony was accurate) *Commonwealth v. Dunkle*, 529 Pa. 168, 602 A.2d 830 (Expert's testimony on behavior patterns that occurred in children who had been sexually abused, such as omitting details of the attack, was not admissible because it was being used to bolster the credibility of the child witness); *Commonwealth v. Gallagher*, 519 Pa. 291, 547 A.2d 355 (1988) (Expert testimony as to why a rape victim's repeated failures to identify an attacker was due to a rape trauma syndrome was excluded because it bolstered the credibility of the witness's testimony as to identification of attacker at trial).

These cases are not applicable the case *sub judice* as Dr. Bernstein's report does not opine on the plaintiffs' truthfulness or credibility. The definition of credibility is "the quality that makes something (as a witness or some evidence) worthy of belief". *Commonwealth v. Delbridge*, 578 Pa. 641, 855 A.2d 27 (2003) *citing* Black's Law Dictionary 374 (7th ed.). Plaintiffs are attempting (unsuccessfully) to equate attributing characteristics to a witness to attacking the credibility of the witness. Nothing in the excerpts of Dr. Bernstein's reports concludes the Plaintiffs are not truthful. His reports merely explain that plaintiffs' nervous upset or sleeplessness may be caused by certain personality characteristics, not by any actions on the part of Defendants. Dr. Bernstein's reports and testimony goes to causation and plaintiffs' damage claims, not their credibility. Dr. Bernstein's reports opine on a myriad of issues to assist the fact finder determine the issues of the case. It does not opine as to the credibility of the plaintiffs.

Plaintiffs further try to exclude Dr. Bernstein's report under Pa.R. E. 705. Plaintiffs allege that Dr. Bernstein does not relate any of his findings to the testimony and evidence that will be presented to the fact finder and should be excluded under Rule 705. Dr. Bernstein's report clearly outlines what evidence he reviewed, what psychiatric tests he performs and the conclusions of those tests. It is unclear how the plaintiffs believe the data relied on by Dr. Bernstein, such as plaintiffs' answers to their psychiatric tests, will not be presented to the fact finder. In actuality, it appears plaintiffs do not like the results of the psychiatric tests, so they try and argue that the tests employed by Dr. Bernstein do not take into account favorable evidence to the plaintiffs. Plaintiffs have offered no support that these tests are considered flawed, so they try and exclude the testimony under Rule 705 on the basis that the tests did not include or interpret the evidence in a way the Plaintiffs wanted it viewed. If plaintiffs' interpretation of

Rule 705 is to be followed, then plaintiffs' own expert cannot testify because he did not even review any of the defendants' own deposition testimony when formulating his opinion.

Plaintiffs also argue that Dr. Bernstein's report and testimony should be excluded because he expresses an opinion as to Dr. Schneider's methodology, or more specifically, Dr. Schneider's lack of methodology in forming his opinions. However, Dr. Bernstein is clearly qualified to question the methodology, or lack thereof, employed by Dr. Schneider. This is clear from Dr. Bernstein's Curriculum Vitae, which is attached hereto as Exhibit "H."

Plaintiffs further assert that Dr. Bernstein's testimony should be excluded because it purports to offer an opinion as to plaintiffs' mental state and motives five years ago. Plaintiffs' argue that this is a "psychological impossibility." Again, plaintiffs have misinterpreted Dr. Bernstein's report. Dr. Bernstein only opines as to plaintiffs' current mental health and personality manifestations; he never states an opinion as to their past mental health. Although he may conclude that these manifestations may have caused their issues with the staff at Clearfield Hospital, he states in his report that these are life-long characteristics. The irony with this argument asserted by plaintiffs is that plaintiffs own expert opines to that very "psychological impossibility". Plaintiffs' expert concluded that "there was a direct and proximate result of the defendants conduct in that both Frances and Dawn did experience emotional distress, mental suffering, mental anguish, sleeplessness, moodiness and irritability." See Schneider Report, pg. 7, attached hereto as Exhibit "I." This is clearly an expert opinion as to the mental state of the plaintiffs five years ago and defendants argued this very point in their Motion *in Limine* to exclude Dr. Schneider's report. Therefore, it appears plaintiffs are in agreement that any such testimony as to the plaintiffs' past mental health conditions should be excluded.

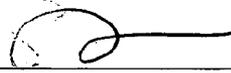
In sum, Dr. Bernstein's testimony is clearly admissible as it is relevant, not unfairly prejudicial and complies with Pennsylvania Rule of Evidence 705.

B. McGonigal's testimony is relevant and admissible.

Plaintiffs' only argument to exclude the testimony of McGonigal is that it is irrelevant. McGonigal's opinions are relevant to all of the claims by plaintiffs. McGonigal is a long-time ICU nurse who was retained to opine on issues that have arisen in this case. These include her opinions concerning the nature and number of reports submitted by plaintiffs; whether such reports were reportable to the Department of Health; whether nursing administration used appropriate and reasonable standards in supervising plaintiffs', responding to plaintiffs' reports; evaluating plaintiffs, disciplining plaintiffs and managing the intensive care unit; the working conditions and staffing of the intensive care unit and whether such conditions were so unpleasant or intolerable that a reasonable person in the plaintiffs' shoes would resign; and issues concerning precepting, mandation, breaks and lunches, time off to attend seminars and classes, use of licensed practical nurses, supervision of LPNs by an RN and/or charge nurse and the role of the RN and charge nurses in the intensive care unit. McGonigal's opinions on the various subjects outlined above are relevant to many issues that have arisen in this case. McGonigal's testimony is also relevant to rebut plaintiffs' expert's testimony that the plaintiffs' perceived work environment was hostile. McGonigal's testimony will address, *inter alia*, the reasons that some decisions may have been taken by Hospital administration that are consistent with the management of an ICU. This is in direct contrast to the plaintiffs' assertions that actions were taken against them purely in retaliation for filing reports. McGonigal's testimony is also relevant to plaintiffs' constructive discharge claim. McGonigal opines as to the stressfulness of working in an ICU environment and that Clearfield hospital ICU was typical of that unit.

As such, McGonigal's testimony is clearly relevant to the claims and defenses that have been raised in this case and will be address at the trial of this matter. As a result, it must be admitted at trial.

SCHNADER HARRISON SEGAL &
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By: 

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Attorneys for Defendants

3. Plaintiffs hired a psychologist, Stanley E. Schneider, Ed.D, who has examined them and issued an expert report on their mental condition. His expert report opines:

there was a direct and proximate result of the defendants' conduct in that both Frances and Dawn did experience emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, and irritability. Their anxiety and depression was noted, particularly Frances Selvage's, in a review of her medical records. . . . I believe, in my clinical judgment, that being in an environment so hostile and intolerable as the one these nurses experienced would result in a reasonable nurse leaving the position rather than staying.

Plaintiffs' expert report is attached hereto as Exhibit "A."

4. Defendants have denied that plaintiffs suffered mental injuries as a result of the alleged incidents described in the Amended Complaint.

5. In view of the above, it is clear that plaintiffs' mental condition is in controversy in this action and a mental examination of plaintiffs' condition is relevant and essential to defendant's defense of this action, especially since plaintiffs retained a psychologist who personally examined them. In fairness, defendants should be permitted to have their expert evaluate plaintiffs as well.

6. Because plaintiffs have placed their mental state at issue and, themselves, have had a psychologist offer an opinion as to their mental state, defendants rightfully should have the opportunity to have their own examination of the plaintiffs' mental state.

7. Defendants, through their counsel, have unsuccessfully sought to have plaintiffs examined by agreement. These efforts have included a letter to plaintiffs' counsel on March 20, 2007, requesting whether the plaintiffs would consent to being examined by a psychiatrist for defendants. On March 26, 2007, counsel for defendants again forwarded correspondence to plaintiffs counsel requesting whether plaintiffs would consent to the examination. No response

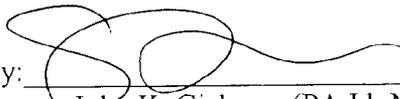
has been received to either request. True and correct copies of counsel's March 20 and March 26 correspondence are attached hereto as Exhibits "B" and "C" respectively.

8. Defendants desire to have plaintiffs examined by Dr. Bernstein, a specialist in the area of psychiatry, on March 31, 2007. The due date for defendants to submit expert reports is April 13, 2007 (the date defendants' pretrial statement is due) and, therefore, time is of the essence.

WHEREFORE, defendants respectfully request this Court to enter an order directing the plaintiffs to attend and undergo a mental examination by Dr. Paul M. Bernstein at 106 N. Second Street, First Floor Suite, Clearfield, Pennsylvania, 16830, on March 31, 2007 at 10:00 a.m. for purposes of inquiring into plaintiffs' alleged mental condition and injuries or suffer sanction upon further order of this Court.

Respectfully Submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By: 

John K. Gisleson (PA Id. No. 62511)
S. Elaine Dieddrich (Pa Id. No. 84077)
120 Fifth Avenue, Suite 2700
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(412) 577-5200

Attorneys for Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton

GUIDANCE ASSOCIATES OF PENNSYLVANIA

412 Erford Road, Camp Hill, PA 17011 (717) 732-2917; FAX: (717) 732-5375
20 Briarcrest Square, Suite 205, Hershey, PA 17033 (717) 533-4312

Stanley E. Schneider, Ed.D.
Director

May 8, 2006

James J. West, Esq.
West Long, LLC
105 N. Front St.
Suite 205
Harrisburg, PA 17101

RE: Salvage/Retorick v. Clearfield Hospital

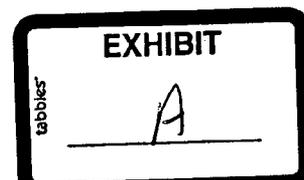
Dear Attorney West:

In your correspondence of September 15, 2005 and January 30, 2006, you asked that I evaluate whether 1) did Dawn Retorick and Frances Salvage suffer any emotional distress related to their employment conditions and if so, 2) was that distress related to a hostile and retaliatory work environment which existed between 1999 and 2002. A third inquiry relates to whether a reasonable nurse faced with similar intolerable circumstances would quit their job rather than stay.

I met with and interviewed Dawn and Frances on February 2, 2006.

In addition, I reviewed the following:

- 9/15/05 letter of referral from Attorney West with amended complaint, including Exhibits #1 through #14.
- Review of 8/8/05 video/transcribed deposition of Frances Salvage, RN
- Review of 8/9/05 video/transcribed deposition of Dawn Retorick, RN
- Review of 8/9/05 video/transcribed deposition of Frances Salvage, RN
- Dawn Retorick -- medical records 3/96 through 1/05
- Frances Salvage -- medical records (cardiology) 7/99-5/02
- Frances Salvage -- medical records (primary care physician) 2/98-11/03
- 1/30/06 letter from Attorney West
- March/April 2006 -- Review of Dawn Retorick's Performance Evaluations from Clearfield Hospital 1982-2002 with attached letters from peers
- Review of Dawn Retorick's Performance Evaluations -- Carlisle Regional Medical Center 2002-2005, March-April 2006
- March/April 2006 -- Review of Frances Salvage's Performance Evaluations from Clearfield Hospital 1993-2002



- March/April 2006 – Review of Frances Selvage’s Performance Evaluations – Carlisle Regional Medical Center

Your Amended Complaint includes a summary of the case, specific factual allegations, nursing statutory, regulatory and ethical standards, duties and issues related to the law. You note (Count VI) “as a direct and proximate result of the defendant’s conduct, the Plaintiffs have suffered severe emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, irritability....”

Dawn Retorick, was interviewed on February 2, 2006. On that occasion, she presented as open, accessible, and somewhat dysphoric, becoming upset as she recalled her history and experiences during 1999-2002 at Clearfield Hospital.

Currently, she is working at Carlisle Regional Medical Center in the Emergency Room, 7:00 p.m. – 7:00 a.m. shift. She commutes 2 ½ hours each way from her home to the hospital. She has been there a little over three years.

Ms. Retorick relates being on the following medications: Lopressor, for blood pressure, Lasix, Neurontin, for restless legs, and Benadryl, for eczema. She reports having a thyroid problem which relates to heart palpitations and also relates that her Circadian Rhythm may be off.

Background information indicates that she was born in Central Pennsylvania. There were five children born to her parents, three older than she, and one younger. Her next older sister died from cancer (7/05).

She describes her family as good, with her parents being somewhat strict. There was no abuse or neglect. Her dad worked as a Supervisor of Housekeeping Services at Penn State University. Her mother worked at a pre-school program. There is no evidence of any abuse or neglect nor any evidence of any drug or alcohol use, misuse or abuse in her family. Basically, she experienced a normal, typical childhood.

Dawn reports liking school and indicates that she was an Honor Roll student. There is no pattern of any detentions, suspensions or expulsions. She graduated high school in 1979. There was no military service.

She began her nursing program in Phillipsburg – a hospital-based program. She completed her RN Degree in 1982 without incident. As she progressed through her RN career, her patient care responsibilities increased.

She was hired as an RN at Clearfield Hospital in June 1982. She was at that hospital working as an RN for approximately 20 years (1982-2002). She reports no difficulties at the hospital until Ms. Thelma Stratton, RN started as the Intensive Care Unit (ICU) Supervisor.

Review of Dawn’s Performance Evaluations from 1982 through 2001 are satisfactory. Apparently, their performance evaluation process involves both a quantitative and qualitative

approach. Quantitatively, she received Satisfactory to Above Average ratings, meeting the position's requirements and, at times over those years, exceeding the position requirements. Some of the comments include, "...able to work at ICU with confidence regarding actions taken in emergencies, positive attitude, self-starter, continues through on her own, functions well in her role as ICU nurse, makes sound judgments... is good member of the team, works well with other ICU staff members as a team, handles all situations well, contributes to overall functioning of the unit on a day-to-day basis, functions well as both staff and Charge Nurse, is a good ICU nurse, she identifies problems...and possible solutions, makes excellent decisions as Charge Nurse, she cares about the place and its people...stable force on evening (shift), excellent critical care skills and knowledge, conscientious, is an efficient Charge Nurse, efficiently oversees personnel and patients, functions well in emergent situations."

The sole evaluation provided by Thelma Stratton, dated 8/13/02, is the only evaluation over the years that Ms. Retorick commented on in her defense. The manager/supervisor's evaluation comments include an incident of transcription error, medication error, as well as Ms. Retorick having "difficulty mentoring in a positive manner." An area of improvement is noted and includes the need to "refrain from discussing Union Business on Company time."

Included with the packet of Performance Evaluations from Clearfield Hospital are letters from peers. Letters were reviewed from Bonnie Maines, Karin Lucas, Diana Dale, Brenda English, and Cheryl Smeal. Ms. Smeal seems to have summarized the sentiments presented by the others when she wrote, "...you have to realize they are responsible for the patients' lives when they are in charge. They have their own patients' lives, plus the lives of patients under the other nurses' care. This is an awesome responsibility. They cannot watch everything another nurse does when they have their own critical patient/s that need/s their attention...Dawn and Fran are very caring, sensitive people..."

Evaluations from Carlisle Regional Medical Center from November 2002 through February 2003 note that Ms. Retorick consistently meets expectations/exhibits behavior. A note is made that she "takes personal responsibility for ensuring all areas are safe and clean while providing a friendly and caring atmosphere. By November 2005, she received the highest rating with a comment, "provides direction to ancillary/professional personnel."

In her deposition of August 2005 and my interview with her in February 2006, Ms. Retorick identified the stressors she dealt with prior to her leaving her position in November 2002. She identified the specific factual allegations included in the Complaint, in addition to her attempts to have those addressed by administrative, supervisory, and managerial staff. She referred to her attempts to resolve issues using the system, filing appropriate notifications, using the Grievance Process, meet and discuss and mediation, saying, "it was hopeless."

In her interview of February 2006, she talked about her situation during those years. She reported being responsible for "everything that happened on my shift." She admits to being worried about her license being compromised in some fashion, saying, "if they mess up and something happened, they would come back and take my license." She felt violated by the ICU manager, who shared information with other staff. She reported her judgment not being trusted

and being undermined. She talked about her professional integrity being questioned. She was cited for a medication error when not on duty. She felt humiliated and embarrassed. She felt singled out and discriminated against, referring to having her personal time compromised. She referred to her need to work through lunches and breaks because of insufficient and unqualified ICU staff and being able to meet continuing education credits.

She describes symptoms consistent with depression, including a sense of helplessness and hopelessness. She said, "I was a wreck." She felt demeaned and degraded and experienced constant turmoil. Anxiety symptoms were noted through her experiencing continuing apprehension and tenseness, in addition to sleep problems. She talked about feeling emotionally abused and in a state of chronic vigilance in that she could not predict her work environment from day to day. She felt singled out in that information was shared with other staff and "people were talking about you." Socially and personally, she talked about her marital relationship being affected, and "almost came to a divorce." She was unavailable to assist her husband raising their children. As the situation progressed, she continued to experience lack of support and said, "I couldn't take it anymore...there was too much turmoil...they forced me out of my job by all of the things they were doing...." She felt humiliated in a meeting in the September/October 2002 timeframe in that she was embarrassed in that meeting which was with a "room full of peers." She felt no administrative support and basically identified herself as a "persona non grata."

Review of her medical records from 1996 through 2005 identify her having dermatitis, allergic rhinitis, arthralgia, and other minor difficulties such as sinus infections and sore throats from 1996 through 1999. She did have borderline high blood pressure identified in 1998. In 1999, the records indicate that she was experiencing headaches, elevated blood pressure, and her gastrointestinal reflux disease (GERD) was no longer controlled with medications. By the end of 1999, her headaches were noted to be severe. These conditions continue with some relief noted over the years. In 2002, the record (July) reflects "working a lot (as) ICU nurse with little time for much else," and by August the records state "burned out with work." Ms. Retorick did not present any psychological or emotional symptoms needing of medication. It appears that she converted her stress into physical symptoms. After 2002, there is no reference to headaches.

Frances Selvage is currently working at Carlisle Regional Medical Center on a 7:00 p.m. to 7:00 a.m. shift in the Emergency Room. She works 76 hours every two weeks and like Dawn Retorick, commutes from Clearfield County to Carlisle. She has partial custody of two grandchildren, ages 12 and 8, and has the children on Sundays from 10:00 a.m. until 7:00 p.m. when she has to work at the hospital and the entire weekend, Friday through Sunday, when she does not work. She reported that her daughter, the mother of the children, was in an accident in 2002 and experienced a brain injury, with short-term memory loss.

Frances began her interview in an apparent normal way. She did not evidence any acute distress and her presentation was unremarkable. There was no evidence or sign of any major affective, cognitive, or behavioral problem. Initially, there were no symptoms or signs of any depression. However, as the interview progressed, she became more anxious and depressed, and at times was tearful when recalling some of her experiences at Clearfield Hospital. Her discussing experiences during that timeframe continue to be emotional triggers.

Background information obtained indicates that she was born and raised in Clearfield County. She is the oldest of three children, having two younger brothers. She felt loved by both parents. She describes her family as "Italian," and described dad as a "bit distant." There was no abuse or neglect. There is no evidence of any drug or alcohol use, misuse or abuse.

Educationally, she attended public schools, from kindergarten through 4th, and Catholic School from 5th through the 12th. She related positively with teachers and administrators. There were no disciplinary problems. She had friends and she was an Honor Roll student. She graduated high school at age 17. In 1966, Fran started the Clearfield Hospital School of Nursing Program, attending two years. In 1968, she married and they relocated to New Jersey.

She returned to Clearfield after five years. She bore three children and adopted a son. Her husband worked construction in New Jersey and was away from home a lot. She was a stay-at-home mom during that time. She began to take part-time classes beginning in 1989 and received her Bachelor of Nursing Degree in 1993. She reports working at Clearfield Hospital from 1993 without any problem until November of 2002. Review of her Performance Evaluations reflect her being a dedicated, responsible, and professional nurse.

She enjoyed working in the Intensive Care Unit, saying, "the ICU was your family. It was a small town...your work family were your stress relievers...we were always there for each other...." She took pride in her work and enjoyed caring for her patients.

Her current medications include Norvasc, Lexapro, and Benicar. She has been taking some sort of antidepressant medication since her difficulties began at Clearfield Hospital.

Frances presented the same concerns, issues, and experiences, as did Dawn Retorick. She notes that when Thelma Stratton became Unit Supervisor, "everything changed." She talked about frustrations having an LPN assigned to the Intensive Care Unit without having the necessary experience and training needed to care for patients, resulting in potential "unpredictable crises."

Frances reports that she would worry, was chronically apprehensive, concerned about losing her license, and also would not eat in order to take care of patients during lunch breaks. She identified it going on for a number of months.

Ms. Selvage also indicated that her ability to be in charge was always questioned. She experienced a number of reactions to the same kinds of stressors noted above. She noted, for example, "it made me a nervous wreck (crying)." She went on to say, "patient families heard Thelma say things...." Frances admits to having expectations - professional expectations that people had to perform. She apparently has very high standards.

Ms. Selvage felt that she was being "abused for being a good nurse." As a result of the work environment during that time period, she experienced a number of reactions.

Physically, she reports an increase in blood pressure, chest pains, sleeplessness, feeling chronically nervous and anxious. She was especially concerned about potential citations

resulting in her license being compromised. Emotionally, she reports apprehensiveness, nervousness, frustration, and irritation concerning her feeling degraded, discounted, and humiliated.

Review of her medical records indicates that she was on antidepressant medication beginning in the fall of 1999. Dr. Ralph Cardamone was treating her hypertension. His notes indicate that in the Spring of 2002, she was experiencing a lot of stress and chest pain. There is a note in May stating, "she has been having a lot of stress at work."

Dr. Conrad was her primary care physician beginning in 1998. Ms. Selvage was on no anxiolytics nor antidepressants until May 1999. His records indicate Situational Anxiety and Sleeplessness. She was prescribed Xanax for anxiety, and Sonata for sleep. Elavil and Zoloft, in addition to Adavan, were also tried from 1999 through 2002. The records indicate Chronic Depression and Situational Anxiety in 2002. Her diagnosis was changed to Chronic Anxiety by the fall of 2002, shortly before she left Clearfield Hospital.

After leaving the hospital, she remained on Zoloft, had quit smoking for a period of time, her depression was stabilized, but she was placed on Lexapro, which is noted to be helping her. This suggests that her depressive disorder continues.

Review of Ms. Selvage's Performance Evaluations indicate a satisfactory rating. Comments include, "...she functions well as a Charge Nurse and Team Nurse...a flexible worker...has a somewhat abrupt personality and difficulty with coworkers on occasion...a very willing worker...provides comprehensive nursing care utilizing the nursing process...functions well in a critical care setting...provides excellent nursing care, functions as a patient advocate, maintains open lines of communication."

Her first negative review occurred in August 2002. It is noted that she "has a tendency to be excitable in emergency situations." Earlier evaluations do not contain a similar content or reference. In fact, a 2001 evaluation notes that she "functions effectively in emergency situations...."

Her 2002 evaluation also includes the following comment: "There is a problem in the Unit of hiring and retraining staff in the Unit and those leaving are refusing to accept positions in the ICU relate that it is because of their treatment and criticism from this employee...." It further states, "I have had three nurses leave the ICU staff and relate their reason for leaving was due to their treatment...criticism which they received from this employee...."

In August 2002, there is a comment that notes, "(she)...confronts and addresses (unreadable) such a manner as to promote a negative atmosphere and ...a disruptive environment in the Unit." A contrasting comment was noted in her 2001 Performance Evaluation: "fosters a positive work environment by acting as a role model and preceptor to all new staff, especially 3-11 personnel."

Letters were received from peers including Kevin Hallin, Cheryl Smeal, Bonnie Maines, Brenda English, Diana Dale, and Karin Lucas, all in support of Ms. Selvage.

Review of the Carlisle Regional Medical Center evaluation in 2004 indicates that Ms. Selvage "consistently meets expectations. The comment includes "serves as a role model and resource person to mentor new employees...." All the areas evaluated noted her performing and demonstrating the roles and responsibilities as a Charge Nurse and her consistently meeting expectations. A similar evaluation was noted in December 2005. There was a lower rating in the area of her needing to delegate, with that rating reflecting that she usually meets expectations.

Regarding the referral questions, my findings support the averment identified above, that is, that there was a direct and proximate result of the defendant's conduct in that both Frances and Dawn did experience emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, and irritability. Their anxiety and depression was noted, particularly France Selvage's, in a review of her medical records.

Regarding the third question, I believe, in my clinical judgment, that being in an environment so hostile and intolerable as the one these nurses experienced would result in a reasonable nurse leaving the position rather than staying. Any work situation that compromises a professional's ethics and challenges their professional integrity, creating the level of stress they experienced, is an unacceptable situation.

In conclusion, it is my clinical judgment, to a reasonable degree of psychological certainty, that the conditions noted in the Complaint were such that Ms. Selvage's and Ms Retorick's decisions to leave that environment were in theirs and their patients' best interests.

Respectfully,



Stanley E. Schneider, Ed.D.
Psychologist

March 20, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517
and U.P.S. EXPRESS

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your letter of March 15, 2007; I appreciate your courtesies in waiving the twenty (20) day notice requirements for service of the subpoenas on the three entities. Concerning the Carlisle Subpoena, while we forwarded you an intent to serve a subpoena upon Carlisle Hospital in October of 2005, our records do not indicate that we served the subpoena, and Carlisle Hospital has confirmed that it does not have record of a subpoena ever being served upon it. This was an error on our part and we now would like to serve the subpoena. I can assure you that we do not have any records from Carlisle Hospital in our files concerning the plaintiffs. Given this additional information, kindly advise whether you will now agree to waive the twenty (20) day notice period for the Carlisle Hospital subpoena. If your clients have privacy concerns concerning their employment records, we have a Protective Order in place that should allay their concerns. I would be glad to treat all of the plaintiffs' employment records from Carlisle Hospital with confidentiality and mark copies thereof as such pursuant to that Order if requested to do so.

If I do not hear from you concerning the Carlisle records by Wednesday, March 21, I will request the Court to rule on your objections to the Subpoena. I note that we requested that the plaintiffs sign an authorization for the release of their employment records with our First Request for Production of Documents (request 28 and attached authorization) which were served on November 3, 2004; however, as discussed below, this authorization was never provided to us.

Concerning the statement in your letter that discovery in this matter closed with the filing of our Motion for Summary Judgment last year, could you kindly advise me as to the basis for this contention. In Clearfield, discovery either closes when the parties agree to close discovery or when the Court sets a date for the close of discovery. We have not agreed upon a date for the close of discovery and there has not been a Court order setting such date. Please contact me today or tomorrow to discuss an agreed-upon date for the close of discovery. I would like for us to come to an agreed date so that we need not disturb the Court with this issue. If I do not hear from you by Thursday, March 22, I will request the Court to schedule a status conference so that

March 20, 2007
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the Court can set a date for the close of discovery. There are discovery materials that still need to be produced pursuant to items that we have requested, but have never received from the plaintiffs despite several requests by phone and by letters dated January 6, 2005, January 25, 2005, February 11, 2005, and September 27, 2005. Specifically, we served document requests on the plaintiffs on November 3, 2004, including specific requests and authorizations for plaintiffs' signatures to obtain all of plaintiffs' medical records, as well as plaintiffs' tax and social security records from 1999 to the present. Rather than provide these authorizations in response to our discovery requests, you objected to providing these authorizations on the basis that the documents already "existed" and therefore the plaintiffs would not provide authorizations. We served a Second Request for Production of Documents on January 25, 2005, again requesting all of Plaintiff's medical records. In an attempt to resolve issues concerning the medical records, we only requested records dating back to 1980.

Concerning the tax records requested in our first document requests, we still need all of Fran Selvages W-2 forms from 1999 to the present and Dawn Retorick's W-2 forms for 2005 to the present (2006). While plaintiffs finally provided us with Ms. Retorick's W-2 Forms from 1999 to 2004 on October 7, 2005, the plaintiffs still did not produce any of Ms. Selvages W-2s at that time on the stated basis that providing Ms. Retorick's W-2s was sufficient to determine both of the plaintiffs incomes for those years. We are, however, entitled to both of the plaintiffs' tax records and W-2 forms so that we can accurately ascertain their incomes. When I again requested the remainder of the tax records during our telephone discussion last week, you indicated that you may or may not provide these documents, although they were requested over 2 years ago. You stated that you believed the plaintiffs had already signed authorizations for their tax records. However, as I noted above, these authorizations were never provided to us.

In addition, I recently noted when reviewing the limited medical records that were provided to us that Fran Selvage's primary care physician is Dr. Cardamone. However, we were only provided records for Ms. Selvage dating back to 1998 (which is the earliest date for which medical records were received for Ms. Selvage from *any* physician) and the authorizations that you provided in October 2005 did not include any authorization for Dr. Cardamone's records. As such, I am enclosing herewith an authorization for Ms. Selvage so that we may obtain her records from Dr. Cardamone.

While I do not wish to do so, I will file a motion to compel on Thursday, March 21, if I do not receive by that date the plaintiffs' tax filings and W-2s for the missing years (Selvage years 1999-2006 and Retorick for years 2005-2006), signed authorizations that were originally requested in our first request for production of documents concerning plaintiffs' tax and social security records (I have enclosed herewith additional updated copies for your convenience), and a signed authorization from Ms. Selvage for Dr. Cardamone's records, also enclosed herewith. These are materials that I have been addressing as outstanding with you since they were first

March 20, 2007

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requested in our document requests dated November 3, 2004 and January 25, 2005, but have never received.

I also enclose herewith a request to supplement your previous responses to interrogatories and document requests. This includes, but is not limited to, documents provided to or exchanged with your experts, your expert's CV, and any of plaintiff's Carlisle records in yours or plaintiff's custody or control.

Finally, could you advise whether you would consent to a motion for an examination of each of the plaintiffs by a psychiatric expert?

I apologize for the tone of this letter, as we have had a cordial relationship throughout this litigation. However, your recent position that discovery is closed with the filing of our summary judgment motion last year combined with the failure of plaintiffs to properly or completely produce documents responsive to discovery requests that are several years old and after many, many attempt to obtain same has forced me to take this route.

As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,



S. Elaine Diedrich

SED/mfh

Enclosures

cc: John K. Gisleon, Esq. (w/o enc.)

Terri I. Patak, Esq. (w/o enc.)

March 26, 2007

S. Elaine Diedrich
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West Long, LLC
105 North Front Street, Suite 205
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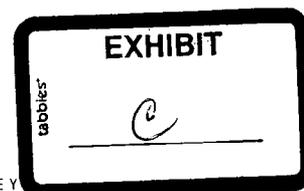
**VIA FAX (717) 234-7517
and U.P.S. EXPRESS**

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your recent correspondence. As a follow-up on two issues which I raised in my letter of March 20, 2007, could you advise whether you consent to allowing our psychiatrist to examine the plaintiffs? He is available to do so this weekend and will, of course, go to Clearfield for the examinations. We would like to schedule the examinations for Saturday, March 31, at 10:00 a.m. If plaintiffs are not available on Saturday, our psychiatrist is available on Sunday, April 1. Please advise if this is acceptable to you and whether the schedule works for plaintiffs. If I do not hear from you by tomorrow afternoon, I will go ahead and schedule a motion to be heard by the Court requesting an order to have the plaintiffs examined by our psychiatrist.

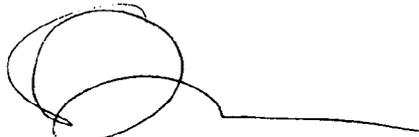
Concerning the close of discovery, we do not believe there is any doubt that discovery in this case was not closed simply because we filed a summary judgment motion. We have never received a contention such as this from counsel. As I discussed in my previous correspondence, the practice in Clearfield County is that counsel agrees on a date for the close of discovery. If they cannot agree upon a date, the Court will hold a status conference and set a date. I would also note that the great majority of discovery that has been done since our summary judgment motion concerns plaintiffs' alleged damages which were not addressed in our motion. Could you let us know if you will agree that discovery in this matter has not closed? If so, we would like to come to an agreement with you as to a date for the close of discovery. If we cannot agree upon a date, we could request the Court to determine a date for the close of discovery during our conference with the Court on April 20. If you will not agree that discovery is not closed in this matter, we will file a praecipe with the Court on Wednesday to request a status conference to determine a date for the close of discovery in this case.



March 26, 2007
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As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal tail extending to the right.

S. Elaine Diedrich

SED/mfh

cc: John K. Gisleson, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2007, a true and correct copy of the foregoing Motion to Compel Plaintiffs to Submit to a Mental Examination was sent, via facsimile and U.S. First Class Mail, postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich (PA Id. No. 84077)

3. On March 12, 2007, defendants requested that plaintiffs re-sign authorizations to obtain additional medical records of plaintiffs and served on plaintiffs' counsel notices of intent to serve subpoenas on two agencies for whom plaintiffs' had performed services, the Pennsylvania Department of Health and Carlisle Hospital, plaintiffs' employer since they resigned their positions with Clearfield Hospital. A true and correct copy of this correspondence is attached hereto as Exhibit "A."

4. In response to these requests, plaintiffs' counsel agreed to provide authorizations of his clients, but at the same time, asserted that "discovery is closed with the filing of [defendants'] Motion for Summary Judgment last year". A true and correct copy of plaintiffs' counsel's letter dated March 15, 2007 is attached hereto as Exhibit "B."

5. On March 20, 2007, defense counsel forwarded a letter to plaintiffs' counsel and included a request for plaintiff to advise as to the basis for his assertion that discovery was closed. In addition, defense counsel attempted to come to an agreement with plaintiffs' counsel that discovery in this matter was not closed and to agree upon a date for the close of discovery. A true and correct copy of the March 20, 2007 letter is attached hereto as Exhibit "C."

6. In a letter dated March 21, 2007, plaintiffs' counsel stated as support for his statement that with defendants' filing of its summary judgment motion in 2006 "under Rule 1003.52(2) [sic] the Defendants felt that discovery was complete as the Rule requires."

7. Plaintiffs' counsel presumptively means Rule 1035.2 (2), which provides only that "After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or (2) if,

after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issue to be submitted to a jury.” Pa. R.C.P. 1035.2.

8. Rule 1035.2 does not provide that with the filing of a motion for summary judgment, discovery is closed in a case. Such date is generally set by Court Order or agreement of the parties.

9. The parties have not entered into any agreements as to the close of discovery in this matter and there has been no order of court setting a date for the close of discovery.

10. Moreover, the discovery being sought in this matter by defendants deals largely with damages, which had nothing to do with defendants’ summary judgment motion.

11. On March 26, 2007, defense counsel forwarded another letter to plaintiffs’ counsel requesting whether he would agree that discovery was not closed in this case and requesting whether he would agree upon a date for the close of discovery. A true and correct copy of the March 26, 2007 correspondence is attached hereto as Exhibit “E.”

12. Plaintiffs’ counsel has not responded to these attempts to come to agreement on this issue.

13. As such, Defendants respectfully request this Honorable Court schedule a Status Conference whereby a date for the close of discovery may be set.

Respectfully Submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By: 
John K. Gisleson (PA Id. No. 62511)
S. Elaine Dieddrich (Pa Id. No. 84077)
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton

March 12, 2007

Kimberly L. Vasquez, Paralegal
Direct Dial 412-577-5293
Direct Fax 412-765-3858
E-mail: kvasquez@schnader.com

James J. West, Esquire
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101

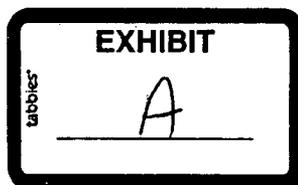
RE: Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital;
Lois Eisenman, Director of Nursing; Jackie Stone, Vice President
of Nursing; and Thelma Stratton, ICU Unit Manager
GD 03-393

Dear Mr. West:

Enclosed please find a copy of Defendant's Notice of Intent to Serve four (4) Subpoenas to Produce Documents and Things for Discovery Pursuant to Rule 4009.21, the original of which we are sending to the Prothonotary for filing today. Copies of the subpoenas to be served are attached to the enclosed Notice.

As we discussed by phone, you have agreed to review these subpoenas and advise as to whether or not you would be willing to waive the twenty-day objection period as to any or all of these subpoenas. In the absence of such a waiver or receipt of your written objection(s), the subpoenas will be served as reflected on the enclosed Notice.

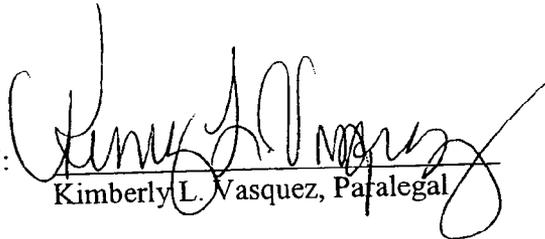
Finally, I am including several medical authorizations requiring your clients' signatures. As I mentioned, you had previously provided us with authorizations, however they are either outdated, or the providers require their own specific release. Please review these as well and, if acceptable to you, kindly have each of the plaintiffs sign them and return them to me. We will, of course, provide you with copies of any records we obtain using these authorizations.



Thank you for your cooperation. Please feel free to call should you have any questions.

Very truly yours,

SCHNADER, HARRISON, SEGAL & LEWIS, LLP

BY: 
Kimberly L. Vasquez, Paralegal

/KLV
Enclosures

JAMES J. WEST, LLC

105 North Front Street, Suite 205

Harrisburg, PA 17101

Telephone: (717) 233-5051

Facsimile: (717) 234-7517

James J. West

jwest@jwestlaw.com

March 15, 2007

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

RE: Retorick/Selvage v. Clearfield Hospital

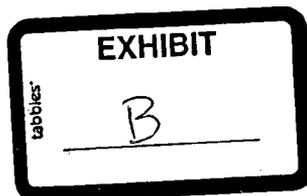
Dear Elaine:

I received the materials you forwarded to me. Even though discovery is closed with the filing of your Motion for Summary Judgment last year, I am concurring in many of the requests and would expect the same courtesy as we prepare for trial.

Insofar as your request to issue subpoenas to Olsten Health Services, Gentiva Health Services and the PA Department of Health, I would advise that you can issue those immediately so long as I receive copies of any documents obtained pursuant to the subpoenas.

I do not consent to the subpoena of the Carlisle Hospital. This was previously done, obviously presented a delicate situation for the Plaintiffs, and it is unnecessary to obtain these same documents a second time. Check your file, I believe it will confirm that those documents have previously been subpoenaed.

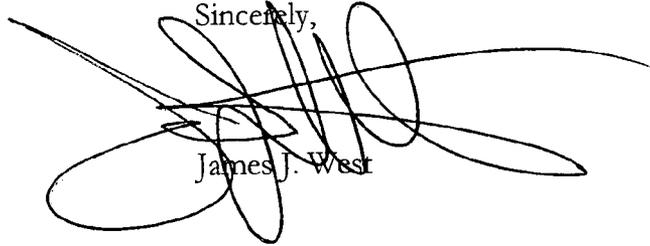
Notwithstanding the fact that we have previously filed consent forms for medical records several years ago, I have acquiesced in your recent request and have sent the new consent forms that you have forwarded to me to my clients for signature and return to you. I have asked them to sign the forms and that if they have any immediate problem to contact me and I am attempting to do this as expeditiously as possible. I first received your forms this morning by fax.



S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Page 2
March 15, 2007

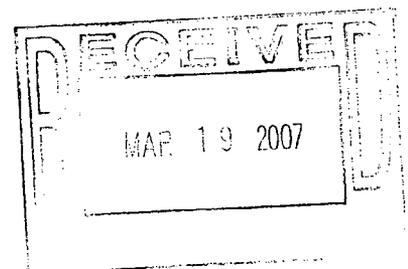
If there is any question regarding this letter, please contact me personally and immediately. Best regards.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right. The signature is positioned above the printed name "James J. West".

James J. West

JJW/jmb



March 20, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

*VIA FAX (717) 234-7517
and U.P.S. EXPRESS*

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your letter of March 15, 2007; I appreciate your courtesies in waiving the twenty (20) day notice requirements for service of the subpoenas on the three entities. Concerning the Carlisle Subpoena, while we forwarded you an intent to serve a subpoena upon Carlisle Hospital in October of 2005, our records do not indicate that we served the subpoena, and Carlisle Hospital has confirmed that it does not have record of a subpoena ever being served upon it. This was an error on our part and we now would like to serve the subpoena. I can assure you that we do not have any records from Carlisle Hospital in our files concerning the plaintiffs. Given this additional information, kindly advise whether you will now agree to waive the twenty (20) day notice period for the Carlisle Hospital subpoena. If your clients have privacy concerns concerning their employment records, we have a Protective Order in place that should allay their concerns. I would be glad to treat all of the plaintiffs' employment records from Carlisle Hospital with confidentiality and mark copies thereof as such pursuant to that Order if requested to do so.

If I do not hear from you concerning the Carlisle records by Wednesday, March 21, I will request the Court to rule on your objections to the Subpoena. I note that we requested that the plaintiffs sign an authorization for the release of their employment records with our First Request for Production of Documents (request 28 and attached authorization) which were served on November 3, 2004; however, as discussed below, this authorization was never provided to us.

Concerning the statement in your letter that discovery in this matter closed with the filing of our Motion for Summary Judgment last year, could you kindly advise me as to the basis for this contention. In Clearfield, discovery either closes when the parties agree to close discovery or when the Court sets a date for the close of discovery. We have not agreed upon a date for the close of discovery and there has not been a Court order setting such date. Please contact me today or tomorrow to discuss an agreed-upon date for the close of discovery. I would like for us to come to an agreed date so that we need not disturb the Court with this issue. If I do not hear from you by Thursday, March 22, I will request the Court to schedule a status conference so that

EXHIBIT

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March 20, 2007

Page 2

the Court can set a date for the close of discovery. There are discovery materials that still need to be produced pursuant to items that we have requested, but have never received from the plaintiffs despite several requests by phone and by letters dated January 6, 2005, January 25, 2005, February 11, 2005, and September 27, 2005. Specifically, we served document requests on the plaintiffs on November 3, 2004, including specific requests and authorizations for plaintiffs' signatures to obtain all of plaintiffs' medical records, as well as plaintiffs' tax and social security records from 1999 to the present. Rather than provide these authorizations in response to our discovery requests, you objected to providing these authorizations on the basis that the documents already "existed" and therefore the plaintiffs would not provide authorizations. We served a Second Request for Production of Documents on January 25, 2005, again requesting all of Plaintiff's medical records. In an attempt to resolve issues concerning the medical records, we only requested records dating back to 1980.

Concerning the tax records requested in our first document requests, we still need all of Fran Selvages W-2 forms from 1999 to the present and Dawn Retorick's W-2 forms for 2005 to the present (2006). While plaintiffs finally provided us with Ms. Retorick's W-2 Forms from 1999 to 2004 on October 7, 2005, the plaintiffs still did not produce any of Ms. Selvages W-2s at that time on the stated basis that providing Ms. Retorick's W-2s was sufficient to determine both of the plaintiffs incomes for those years. We are, however, entitled to both of the plaintiffs' tax records and W-2 forms so that we can accurately ascertain their incomes. When I again requested the remainder of the tax records during our telephone discussion last week, you indicated that you may or may not provide these documents, although they were requested over 2 years ago. You stated that you believed the plaintiffs had already signed authorizations for their tax records. However, as I noted above, these authorizations were never provided to us.

In addition, I recently noted when reviewing the limited medical records that were provided to us that Fran Selvage's primary care physician is Dr. Cardamone. However, we were only provided records for Ms. Selvage dating back to 1998 (which is the earliest date for which medical records were received for Ms. Selvage from *any* physician) and the authorizations that you provided in October 2005 did not include any authorization for Dr. Cardamone's records. As such, I am enclosing herewith an authorization for Ms. Selvage so that we may obtain her records from Dr. Cardamone.

While I do not wish to do so, I will file a motion to compel on Thursday, March 21, if I do not receive by that date the plaintiffs' tax filings and W-2s for the missing years (Selvage years 1999-2006 and Retorick for years 2005-2006), signed authorizations that were originally requested in our first request for production of documents concerning plaintiffs' tax and social security records (I have enclosed herewith additional updated copies for your convenience), and a signed authorization from Ms. Selvage for Dr. Cardamone's records, also enclosed herewith. These are materials that I have been addressing as outstanding with you since they were first

March 20, 2007
Page 3

requested in our document requests dated November 3, 2004 and January 25, 2005, but have never received.

I also enclose herewith a request to supplement your previous responses to interrogatories and document requests. This includes, but is not limited to, documents provided to or exchanged with your experts, your expert's CV, and any of plaintiff's Carlisle records in yours or plaintiff's custody or control.

Finally, could you advise whether you would consent to a motion for an examination of each of the plaintiffs by a psychiatric expert?

I apologize for the tone of this letter, as we have had a cordial relationship throughout this litigation. However, your recent position that discovery is closed with the filing of our summary judgment motion last year combined with the failure of plaintiffs to properly or completely produce documents responsive to discovery requests that are several years old and after many, many attempt to obtain same has forced me to take this route.

As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,



S. Elaine Diedrich

SED/mfh
Enclosures

cc: John K. Gisleson, Esq. (w/o enc.)
Terri I. Patak, Esq. (w/o enc.)

JAMES J. WEST, LLC

105 North Front Street, Suite 205

Harrisburg, PA 17101

Telephone: (717) 233-5051

Facsimile: (717) 234-7517

James J. West

jwest@jwestlaw.com

March 21, 2007

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

**VIA FACSIMILE AND FIRST CLASS
MAIL**

RE: Retorick/Selvage v. Clearfield Hospital

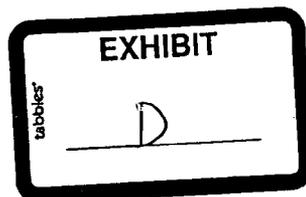
Dear Elaine:

I was very surprised by the tone of today's letter especially since I have been working with you on obtaining additional discovery you had not received because subpoenas, releases that I had my clients consent to or sign at your request were not in proper form or had expired without compliance. Frankly, I thought I was being generous in my assistance.

I felt that the matters you raise today concerning medical records and W-2 forms were complied with to your satisfaction based on my letters and enclosures of June 6, 2005 and October 7, 2005. To my recollection, I have heard nothing since those materials were sent to you. Moreover, since you moved for summary judgment last year (without previously contacting me) it was clear to me that under Rule 1003.52(2) the Defendants felt that discovery was complete as the Rule requires.

In any event, I have reviewed your letter received this morning and without arguing as to why this would come up for the first time after a two year hiatus, I am attempting to give you additional information concerning W-2's that have been issued after the discovery request was answered. In addition, I am providing you new waiver forms executed by the Plaintiffs which will again allow you to seek additional information. I would also call to your attention that the H&R Block materials I previously provided to you contains itemized information concerning Fran Selvage's W-2 forms. This enclosing information can be summarized as follows:

1. Authorization for Release of Information directed to Philipsburg Hospital signed by Frances Selvage;



S. Elaine Diedrich, Esquire

Page 2

March 21, 2007

2. Authorization for Release of Information directed to Dr. Donald Conrad signed by Frances Selvage;

3. Authorization for Release of Information directed to Ralph Cardamone, M.D. signed by Frances Selvage;

4. Authorization for Release of Information directed to Dr. Domingo Tan signed by Frances Selvage;

5. Authorization for Release of Information directed to Milton S. Hershey Medical Center signed by Dawn Retorick;

6. Request for Social Security Earnings Information signed by Frances Selvage;

7. Request for Social Security Earnings Information signed by Dawn Retorick;

8. 1999 through 2006 W-2's for Frances Selvage; and

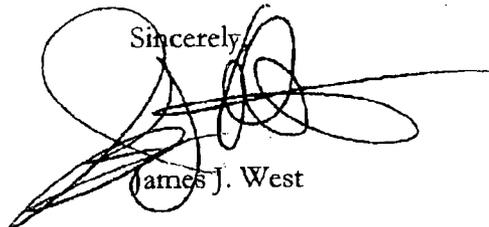
9. 2005 and 2006 W-2's for Dawn Retorick.

I am also enclosing a copy of my expert's curriculum vitae which I obtained for you today. I believe all other information Dr. Schneider considered in forming his opinion is available to you. If I am incorrect, please let me know immediately.

I believe I will have additional requests for you as the case approaches trial but I doubt that will be before next week. Again, having noticed this for trial on December 11, 2006, I was very surprised to get your letter this morning indicating that you believed discovery was open. I will gladly update matters and even help in those matter where you have not gotten compliance with subpoenas we previously consented to or not used the waiver forms in a timely fashion, but my clients are extremely anxious, after four years, to get this case to trial. I know you can understand that.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "James J. West", written over a printed name. The signature is stylized and somewhat messy.

James J. West

JJW/jmb
Enclosures

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: Frances Salvage SSN: 195-38-9930 DOB: 01/04/49

Address: 302 Merrill Street City: Clearfield State: PA Zip Code: 16830

I. General Release.

I hereby authorize _____ to disclose the information set forth in Section IV of _____
[Name and address of record source: e.g., Employer]

this Authorization for the period from _____ to _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

- a.) Person(s) authorized to disclose the information: Philipsburg Hospital
[Name of the Provider: Hospital, Doctor, Insurance Co.]
- b.) Information to be disclosed: The information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____
- c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: Schnader, Harrison, Segal & Lewis, LLP
[Name of MCS Client]

I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

- d.) Purpose of this request: At my request.
- e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____
- f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.
- g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.
- h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Frances Salvage _____ Date 3-21-07
Signature of Person Identified Above or his or her Authorized Representative / Guardian

By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.	
Provider	
<input type="checkbox"/>	<p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Car Insurance</u> Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Social Security Benefits</u> Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned individual.</p>
<input type="checkbox"/>	<p><u>School</u> Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>
V. Information Subject to the Health Information Release.	
Provider	
<input type="checkbox"/>	<p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Pharmacy</u> Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party; from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical Insurance</u> Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input checked="" type="checkbox"/>	<p><u>Medical</u> Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: Frances Selvage SSN: 195-38-9930 DOB: 01/04/49
Address: 302 Merrill Street City: Clearfield State: PA Zip Code: 16830

I. General Release.

I hereby authorize _____ to disclose the information set forth in Section IV of _____ of _____ [Name and address of record source: e.g., Employer] this Authorization for the period from _____ to _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

- a.) Person(s) authorized to disclose the information: Dr. Donald Conrad
[Name of the Provider: Hospital, Doctor, Insurance Co.]
 - b.) Information to be disclosed: The Information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____
 - c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: Schnader, Harrison, Segal & Lewis, LLP
[Name of MCS Client]
- I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.
- d.) Purpose of this request: At my request.
 - e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____.
 - f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.
 - g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.
 - h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Frances Selvage _____ Date 3-21-07
Signature of Person Identified Above or his or her Authorized Representative / Guardian

By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.

<input type="checkbox"/>	<u>Provider</u>	<p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>		<p><u>Car Insurance</u> Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>		<p><u>Social Security Benefits</u> Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned individual.</p>
<input type="checkbox"/>		<p><u>School</u> Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>		<p><u>Other</u></p>

V. Information Subject to the Health Information Release.

<input type="checkbox"/>	<u>Provider</u>	<p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>		<p><u>Pharmacy</u> Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party; from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>		<p><u>Medical insurance</u> Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input checked="" type="checkbox"/>		<p><u>Medical</u> Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>		<p><u>Other</u></p>

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: Frances L. Selvage SSN: 195-38-9930 DOB: 1/4/49
Address: 302 Merrill Street City: Clearfield State: PA Zip Code: 16830

I. General Release.

I hereby authorize _____ to disclose the information set forth in Section IV of _____ of _____ [Name and address of record source: e.g., Employer]
this Authorization for the period from _____ to _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

- a.) Person(s) authorized to disclose the information: Ralph Cardamone, M.D.
[Name of the Provider: Hospital, Doctor, Insurance Co.]
 - b.) Information to be disclosed: The information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____
 - c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: Schnader Harrison Segal & Lewis, LLP
[Name of MCS Client]
- I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.
- d.) Purpose of this request: At my request.
 - e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____
 - f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.
 - g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.
 - h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Frances L. Selvage _____ Date 3-21-07
Signature of Person Identified Above or his or her Authorized Representative / Guardian

By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.

<input type="checkbox"/>	<u>Provider</u>	<p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>		<p><u>Car Insurance</u> Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>		<p><u>Social Security Benefits</u> Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned individual.</p>
<input type="checkbox"/>		<p><u>School</u> Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>		<p><u>Other</u></p>

V. Information Subject to the Health Information Release.

<input type="checkbox"/>	<u>Provider</u>	<p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>		<p><u>Pharmacy</u> Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party; from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>		<p><u>Medical Insurance</u> Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input checked="" type="checkbox"/>		<p><u>Medical</u> Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>		<p><u>Other</u></p>

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: Frances Selvage SSN: 195-38-9930 DOB: 01/04/49
 Address: 302 Merrill Street City: Clearfield State: PA Zip Code: 16830

I. General Release.

I hereby authorize Dr. Domingo Tan to disclose the information set forth in Section IV of _____
[Name and address of record source: e.g., Employer]
 this Authorization for the period from _____ to _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

- a.) Person(s) authorized to disclose the information: Dr. Domingo Tan
[Name of the Provider: Hospital, Doctor, Insurance Co.]
 - b.) Information to be disclosed: The information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____
 - c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: Schnader, Harrison, Segal & Lewis, LLP
[Name of MCS Client]
- I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.
- d.) Purpose of this request: At my request.
 - e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____.
 - f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.
 - g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.
 - h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Frances Selvage _____ Date 3-21-07
 Signature of Person Identified Above or his or her Authorized Representative / Guardian

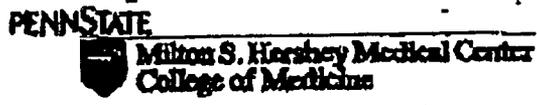
By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Car Insurance</u> Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Social Security Benefits</u> Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned Individual.</p>
<input type="checkbox"/>	<p><u>School</u> Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>
V. Information Subject to the Health Information Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Pharmacy</u> Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party, from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical Insurance</u> Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input checked="" type="checkbox"/>	<p><u>Medical</u> Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>

MAR-20-2007 12:25P FROM: TO:17172347517 P:1
Mar 21 2007 11:25PM James J. West LLC 717-234-7517 p.3
FEB-15-2007 01:00 PM P.02



AUTHORIZATION FOR RELEASE OF HOSPITAL RECORDS

Health Information Services, HA-24, P.O. Box 880, Hershey, Pennsylvania 17033-0880

Name of Patient Dawn Estorick Social Security # 195-52-2256

Date of birth 08 / 16 / 61 Medical Record Number _____ Phone # () _____

THIS AUTHORIZATION WILL NOT BE ACCEPTED UNLESS ALL ITEMS ARE COMPLETED. THE INFORMATION BEING DISCLOSED MAY INCLUDE HIV/AIDS, DRUG/ALCOHOL ABUSE & MENTAL HEALTH DATA.

I HEREBY AUTHORIZE **HERSHEY MEDICAL CENTER/UNIVERSITY HOSPITAL** TO

A. RELEASE TO OR **B. RECEIVE FROM**
(Circle One)

The MCS Group on behalf of Schnader, Harrison, Segal & Lewis LLP
(Name of authorized person, agency, institution, or other)

Forbes Avenue Pittsburgh, PA 15219
(Street) (City) (State) (Zip Code)

Reason for Request: Litigation

Type of information to be released consists of:

DISCHARGE DATE(S) ALL OUTPATIENT VISIT DATE(S)

Discharge Summary (see) History - Physical Operative Report

Diagnostic Test(s)
Indicate Type of Test & Date

Other (please specify)

This consent is subject to revocation at any time except to the extent that the person who is to make the disclosure has already taken action in reliance on it. If you wish to revoke this authorization, you must do so in writing to the address at the top of this form, to the attention of the HMC Privacy Officer. If not previously revoked, this consent will terminate ninety (90) days from the date of signature. Failure to sign this form will not impact your right to receive care at Hershey Medical Center. Neither our treatment nor your payment is conditioned upon your signature on this form.

I hereby release the provider of said records from any legal responsibility or liability in connection with the release of the records indicated and herein.

[Signature]
Signature of Patient or Representative

3-21-07
Date

(Date/long if signed by other than Patient)

Witnessed - MUST BE SIGNED

PHONE _____

Note to recipient of information: This information has been disclosed to you from the records protected by Pennsylvania Law. Pennsylvania Law prohibits you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains.

REQUEST FOR SOCIAL SECURITY EARNINGS INFORMATION

1. From whose record do you need the earnings information?

Print the Name, Social Security Number (SSN), and date of birth below.

Name	<u>Frances L. Selvage</u>	Social Security Number	<u>195-38-9930</u>
Other Name(s) Used (Include Maiden Name)	<u>Frances Lombardo</u>	Date of Birth (Mo/Day/Yr)	<u>1/4/49</u>

2. What kind of information do you need?

- Detailed Earnings Information** For the period(s)/year(s): _____
 (If you check this block, tell us below why you need this information.)
- Certified Total Earnings For Each Year.** For the year(s): 1999 - 2006
 (Check this box only if you want the information certified. Otherwise, call 1-800-772-1213 to request Form SSA-7004, Request for Earnings and Benefit Estimate Statement)

3. If you owe us a fee for this detailed earnings information, enter the amount due using the chart on page 3 A. \$ 31.00

Do you want us to certify the information? Yes No

If yes, enter \$15.00 B. \$ 15.00

ADD the amounts on lines A and B, and enter the TOTAL amount C. \$ 46.00

- ? You can pay by CREDIT CARD by completing and returning the form on page 4, or
- ? Send your CHECK or MONEY ORDER for the amount on line C with the request and make check or money order payable to "Social Security Administration"
- ? DO NOT SEND CASH.

4. I am the individual to whom the record pertains (or a person who is authorized to sign on behalf of that individual). I understand that any false representation to knowingly and willfully obtain information from Social Security records is punishable by a fine of not more than \$5,000 or one year in prison.

SIGN your name here (Do not print) > Frances L. Selvage Date 3-21-07

Daytime Phone Number _____
(Area Code) (Telephone Number)

5. Tell us where you want the information sent. (Please print) Schnader Harrison Segal & Lewis, LLP
 Name S. Elaine Diedrich, Esq. Address Suite 2700, Fifth Avenue Place
120 Fifth Avenue
 City, State & Zip Code Pittsburgh, PA 15222

6. Mail Completed Form(s) To: Exception: If using private contractor (e.g., FedEx) to mail form(s), use:

Social Security Administration Division of Earnings Record Operations P.O. Box 33003 Baltimore Maryland 21290-3003	Social Security Administration Division of Earnings Record Operations 300 N. Greene St. Baltimore Maryland 21290-0300
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MAR-20-2007 12:24P FROM:

TO:17172347517

P:1

Mar 21 2007 11:25PM James J. West LLC

717-234-7517

P.2

REQUEST FOR SOCIAL SECURITY EARNINGS INFORMATION

1. From whose record do you need the earnings information?

Print the Name, Social Security Number (SSN), and date of birth below.

Name Dawn L. Ratorick Social Security Number 195-52-2256
Other Name(s) Used (Include Maiden Name) Dawn Clark Date of Birth (Mo/Day/Yr) 8/16/61

2. What kind of information do you need?

Detailed Earnings Information (If you check this block, tell us below why you need this information.) For the period(s)/year(s):

Certified Total Earnings For Each Year. (Check this box only if you want the information certified. Otherwise, call 1-800-772-1213 to request Form SSA-7004, Request for Earnings and Benefit Estimate Statement) For the year(s): 1999 - 2006

3. If you owe us a fee for this detailed earnings information, enter the amount due using the chart on page 3 A. \$ 31.00

Do you want us to certify the information? Yes No
If yes, enter \$15.00 B. \$ 15.00

ADD the amounts on lines A and B, and enter the TOTAL amount C. \$ 46.00

- You can pay by CREDIT CARD by completing and returning the form on page 4, or
Send your CHECK or MONEY ORDER for the amount on line C with the request and make check or money order payable to "Social Security Administration"
DO NOT SEND CASH.

4. I am the individual to whom the record pertains (or a person who is authorized to sign on behalf of that individual). I understand that any false representation to knowingly and willfully obtain information from Social Security records is punishable by a fine of not more than \$5,000 or one year in prison.

SIGN your name here (Do not print) > Dawn L. Ratorick Date 3-21-07

Daytime Phone Number 714 345-6387 (Area Code) (Telephone Number)

5. Tell us where you want the information sent. (Please print) Schnader Harrison Segal & Lewis, LLP
Name S. Elaine Diedrich, Esq. Address Suite 2700, Fifth Avenue Place
City, State & Zip Code Pittsburgh, PA 15222 120 Fifth Avenue

6. Mail Completed Form(s) To: Exception: If using private contractor (e.g., FedEx) to mail form(s), use:

Social Security Administration
Division of Earnings Record Operations
P.O. Box 33003
Baltimore Maryland 21290-3003

Social Security Administration
Division of Earnings Record Operations
300 N. Greene St.
Baltimore Maryland 21290 0300

Form SSA-7050-P4 (1-2004) EF (01-2004)

03/21/2007 00:28 8147652111

H&R BLOCK

1 Wages, tips, other compensation 47690.93		2 Federal income tax withheld 9042.94		3 Social security wages 39708.22		4 Social security tax withheld 2461.91		5 Medicare wages and tips 39708.22		6 Medicare tax withheld 578.77	
3 Social security wages 47690.93		4 Social security tax withheld 3356.84		7 Medicare wages and tips 47690.93		8 Medicare tax withheld 692.52		Employer's name, address, and ZIP code CLEARFIELD HOSPITAL PO BOX 992 CLEARFIELD PA 16830			

7 Social security tips		8 Allocated tips		9 Advance EIC payment		10 Dependent care benefits		11 Nonqualified plans		12a See instructions for box 12		13 State wages, tips, etc. 47690.93		14 State income tax 1335.35		15 Local wages, tips, etc. 46794.21		16 Local income tax 487.97		17 State wages, tips, etc. 36592.16		18 Local wages, tips, etc. 36592.16		19 Local income tax 385.93	
------------------------	--	------------------	--	-----------------------	--	----------------------------	--	-----------------------	--	---------------------------------	--	--	--	--------------------------------	--	--	--	-------------------------------	--	--	--	--	--	-------------------------------	--

Employer's name, address and ZIP code
**FRANCES SELVAGE
302 MERRILL ST
CLEARFIELD, PA 168301408**

2001 W-2 Wage and Tax Statement
Copy B To Be Filed With Employee's FEDERAL Tax Return

19 State wages, tips, etc. PA 15995152	20 State income tax 1335.35	21 Local wages, tips, etc. CLEARFIELD	22 Local income tax 487.97
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1999 W-2 Wage and Tax Statement
Federal Filing Copy
Department of the Treasury - Internal Revenue Service

Francis L. Selvage
INTELSTAF HEALTHSERVICES(STAFFING)
1000 SOUTH ROONEY PARKWAY
LITTLE ROCK, AR 72204

13a Social Security number	13b Employer's identification number	13c State identification number	13d Federal identification number
111-3434096	FRANCIS L. SELVAGE		

2000 W-2 Wage and Tax Statement
Copy B To Be Filed With Employee's FEDERAL Tax Return

1 Wages, tips, other compensation 41474.17		2 Federal income tax withheld 7460.55		3 Social security wages 41474.17		4 Social security tax withheld 2571.40		5 Medicare wages and tips 41474.17		6 Medicare tax withheld 601.38	
---	--	--	--	-------------------------------------	--	---	--	---------------------------------------	--	-----------------------------------	--

Employer's name, address and ZIP code
**CLEARFIELD HOSPITAL
PO BOX 992
CLEARFIELD PA 16830**

2000 W-2 Wage and Tax Statement
Copy B To Be Filed With Employee's FEDERAL Tax Return

19 State wages, tips, etc. PA 15995152		20 State income tax 1161.28		21 Local wages, tips, etc. 42517.45		22 Local income tax 425.17	
---	--	--------------------------------	--	--	--	-------------------------------	--

2001 Federal Filing Copy and Tax Statement
Employee's Federal Income Tax Return

1 Federal income tax	2 Wages, tips, other compensation	3 Social security wages	4 Social security tax	5 Medicare wages and tips	6 Medicare tax	7 Social Security tax	8 Advance EIC payment	9 Nonqualified plans	10 Dependent care benefits	11 State wages, tips, etc.	12 State income tax	13 Local wages, tips, etc.	14 Local income tax
467.57	4229.25	4229.25	262.21	4229.25	61.32	4229.25				4229.25	118.42	4229.25	42.32

Employer's name, address and ZIP code
**INTELSTAF HEALTHSERVICES(STAFFING)
1000 SOUTH ROONEY PARKWAY
LITTLE ROCK, AR 72204**

Employer's identification number
111-3434096

Employee's name and address
**FRANCIS L SELVAGE
302 MERRILL ST.
CLEARFIELD, PA 16830**

Employee's social security number
195-38-9930

State and employer's state ID
PA 101006649

03/21/2007 00:20 8147652111

H&R BLOCK

PAGE 03

LW241

Copy B To Be Filed With Employee's FEDERAL Tax Return		2003	OMB No. 1545-0008
a Control number	1 Wages, tips, other comp.	2 Federal income tax withheld	
8580563	72881.66	9813.75	
b Employer ID number	3 Social security wages	4 Social security tax withheld	
	5 Medicare wages and tips	6 Medicare tax withheld	
251887146	73682.09	4568.28	
c Employer's name, address, and ZIP code			
CARLISLE REGIONAL MED CENTER 246 PARKER ST CARLISLE PA 17013			
d Employee's social security number			
195-38-9930			
e Employee's name, address, and ZIP code			
FRANCES L SELVAGE 302 MERRILL STREET CLEARFIELD PA 16830			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12	
		D 800.43	
13 Statutory employee	14 Other	12b Code	12c Code
		C 48.76	
Retirement plan	IRRS 354.64	12d Code	
X			
Third-party sick pay			
PA 251887146	73682.09	2081.57	
15 State Employer's state I.D. no.	16 State wages, tips, etc.	17 State income tax	
75633.33	737.01	CARLISLE	

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS
The information is being furnished to the Internal Revenue Service.

LW24UPAL1

Copy B To Be Filed With Employee's FEDERAL Tax Return		2004	OMB No. 1545-0008
a Control number	1 Wages, tips, other comp.	2 Federal income tax withheld	
8580526	85014.06	9164.53	
b Employer ID number	3 Social security wages	4 Social security tax withheld	
	5 Medicare wages and tips	6 Medicare tax withheld	
251887146	85014.06	5270.87	
c Employer's name, address, and ZIP code			
CARLISLE REGIONAL MED CENTER 246 PARKER ST CARLISLE PA 17013			
d Employee's social security number			
195-38-9930			
e Employee's name, address, and ZIP code			
FRANCES L SELVAGE 302 MERRILL STREET CLEARFIELD PA 16830			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12	
		D 800.43	
13 Statutory employee	14 Other	12b Code	12c Code
		C 48.76	
Retirement plan	IRRS 354.64	12d Code	
X			
Third-party sick pay			
PA 251887146	85084.70	2601.40	
15 State Employer's state I.D. no.	16 State wages, tips, etc.	17 State income tax	
75633.33	737.01	CARLISLE	

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS
The information is being furnished to the Internal Revenue Service.

Copy B To Be Filed With Employee's FEDERAL Tax Return		2002	OMB No. 1545-0008
a Control number	1 Wages, tips, other comp.	2 Federal income tax withheld	
8580620	7485.63	1255.28	
b Employer ID number	3 Social security wages	4 Social security tax withheld	
	5 Medicare wages and tips	6 Medicare tax withheld	
251887146	7565.38	469.05	
c Employer's name, address, and ZIP code			
CARLISLE REGIONAL MED CENTER 246 PARKER ST CARLISLE PA 17013			
d Employee's social security number			
195-38-9930			
e Employee's name, address, and ZIP code			
FRANCES L SELVAGE 302 MERRILL STREET CLEARFIELD PA 16830			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12	
		D 79.75	
13 Statutory employee	14 Other	12b Code	12c Code
Retirement plan		12d Code	
X			
Third-party sick pay			
PA 251887146	7565.38	211.81	
15 State Employer's state I.D. no.	16 State wages, tips, etc.	17 State income tax	
7565.38	75.63	CARLISLE	

Form W-2 Wage and Tax Statement Dept. of the Treasury - IRS
The information is being furnished to the Internal Revenue Service.

Copy B To Be Filed With Employee's FEDERAL Tax Return		2002	OMB No. 1545-0008
a Control number	1 Wages, tips, other compensation	2 Federal income tax withheld	
651	56006.06	10416.05	
b Employer ID number	3 Social security wages	4 Social security tax withheld	
	5 Medicare wages and tips	6 Medicare tax withheld	
25-0279346	56581.06	3508.03	
c Employer's name, address, and ZIP code			
CLEARFIELD HOSPITAL PO BOX 992 CLEARFIELD PA 16830			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a See instructions for box 12	
		E 575.00	
13 Statutory employee	14 Other	12b Code	12c Code
Retirement plan		12d Code	
X			
Third-party sick pay			
PA 25-0279346	56581.06	3985.00	
15 State Employer's state I.D. no.	16 State wages, tips, etc.	17 State income tax	
15995152	52996.06	1483.89	
18 Local wages, tips, etc.	19 Local income tax	20 Locality name	
7565.38	75.63	CLEARFIELD	

2002 W-2 Wage and Tax Statement Copy B To Be Filed With Employee's FEDERAL Tax Return

Department of the Treasury - Internal Revenue Service

Copy 2-To Be Filed With Employee's State, City, or Local Income Tax Return		2005	OMB No. 1545-0008
a Control number 8580488	1 Wages, tips, other comp. 84094.05	2 Federal income tax withheld 8412.28	
b Employer ID number (FIN) 251887146	3 Social security wages 84094.05	4 Social security tax withheld 5213.83	
	5 Medicare wages and tips 84094.05	6 Medicare tax withheld 1219.36	
c Employer's name, address, and ZIP code CARLISLE REGIONAL MED CENTER 246 PARKER ST CARLISLE PA 17013			
d Employee's social security number 185-38-9930			
e Employee's name, address, and ZIP code FRANCES L SELVAGE 302 MERRILL STREET CLEARFIELD PA 16830			
7 Social security tips	8 Allocated tips	9 Advance EIC payment	
10 Dependent care benefits	11 Nonqualified plans	12a Code	
13 Statutory employee Retirement plan Third-party sick pay	14 Other INS 281.07	12b Code C 395.32 12c Code 12d Code	
PA 251887146	84094.05	2572.51	
15 State Employer's state I.D. no.	16 State wages, tips, etc.	17 State income tax	
18 Local wages, tips, etc. 84692.48	19 Local income tax 846.80	20 Locality name CARLISLE	

Form W-2 Wage and Tax Statement

Dep. of the Treasury - IRS

2006 W-2 and EARNINGS SUMMARY

accurate Use **efile** Visit the IRS Web Site at www.irs.gov/efile

W-2 Wage and Tax Statement **2006**

Copy C for employer's records

Control number	Dept.	Corp.	Employer use only
580540 VLA	0780	858	A 28992

Employer's name, address, and ZIP code
CARLISLE REG MED CTR
361 ALEXANDER SPRING RD
CARLISLE, PA 17015

Employee's name, address, and ZIP code
FRANCES L SELVAGE
302 MERRILL STREET
CLEARFIELD, PA 16830

Employer's FED ID number 25-1887146	Employee's SSA number 195-38-9930
Wages, tips, other comp. 91179.86	Federal income tax withheld 9690.87
Social security wages 94200.00	Social security tax withheld 5840.40
Medicare wages and tips 94326.59	Medicare tax withheld 1367.73
Social security tips	Allocated tips
Advance EIC payment	Dependent care benefits
Nonqualified plans	12a See instructions for box 12 D 3146.73
Other 1984.59 PRETAX INS	12b 12c 12d
	13 Stat emp Ret plan Ind party sick pay X
State Employer's state ID no. TOTAL STATE	16 State wages, tips, etc.
State income tax 2685.45	18 Local wages, tips, etc.
Local income tax 941.92	20 Locality name TOTAL LOCAL

FRANCES L SELVAGE
302 MERRILL STREET
CLEARFIELD, PA 16830

Social Security Number: 195-38-9930

1 Wages, tips, other comp. 79459.58		2 Federal income tax withheld 13792.97	
3 Social security wages 81961.18		4 Social security tax withheld 8881.39	
5 Medicare wages and tips 81961.18		6 Medicare tax withheld 1188.48	
a Control number 808943	VLA 0780	Dept 0780	Employer use only 858 A 28917
b Employee's name, address, and ZIP code CARLISLE REG MED CTR 361 ALEXANDER SPRING RD CARLISLE, PA 17015			
h Employer's FED ID number 25-1887146		i Employee's SSN number 195-62-2256	
7 Social security tips		8 Advance EIC payment	
9 Advance EIC payment		10 Dependent care benefits	
11 Nonqualified plans		12a D 250.56	
13 Other 4002.80 PRETAX INS		13a 13b 13c	
13 State (incl. plan) party opt pay X X		13d	
m Employee's name, address and ZIP code DAWN L RETORICK 806 GRASSFLAT AVE MORRISDALE, PA 16858			
15 State Employer's state I.D. no. PA 251887146		16 State wages, tips, etc. 81961.18	
17 State income tax 2400.53		18 Local wages, tips, etc. 85798.47	
19 Local income tax 657.89		20 Locality name CARLISLE	
City or Local Filing Copy W-2 Wage and Tax Statement 2006 Copy 2 to be filed with employer's City or Local income tax return.			

LW2ALPALT

Employer's name, address, and ZIP code FEDERAL ...		2005	OMB No. 1545-0046
a Control number 8580491	1 Wages, tips, other comp. 71820.07	7 Federal income tax withheld 14726.80	
b Employer ID number (EIN) 251887146	3 Social security wages 74286.39	4 Social security tax withheld 4605.75	
c Employer's name, address, and ZIP code CARLISLE REGIONAL MED CENTER 246 PARKER ST CARLISLE PA 17013		5 Medicare wages and tips 74286.39	
6 Medicare tax withheld 1077.35		8 Employee's name, address, and ZIP code DAWN L RETORICK 806 GRASSFLAT AVE MORRISDALE PA 16858	
9 Employee's SSN number 195-62-2256		10 Advance EIC payment	
11 Social security tips		12a D 2366.32	
13 Other 3626.48		13a 13b 13c 13d	
13 State (incl. plan) party opt pay X X		13e	
14 State Employer's state I.D. no. PA 251887146		15 State wages, tips, etc. 74286.39	
16 State income tax 77641.45		17 Local wages, tips, etc. 776.29	
18 Local income tax		19 Locality name CARLISLE	

This information is being furnished to the Internal Revenue Service. Dept. of the Treasury - IRS

GUIDANCE ASSOCIATES OF PENNSYLVANIA

412 Erford Road, Camp Hill, PA 17011 (717) 732-2917; FAX: (717) 732-5375 Stanley E. Schneider, Ed.D.
20 Briarcrest Square, Suite 205, Hershey, PA 17033 (717) 533-4312 Director

CURRICULUM VITAE

Stanley E. Schneider, Ed.D., CAC, RCE

412 Erford Road
Camp Hill, PA 17011

(717) 657-0656 Home
(717) 732-2917 Office

PROFESSIONAL EXPERIENCE:

Guidance Associates of Pennsylvania (1973-present)
Camp Hill, PA Owner, Clinical Director, Psychologist

Pennsylvania Licensed Psychologist; Certified Addictions Counselor; Diplomate, Professional Academy of Custody Evaluators; Custody mediator; Expert testimony in civil and criminal cases; Litigation support; Continuing education to attorneys, judiciary, and practitioners on forensic psychology issues.

Forensic Psychology experience in:

Competency	Criminal Responsibility
Psychic Trauma	Workmen's Compensation
Personal Injury	Traumatic Reactions
Megan's Law	Child Custody Evaluations
Malingering/Deception	Social Security Disability
Child Abuse/Neglect	Termination of Parental Rights

Guidance Associates of Pennsylvania – Clinical Director

Supervise and coordinate programs and services provided by Guidance Associates:

Employee Assistance Programs. Contracts with local industry to provide counseling services to employees related to substance abuse and other problems affecting employee performance.

Outpatient Mental Health Services. Individual, family and marital therapy privately and contracted through insurance carriers.

Curriculum Vitae: Stanley E. Schneider

Page 2

Pennsylvania Department of State (2004-present)
 Bureau of Professional and Occupational Affairs Expert Witness
 Harrisburg, PA

Social Security Administration (1985-present)
 Office of Hearings and Appeals Medical Advisor/Expert Consultant
 Harrisburg, PA

Provide expert testimony as requested by Administrative Law Judge.

Bureau of Disability Determination (1985-present)
 Harrisburg, PA Clinical Evaluator

Harrisburg State Hospital (1980-1984)
 Harrisburg, PA Chief Psychologist
 Plan, organize and direct institutional psychological services.

Harrisburg State Hospital (1978-1980)
 Geriatric Treatment Center Psychological Services Manager
 Harrisburg, PA
 Head psychologist in geriatric treatment units.

Harrisburg State Hospital (1974-1977)
 Extended Care Center Director
 Harrisburg, PA
 Design, development, implementation and total administration of a 145 bed psychiatric unit.

Pennsylvania Department of Welfare (1972-1974)
 Harrisburg, PA Deputy Commissioner for Mental Retardation
 Create and implement state wide service delivery system for mentally retarded, institutional and community based program services.

Medical College of Pennsylvania (1971-1972)
 Department of Psychiatry Mental Retardation Coordinator

Southeastern Region of PA (1970-1971)
 Social Systems Analysis Project Program Associate

Philadelphia Association for Retarded Children
 Philadelphia, PA

Director, Professional Services (1970-1971)
 Coordinator of Rehabilitation Services (1969-1970)

Occupational Evaluation and Training Workshop (1965-1967)
 Milford, Massachusetts Director

Curriculum Vitae: Stanley E. Schneider

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RELATED EXPERIENCE:

Member, Highmark Behavioral Health Quality Improvement Committee (2003 – present)

Faculty, National Business Institute, Eau Claire, Wisconsin (2003 – present)

Adjunct Faculty, National College of the State Judiciary, University of Nevada, Reno, Nevada (1988-1990)

Faculty, Professional Education Systems, Incorporated, Eau Claire, Wisconsin (1988)

Hearing Officer, Pennsylvania Right to Education, Pennsylvania Department of Education (1975-1983)

Instructor, Hershey Medical Center, Department of Behavioral Science, Continuing Education (1975-1980)

Vice President, Dauphin County Mental Health/Mental Retardation, North Base Service Unit, Administrative Board (1974-1975)

Associate Professor, Burlington County Community College, New Jersey (1970-1971 Winter)

Instructor, Temple University, Department of Educational Psychology (1969-1970 academic year)

School Psychologist, Burlington County Vocational-Technical High School, Mt. Holly, New Jersey (1970-1971 academic year)

Consultant, Alexandria Community Mental Health Center, Alexandria, Virginia (1968-1969)

EDUCATION:

University of Maryland, Department of Counseling and Personnel Services, College Park, Maryland, Doctor of Education (1969)
Doctoral Dissertation: "The Effects of Work and Counseling on Chronic Psychiatric Patients with Differing Levels of Ego Strength"

Boston University, Graduate School of Education, Certificate of Advanced Graduate Study in Rehabilitation Counseling (1965)

Boston University, Graduate School of Education, Master of Education in Guidance and Counseling (1965)

University of Maine, Orono Maine, Bachelor of Arts (1962)

Curriculum Vitae: Stanley E. Schneider

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INTERNSHIPS:

Consultation: Alexandria Community Mental Health Center, Alexandria, Virginia (September 1967- January 1968)

Rehabilitation Counseling: Veterans Administration Outpatient Clinic, Day Treatment Center, Boston Massachusetts (January - June 1965)

Rehabilitation Counseling: Massachusetts Rehabilitation Commission, Boston District Office, Boston, Massachusetts (September - December 1964)

Eastern Middlesex Association for Retarded Children, Occupational Training Center, Reading, Massachusetts (January - June 1964)

HONORS AND AWARDS:

Nomination to "Who's Who in the East" 1977-1978 Edition
Election to Outstanding Young Men of America (1970)
Department of Health, Education and Welfare (SRS) Training Grants (1963-1965, 1967-1968)

PROFESSIONAL MEMBERSHIP/AFFILIATIONS:

American College of Forensic Psychology
Association of Family and Conciliation Courts
American Psychological Association
Pennsylvania Psychological Association (Fellow)
Member: Child Custody Determination Project Group

CERTIFICATION:

Pennsylvania Licensed Psychologist (No. PS 272 L)
National Register of Health Service Providers in Psychology (No. 21934)
Registered Custody Evaluator and Academy Fellow,
Professional Academy of Custody Evaluators (No. 10158)
Diplomate, American College of Forensic Examiners (No. 17445)
Diplomate, American College of Certified Forensic Counselors (No. F19306)
Association of State and Provincial Psychology Boards, Professional Qualification in Psychology (No. 2534)
Certified Addictions Counselor Diplomate (PA No. 1640)
Permanent Certification, School Psychologist, New Jersey (June 1971)

Curriculum Vitae: Stanley E. Schneider

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PROFESSIONAL DEVELOPMENT:

Extensive participation in various symposia, conferences, task forces, steering committees, and professional meetings.

PRESENTATIONS AND PUBLICATIONS:

"Psychological Factors in Child Abuse", presented at Medical and Scientific Evidence Course, National Judiciary College, Reno Nevada, Fall, 1988

"Facilitating Settlement and Litigation: Utilization of Psychological Evaluation in Assessing the Validity and Viability of Symptoms" presented to Attorneys, Seminar for Guidance Associates of Pennsylvania, Spring, 1988

Zeigler, P. L., Hampton, M. J., Rapkin, W.R., Rothman, S.A., Schneider, S.E., Pennsylvania Worker's Compensation Law and Practice, Professional Education Systems, Eau Claire, WI, 1988

"Psychology of Workmen's Compensation Cases", presented at Seminar: Pennsylvania Worker's Compensation Law and Practice, Professional Education Systems, Pittsburgh, Harrisburg, Philadelphia, Fall 1988

"The MMPI: Its Use, Abuse and the Secrets Behind It" presented to the Dauphin County Bar Association Family Law Section, Harrisburg, PA, November, 1988

"What Every Estate Planner Needs to Know About Death and Dying, and Those Who Have Experienced Loss, Grief and Mourning", Real Property, Probate and Trust Law, Fall, 1988

"Special Stresses in Medical Practices" presented to Medical Office Managers' Network, Camp Hill, PA, November, 1989

"Occupationally Related Stress Factors" presented to Pennsylvania Shorthand Reporters Association, Camp Hill, PA, February, 1990

"The HR - EAP Interface" presented to Harrisburg Area Personnel Association, Camp Hill, PA, March, 1990

"Our Schools and Community: ...Partners in a Drug-Free Environment" presented to Albert Gallatin Area School District, Masontown, PA, April, 1991

"Employee Involvement Programs" presented to Harrisburg Area International Personnel Management Association and The American Society for Public Administration, Mechanicsburg, PA, May, 1991

Curriculum Vitae: Stanley E. Schneider

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"Healthy Family Living - A Plan for the Nineties" presented to The Underwriter's Group, Harrisburg, Pa, September 1991.

"Employee Assistance Program" presented to USDA Soil Conservation Service, Harrisburg PA, November 1991.

"Family Assistance Programs", presented to GPU System Human Resources Conference, Reading, PA, December, 1991.

"Work Related Stress Management Strategies", presented to Pennsylvania Hospital Insurance Company, Mechanicsburg, PA, January, 1992 and to The Underwriters Group, Harrisburg, PA, May, 1992.

"Psychological Aspects of Retirement", presented to General Public Utilities, Three Mile Island, Middletown, PA, March, 1992.

"Dealing with Stress in the Workplace", presented to Rotary International, Mechanicsburg, PA, May, 1993.

"Keeping Ourselves Together: Self Esteem and Stress Management", presented to B'nai B'rith Senior Housing International Conference, Harrisburg, PA, October, 1993.

"The Economics of Mental Health, 1993", presented to Health America/Mainstay Conference, Hershey, PA, October, 1993.

"Stress and Violence in the Workplace", presented to Carlisle Area Personnel Association, Carlisle, PA, November, 1993.

"The Custody Mediation System", presented to York County Bar Association, York, PA, November, 1993.

"Domestic Relations Practice: Hard Issues Faced Daily", presented to the Pennsylvania Trial Lawyers Association, Harrisburg, PA, May, 1994.

"Dealing with Stress from a Changing Work Environment", presented to GPU Administration and Finance Division, Harrisburg, PA, May, 1994.

"Courts, Custody and Conflict Resolution", Domestic Relations Practice: Hard Issues Faced Daily, Pennsylvania Trial Lawyers Association, 1994, pp.37-52.

"The Employee Assistance Program: It's Scope and Use", presented to the GPU Fitness for Duty Association, Middletown, PA, Spring 1994.

"Handling Holiday Stress", presented to Camp Hill Mall Merchant's Association, Camp Hill, PA, October, 1995.

"The Role of a Psychologist in Custody Disputes", Custody Seminar, Camp Hill and Carlisle, PA, October, 1995.

Curriculum Vitae: Stanley E. Schneider

Page 7

"Increasing productivity and Managing Stress", presented to Home Builders Association of Metropolitan Harrisburg, Camp Hill, PA, May, 1996.

"Custody Evaluations: A Reprise", presented to Cumberland County Bar Association, Carlisle, PA, June 12, 1998.

"Custody Evaluations and the Conciliation Process", presented at Cumberland County Bench-Bar Conference, Allentown, PA, October 15, 1998.

"Children's Suggestibility in Child Sex Abuse Cases", 1999 Joint Annual Meeting of the Pennsylvania Association of Criminal Defense Lawyers and the Public Defenders Association of Pennsylvania, Grantville, PA, September 17, 1999.

McKenna, E.L., Cohen, C., Schneider, S.E., Crisis Management and Response Team Manual, Pennsylvania School Boards Association, New Cumberland, PA, 1999.

"The Myers-Briggs Type Indicator and Its Use in Attorney Relationships, Negotiating Styles, Witness Orientation and Jury Selection", Cumberland County American Inn of Court, Dickinson Law School Carlisle, PA, March 2, 2000.

"Economic Perspectives and Behavioral Health Care", Duquesne University, October 30, 2001.

"The Nuts and Bolts of a Custody Evaluation," Cumberland County Bar Association, Carlisle, PA, June 14, 2002.

"The Nuts and Bolts of a Custody Evaluation," Lebanon County Custody Conciliators, Lebanon, PA, December 27, 2002.

"Sex & Suggestibility: The Puzzling Arena of Abuse," York County Bar Association, York, PA, February 24, 2003

Boyle, C.A., Schneider, S.E., Wagenseller, D., Child Custody and Shared Parenting in Pennsylvania, National Business Institute, Inc., Eau Claire, WI, 2003

"Role of Development in Determining Children's Needs in Divorce," National Business Institute, Harrisburg, PA, June 5, 2003.

"Dealing with Difficult Divorce Cases from a Child Psychologist's Perspective," National Business Institute, Harrisburg, PA, June 5, 2003.

Boyle, C.A., Schneider, S.E., Wagenseller, D., Child Custody and Shared Parenting in Pennsylvania, National Business Institute, Inc., Eau Claire, WI, 2004

"Role of Development in Determining Children's Needs in Divorce," National Business Institute, Harrisburg, PA, May 24, 2004.

Curriculum Vitae: Stanley E. Schneider

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"Practical Issues in the Treatment of High Conflict Families", Pennsylvania Psychological Association, Annual Convention, Harrisburg, PA, June 16, 2006.

"Change: The Only Constant;" Pennsylvania-Delaware Affordable Housing Management Association, Lancaster, PA, October 12, 2006.

March 26, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

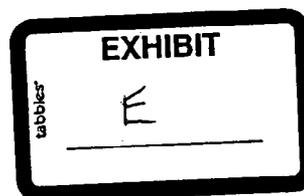
**VIA FAX (717) 234-7517
and U.P.S. EXPRESS**

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your recent correspondence. As a follow-up on two issues which I raised in my letter of March 20, 2007, could you advise whether you consent to allowing our psychiatrist to examine the plaintiffs? He is available to do so this weekend and will, of course, go to Clearfield for the examinations. We would like to schedule the examinations for Saturday, March 31, at 10:00 a.m. If plaintiffs are not available on Saturday, our psychiatrist is available on Sunday, April 1. Please advise if this is acceptable to you and whether the schedule works for plaintiffs. If I do not hear from you by tomorrow afternoon, I will go ahead and schedule a motion to be heard by the Court requesting an order to have the plaintiffs examined by our psychiatrist.

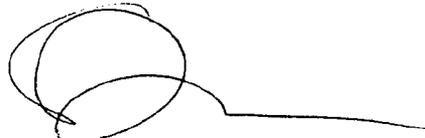
Concerning the close of discovery, we do not believe there is any doubt that discovery in this case was not closed simply because we filed a summary judgment motion. We have never received a contention such as this from counsel. As I discussed in my previous correspondence, the practice in Clearfield County is that counsel agrees on a date for the close of discovery. If they cannot agree upon a date, the Court will hold a status conference and set a date. I would also note that the great majority of discovery that has been done since our summary judgment motion concerns plaintiffs' alleged damages which were not addressed in our motion. Could you let us know if you will agree that discovery in this matter has not closed? If so, we would like to come to an agreement with you as to a date for the close of discovery. If we cannot agree upon a date, we could request the Court to determine a date for the close of discovery during our conference with the Court on April 20. If you will not agree that discovery is not closed in this matter, we will file a praecipe with the Court on Wednesday to request a status conference to determine a date for the close of discovery in this case.



March 26, 2007
Page 2

As always, if you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal tail extending to the right.

S. Elaine Diedrich

SED/mfh

cc: John K. Gisleson, Esq.

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2007, a true and correct copy of the foregoing Preacipe for Status Conference with the Court was sent, via facsimile and U.S. First Class Mail, postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich (PA Id. No. 84077)

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2007, a true and correct copy of the foregoing Preacipe for Status Conference with the Court was sent, via facsimile and U.S. First Class Mail, postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich (PA Id. No. 84077)

John K. Gisleson (PA Id. No. 62511)
S. Elaine Diedrich (Pa. Id. No. 84077)
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200
Facsimile (412)765-3858
Attorneys for Defendants

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

APR 11 2007

Attest. *William D. Shaw*
Prothonotary/
Clerk of Courts

FRANCES L. SELVAGE and)
DAWN L. RETORICK,)
)
 Plaintiffs,)
)
 vs.)
)
 CLEARFIELD HOSPITAL,)
 LOIS EISENMAN, Director of Nursing,)
 JACKIE STONE, Vice President of Nursing,)
 THELMA STRATTON, ICU Unit Manager,)
)
 Defendants.)

IN THE COURT OF COMMON
PLEAS OF CLEARFIELD
COUNTY, PENNSYLVANIA

No. 03-393-CD

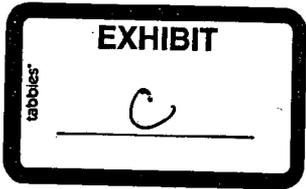
Civil Action – Law

**DEFENDANTS' SUPPLEMENT TO MOTION TO COMPEL MENTAL
EXAMINATION OF PLAINTIFFS AND MOTION FOR STATUS CONFERENCE**

Defendants Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton
(collectively, "defendants"), by and through their undersigned counsel, hereby present this
Supplement to their Motion to Compel Mental Examination of Plaintiffs and Motion for a Status
Conference.

**I. Additional information concerning Motion to Compel Mental Examinations of
Plaintiffs**

1. Plaintiffs' counsel has indicated that he may consent to the mental examination of
his clients. However, issues remain concerning the scope and time of the examinations.



2. In addition to responding to plaintiffs' expert report,¹ defendants seek to have their expert examine plaintiffs for the purpose of analyzing any pre-existing conditions of plaintiffs. Further, if plaintiffs intend to seek damages to include emotional distress damages post-dating their date of departure from Clearfield Hospital, defendants would like their expert to examine plaintiffs concerning this issue as well.

3. Concerning the timing of the mental examinations, defendants' expert report in this matter is due to be filed with its pretrial statement on April 13. As such, on March 20, defense counsel sent a letter to plaintiffs' counsel requesting whether plaintiffs' would consent to a mental examination. A copy of this letter is attached to defendants original Motion to Compel Mental Examinations of the Plaintiffs as Exhibit "B." After receiving no response, on March 26, another letter was sent requesting whether plaintiffs could be available on Saturday, March 31 for the examination or, in the alternative, Sunday April 1. A copy of the March 26 letter is attached to defendants original Motion as Exhibit "C."

4. After plaintiffs' counsel advised that his clients would not be available on Saturday, March 31, defense counsel requested the examinations take place on Sunday, April 1, or Wednesday, April 4. A true and correct copy of defense counsel's letter dated March 28, 2007, is attached hereto as Exhibit "A." Plaintiffs' counsel responded advising that his clients were not available through a letter dated March 28, which is attached hereto as Exhibit "B." In

¹ Plaintiffs' expert analyzed whether plaintiffs suffered emotional distress while at Clearfield Hospital and whether this emotional distress was the direct and proximate result of defendants' alleged conduct. He states that in response to a third question posed, that he believed in his clinical judgment that being in the environment at Clearfield Hospital would result in a reasonable nurse leaving their position and that their decisions were in theirs and their patients' best interests. Plaintiffs' expert report is attached to defendants' Motion to Compel Mental Examinations of plaintiffs as Exhibit "A."

addition, plaintiffs' counsel advised that his clients are only available on Tuesdays. Defendants' expert teaches a course on Tuesdays and cannot conduct the examinations on that day.

5. As Such, defendants respectfully request that plaintiffs be required to make themselves available on a Saturday or Sunday, April 7 or 8, due to the impending date of defendants' expert reports.

6. In the event that plaintiffs cannot be made available on those dates, defendants respectfully request an extension of time to file the expert report of their psychiatrist expert, Dr. Paul Bernstein.

II. Additional facts concerning Motion for Status Conference

7. The great majority of information currently being sought in this matter by defendants concerns plaintiffs' damages and items that defendants have been attempting to obtain from plaintiffs for several years.

8. Discovery in this case resulted in various discovery disputes between the parties as defense counsel has been forced to chase documents responsive to its discovery requests which were as elementary as plaintiffs' medical records and income information.²

A. Plaintiffs' failure to produce income and medical records in response to Defendants' repeated requests for this information has unreasonably resulted in defendants being forced to expend great time and efforts to obtain this information.

9. On November 3, 2004, Defendants served their First Request for Production of Documents on Plaintiffs requesting, *inter alia*, plaintiffs' income tax returns, together with all W-2s, schedules and attachments from 1999 to the time of trial (request 4), requested that

² Plaintiffs claimed damages include, *inter alia*, front pay, expenses of finding and engaging in other employment, amounts for emotional harm, pain and suffering and medical expenses.

plaintiffs each sign an authorization to release transcripts of their tax forms (request 25), an authorization to request social security earnings information (request 26), and medical authorizations (request 27). A true and correct copy of defendants First Request for Production of Documents is attached hereto as Exhibit "C".

10. In response, plaintiffs' counsel objected to and refused to have his clients sign the authorizations for tax, social security and physicians records on the grounds that they were "not authorized by the Rule governing production of documents that already exist" and asserting that the requests to sign authorizations were "unreasonable". A true and correct copy of Plaintiffs' Response to Defendants' First Request for Production of Documents is attached hereto as Exhibit "D."

11. Despite many calls and correspondence from defense counsel to plaintiffs' counsel and promises from the plaintiffs concerning the production of these records, plaintiffs never produced all of the information requested in defendants' discovery requests. This resulted in several of the items currently being sought.

12. In addition to refusing to sign authorizations provided to plaintiffs in November 2004 to obtain their income information, plaintiffs failed and/or refused to produce items as simple as copies of their W-2 forms.

13. On June 6, 2005, plaintiffs finally produced tax records in response to defendants' First Request for Production of Documents. However, the records produced included only their joint tax returns with their husbands, with no attachments, so that their incomes could not be determined. These were therefore useless to determine plaintiffs' incomes during and after leaving Clearfield Hospital.

14. On September 27, 2005, defense counsel sent a letter to plaintiffs' counsel identifying the problems with the tax records produced and again requesting plaintiffs' W-2 Forms so their incomes could be determined. A true and correct copy of this letter is attached hereto as Exhibit "E."

15. In responding to this request, on October 7, 2005, plaintiffs' counsel produced only Retorick's W-2 forms for 1999-2004, and failed to produce Selvage's W-2s. Plaintiffs' counsel claimed in that letter that he was providing Retorick's W-2s and that these "should enable you to delineate the income of all plaintiffs from their spouse's income based on the records that have been produced." A true and correct copy of plaintiff's counsel's October 7, 2005 letter is attached hereto as Exhibit "F."

16. In preparing for trial, it was discovered that plaintiffs had actually never produced Selvage's W-2 forms and that they still did not know her income after she quit her position with Clearfield Hospital. On March 20, 2007, defense counsel *again* sent a letter to plaintiffs' counsel requesting, *inter alia*, Selvage's W-2 forms that had never been provided. A true and correct copy of defense counsel's March 20, 2007 letter is attached to defendant's Motion for Status Conference as Exhibit "C."

17. The next day, on March 21, 2007, over 3 years after they were originally requested, plaintiffs' counsel finally produced Ms. Selvage's W-2 forms. The reason why plaintiffs were able to produce these records the next day after being requested at least three times was not explained by plaintiffs' counsel. A true and correct copy of plaintiffs' counsel's March 21, 2007 letter with attachments is attached to defendants' Motion for Status Conference as Exhibit "D."

18. Selvage's W-2s produced on March 21, 2007, revealed that Selvage was earning *substantially* more money at Carlisle Hospital than at Clearfield Hospital. Selvage is now earning over \$94,000 compared to her income while at Clearfield (which was approximately \$60,000).

19. Moreover, Selvage is making substantially more money than Retorick - Retorick is earning \$81,000 per year at Carlisle. Thus, despite plaintiffs' counsel's October 7 representation, there was no way for defendants to determine Selvage's income from Retorick's W-2 forms.

20. Thus, the reason why plaintiffs would try to play "hide the ball" concerning Selvage's income is understandable, but certainly not excusable. Clearly, obtaining and producing W-2 forms for Selvage was not difficult, as plaintiffs' counsel was able to produce these records the day after they were requested on March 20th.

21. Moreover, with respect to plaintiffs' medical records, in addition to refusing to provide authorizations for plaintiffs' physicians in response to defendants' requests, plaintiffs' counsel refused to produce *any* of plaintiffs' medical records prior to 1999 - despite plaintiffs' alleged damage claims for emotional distress and defendants' right to examine plaintiffs' medical records for preexisting conditions.

22. A Second Request for Production of Documents requesting plaintiffs' medical records was served on plaintiffs on January 25, 2007. A true and correct copy of defendants' Second Request for Production of Document is attached hereto as Exhibit "G."

23. Letters to plaintiffs' counsel objecting to plaintiffs' proposed production of limited medical records dating back to 1999 were sent by defense counsel on January 5 and 25, 2005, and a telephone call was made to plaintiffs' counsel by defense counsel on February 10,

2005. Defense counsel bent over backwards to work with plaintiffs' counsel to obtain the medical records, including agreeing to enter into a confidentiality agreement and limiting the medical records request to records dating back to 1980. Plaintiffs' counsel finally agreed to produce plaintiffs' medical records dating back to 1980. True and correct copies of the exchange of correspondence between plaintiffs' and defendants' counsel concerning medical records are attached hereto as Exhibit "H."

24. However, after agreeing to this, when medical records were finally produced by plaintiffs, they were only produced for plaintiff Retorick dating back to 1996 and for Selvage dating back to 1999.

25. In a letter dated September 27, 2005, defense counsel again requested full responses to the medical records requests. Plaintiffs' counsel provided authorizations for some, but not all, of plaintiffs' physicians. An authorization for Selvage's primary care physician, Dr. Cardamone, was omitted. See Exhibits "E" and "F."

26. These authorizations were received while defense counsel was on maternity leave. When they were sent out to physicians, they were either not responded to by the physicians because the physicians required their own specific releases or they were stale.

27. As a result, in letters dated March 12 and 20, 2007, plaintiffs were simply requested to re-sign authorizations for these records, defendants again requested for Selvage's W-2 Forms, Selvage was requested to sign a first authorization for her primary care physician, Dr. Cardamone, and plaintiffs' were again requested to sign authorizations for their income tax and social security records (given the lack of information ever produced by them).

28. Ironically, it is with these requests that plaintiffs' counsel began asserting that discovery was closed in this case with the filing of defendants' motion for summary judgment.

29. The discovery being sought by the defendants deals largely with damages as well as several outstanding documents requested from plaintiffs long ago.

30. Further, prior to the filing of defendants' motion for summary judgment in March 2006, substantial discovery had been undertaken.

31. Specifically, all of the defendants' depositions had been taken, plaintiffs' depositions had been taken and two third-party witnesses' depositions had been taken. In addition, plaintiffs had served four requests for production of documents and one set of interrogatories, all of which were responded to by defendants. Defendants had served two sets of document requests and interrogatories.

32. Plaintiffs were granted an extension of time to respond to defendants motion for summary judgment and filed an expert report with their response.

33. Clearly, if a party files a summary judgment motion, it does not prohibits further discovery in the absence of a court order or agreement of the parties providing for the close of discovery.

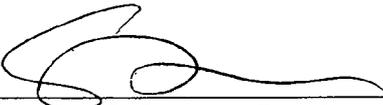
34. The parties have not entered into any agreements as to the close of discovery in this matter and there has been no order of court setting a date for the close of discovery.

WHEREFORE, Defendants respectfully request that this Honorable Court grant its Motion to Compel Mental Examinations of Plaintiffs to include examination of plaintiffs for the purpose of responding to plaintiffs' expert report, to analyze any pre-existing conditions of plaintiffs and emotional distress experienced by plaintiffs post-dating their departure from Clearfield Hospital, if applicable. Moreover, defendants respectfully request that this Honorable Court schedule plaintiffs' examinations for a time in the immediate future or grant an extension of time for defendants to file an expert report by their expert, Dr. Paul Bernstein. Finally,

defendants respectfully request that this Honorable Court schedule a status conference to determine a date for the close of discovery or, in the alternative, schedule a date for the close of discovery in this matter.

Respectfully Submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By: 
John K. Gisleon (PA Id. No. 62511)
S. Elaine Dieddrich (Pa Id. No. 84077)
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton

March 28, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517

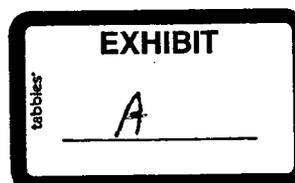
Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Pursuant to our discussion yesterday evening, Dr. Bernstein can also make himself available on Sunday, April 1, to examine the plaintiffs. He may also be available on Wednesday, April 4. If either of those days works better for your clients or another day, please let me know and we will try to work it out.

It is my understanding that you will contact your clients today and request whether they will consent to an examination by Dr. Bernstein. It is my understanding that your clients object because they want to move on with the case and go to trial. As I explained, we do not intend to delay the trial in any way, but are simply attempting to have our expert examine the plaintiffs (as we are entitled to do) and be able to file a report on April 13 with our pretrial statement when expert reports are due. Also, I reiterate that our original request to whether you would consent to this examination was made on March 20. We did not receive a response from you and again requested this information on March 26.

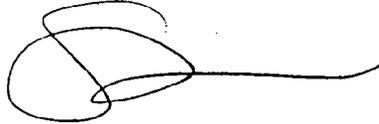
Concerning your issue with the close of discovery, I reiterate that we do not agree with your position that Rule 1035.2 concerning summary judgment provides that discovery "closes" in a case (thereby prohibiting any further discovery) when a party files a summary judgment motion. Not only does the rule not state this, but I note that the great majority of items we have requested in the past few weeks are not novel items, such as plaintiffs' income information, that we requested in our first request for production of documents, but never received despite correspondence concerning same.



March 28, 2007
Page 2

I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line extending to the right.

S. Elaine Diedrich

SED/mfh

cc: John K. Gisleson, Esq.

TRANSMISSION VERIFICATION REPORT

TIME : 03/28/2007 12:02
NAME :
FAX :
TEL :
SER. # : BROM5J406428

DATE, TIME	03/28 12:02
FAX NO./NAME	17172347517
DURATION	00:00:20
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700 PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.765.3858 schnader.com

March 28, 2007

S. Elaine Diedrich
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E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

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JAMES J. WEST, LLC

105 North Front Street, Suite 205

Harrisburg, PA 17101

Telephone: (717) 233-5051

Facsimile: (717) 234-7517

James J. West

jwest@jwestlaw.com

March 28, 2007

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

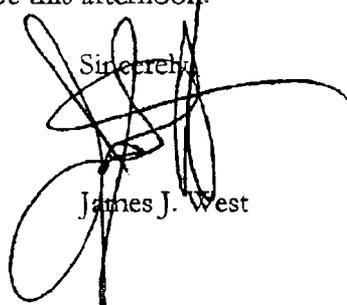
VIA FACSIMILE

RE: Retorick/Selvage v. Clearfield Hospital

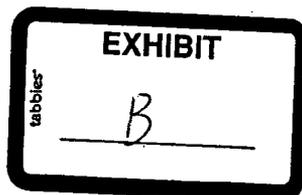
Dear Elaine:

I contacted both Plaintiffs yesterday concerning their positions on the examination. Of course, they are very anxious for trial, felt discovery was closed having noticed the trial back in December, etc. In addition, Fran Selvage is scheduled to work this weekend. Likewise, Dawn Retorick canceled her visit with me. She was recently hospitalized and is still undergoing outpatient wound care. Notwithstanding the issue on whether or not this is a timely Motion, the Plaintiffs are unavailable for this weekend on such short notice.

I received your Motion this morning. I will attempt to discuss it with the Plaintiffs and get back to you but it will probably be this afternoon.

Sincerely,

James J. West

JJW/jmb



DEFINITIONS

As used herein, the following terms have the meanings indicated below:

1. **And** as well as **Or** shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of this Discovery all documents, information or other responses that might otherwise be construed to be outside the scope thereof.

2. **Clearfield Hospital** means Clearfield Hospital a named Defendant herein, and any predecessor, successor, parent, subsidiary, division or affiliate thereof, whether owned wholly or in part, and any present or past officer, director, agent, servant, employee and representative of any of the foregoing.

3. **Communication** means the transfer or transmittal of any information, in or by any form or media, whatsoever, whether oral or written, or formal or informal.

4. **Amended Complaint** means the Amended Complaint filed by Plaintiffs at Civil Action No. 03-393-CD in the Court of Common Pleas of Clearfield County, Pennsylvania.

5. **Concerning** is used in its broadest sense and means regarding, referring to, touching upon, affirming, denying, mentioning, discussing, describing, reflecting, evidencing, containing, constituting or relating to, or relevant to, or likely to lead to, the discovery of admissible evidence.

6. **Defendants** means the named Defendants herein and collectively Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton.

7. **Document**, unless specified otherwise, shall be coextensive with the meaning set forth in the Pennsylvania Rules of Civil Procedure, and means and includes any and all printed, written, typewritten, handwritten or otherwise recorded or graphic

matter, of whatsoever character and however produced, recorded or reproduced, which is in the possession, custody or control of, or is obtainable by the party to whom this discovery request is being made, including, but not limited to, letters, memoranda, interoffice communication, correspondence, minutes of meetings or discussions, notes, diaries, medical records, calendars, date books, brochures, reports, telegrams, records, drawings, plans, specifications, blueprints, graphs, charts, work papers, photographs, slides, motion pictures, phonograph records, recordings, invoices, bills of lading, purchase orders, receipts, checks, transcriptions, transcripts, contracts, agreements, accounting records, microfilms, microfiche, videotapes, advertisements, technical data, test records, computer print-outs, delivery tickets, delivery receipts, other delivery information, sales records, bills, accounting summaries, bulletins, opinions, published articles, investigations, summaries, statements, literature, books, promotional aids, releases, magazines, computer printouts, computer disks, all information and data electronically or magnetically recorded or stored in computers or on tape or cards, any other typewritten, handwritten, or graphic material of any kind or description and any and all drafts or carbon, photostatic, photographic or other copies of any of the foregoing.

10. **Person** means an individual, trust, firm, corporation, association, partnership, consortium, joint venture, or other governmental, commercial, incorporated, unincorporated, or not-for-profit entity or agency.

11. **Refer, referring, relate or relating** are used in their broadest sense to mean and include direct as well as indirect references to, descriptions of, discussions of or commentary on the subject matter of the request.

12. **Plaintiff or Plaintiffs** mean Frances L. Selvage and/or Dawn L. Retorick.

13. **Support** (or a form thereof), shall mean advocate, affirm, aid, allow, bulwark, confirm, contribute, corroborate, demonstrate, embrace, enable, establish, facilitate, foster, justify, permit, maintain, prove, promote, reinforce, sustain, verify or vouch.

14. **You** or **your** mean Frances L. Selvage and/or Dawn L. Retorick.

INSTRUCTIONS

Please adhere to the following instructions, to the extent applicable, in responding to each and every discovery request propounded in this Discovery.

I. This Discovery is to be answered separately, fully, in writing and under oath within thirty (30) days after service to the extent required by the Pennsylvania Rules of Civil Procedure. Furthermore, this Discovery is continuing and any responsive information secured subsequent to the filing of your responses should be supplied by supplemental answers pursuant to the Pennsylvania Rules of Civil Procedure.

II. In preparing your response, the singular shall include the plural and *vice versa*, and the past tense in a verb shall include the present tense thereof, and *vice versa*.

III. If an objection is stated to any request for production please set forth fully your objection and your reason for such objection.

IV. If you claim any form of privilege as a ground for not responding to a request for production or any portion therefore, set forth in complete detail each and every fact upon which the privilege is based, including sufficient facts for the Court to make a full determination whether the claim of privilege is valid.

V. If any document is withheld under a claim of attorney-client privilege or work product doctrine or any other claim of privilege, identify the document withheld by

date; author; sender; recipient, including all persons who were shown, had access to, or received a copy; format; title; present or last known location; a general description of the subject matter of the document; and any other information necessary to support the claim of privilege. State the grounds for the assertion of the privilege in sufficient detail to permit the Court to adjudicate the validity of the claim.

VI. If any document requested herein was formerly in your possession, custody or control, and has been lost or destroyed, or otherwise disposed of, state with respect to each document: (i) the date, subject matter and nature of the document; (ii) the name of the author, the author's employer, and the author's position; (iii) if applicable, the name of the recipient, the recipient's employer, and the recipient's position; (iv) the name of each other person who was shown or furnished the document or a copy or any part thereof, each person's employer, and each person's position; (v) the date on which the document was lost or destroyed; and (vi) if destroyed, the conditions of and reasons for such destruction and the names of the persons requesting and performing such destruction, their employer(s) and position(s).

VII. Each document request seeks the production of each document in its entirety, including each attachment or other matter affixed thereto and all marginal notations.

VIII. If any document cannot be produced in full, produce such document to the extent possible, state the reason for your inability to produce the remainder of the document and, with respect to the remainder, state what information, knowledge or belief you have concerning the portion not produced.

IX. The document requests herein seek the production of all non-identical copies, including drafts and copies upon which notes have been made.

X. In responding to any request for production of documents, you are required to furnish such documents and information as are within your personal knowledge, possession, custody and control, as well as that of your representatives, agents, attorneys, partners, investigators or anyone else acting for you, or on or in your behalf.

XI. All documents produced in response to any request for production of documents shall be organized and labeled to correspond with the specific request for production of documents to which they are being produced in response.

XII. To the extent that you consider any of the document requests objectionable, respond to that portion of each document request that is not objectionable in your view, and separately state your objection to that portion of the request and the ground for each such objection.

REQUESTS FOR PRODUCTION

1. Produce each and every document identified or requested to be identified in response to, or to which you referred, in preparing your responses to the First Set of Interrogatories Propounded Upon Plaintiffs by Defendants.

RESPONSE:

2. Copies of all documents concerning, referring or relating to, or otherwise supporting, any allegation made in the Amended Complaint or Plaintiffs' answers to Defendants' First Set of Interrogatories.

RESPONSE:

4. Copies of all income tax returns submitted to the United States, any state and/or local government, together with all W-2's, schedules and attachments prepared or filed by either Plaintiff (or on their behalf) beginning with calendar year 1999 and continuing for each and every successive year until the time of trial.

RESPONSE:

5. Copies of all documents and correspondence pertaining or relating to Plaintiffs' claims.

RESPONSE:

6. Copies of any documents, correspondence, notes, logs, diaries or any other writing which relates in any fashion or manner to any aspect of either Plaintiff's employment with Clearfield hospital.

RESPONSE:

7. Copies of any documents, correspondence, notes, logs, diaries or any other writing which relates in any fashion or manner to retaliation of any sort against any other employee or former employee of Clearfield Hospital.

RESPONSE:

8. Copies of any documents, correspondence, notes, logs, diaries or any other writing that relates in any fashion or manner to any of the Defendants.

RESPONSE:

9. Copies of any documents, correspondence, notes, logs, diaries or any other writing that relates in any fashion or manner to either Plaintiffs' employment with Clearfield Hospital.

RESPONSE:

10. Copies of all written statements or affidavits in any form regardless of who prepared the statement or affidavit by either Plaintiff that relates in any way to this action.

RESPONSE:

11. Copies of all written statements or affidavits in any form regardless of who prepared the statement or affidavit by any other individual that relates in any way to this action.

RESPONSE:

12. Copies of all documents, recordings, or statements from, or information provided by any of Clearfield Hospital's employees or any other person that pertains or relates in any way to this action.

RESPONSE:

13. Copies of all documents provided by any named Defendant herein to either Plaintiff at any time during or after their employment with Clearfield Hospital.

RESPONSE:

14. Copies of all documents that will be used in Plaintiffs' prosecution of this case at trial.

RESPONSE:

15. Copies of all correspondence or documents sent or provided to either Plaintiff from any person, corporation or other entity which relate in any fashion or manner to any aspect of either Plaintiff's employment with Clearfield Hospital or in any way to this action.

RESPONSE:

16. Copies of all correspondence from either plaintiff to any person, corporation or other entity which relate in any way to any attempt by either Plaintiff to secure employment from January 1, 1999 to the present.

RESPONSE:

17. Copies of all correspondence to either Plaintiff from any person, corporation or other entity which relate in any way to any attempt by either Plaintiff to secure employment or the response to said application for employment from January 1, 1999 to the present.

RESPONSE:

18. Copies of all written offers of employment made by any entity to either Plaintiff from January 1, 1999 to the present.

RESPONSE:

19. Copies of all of either of Plaintiff's responses to any written offers of employment made by any entity to either Plaintiff from January 1, 1999 to the present.

RESPONSE:

20. Copies of all check stubs from any salary or wage checks received by either Plaintiff from November 1, 2002 through the present.

RESPONSE:

21. Copies of all versions of any resumes prepared or used by either Plaintiff, and any drafts thereof, since January 1, 1999.

RESPONSE:

22. Copies of all help wanted ads to which either Plaintiff has responded since January 1, 1999.

RESPONSE:

23. Copies of all expert witness reports, written statements or other investigation materials that either Plaintiff intends to use at trial and/or during the prosecution of this case.

RESPONSE:

24. A copy of the curriculum vitae of any expert retained.

RESPONSE:

25. Please complete, sign and return the attached *Request for Copy or Transcript of Tax Form*.

RESPONSE:

26. Please sign and return the attached *Request for Social Security Earnings Information*.

RESPONSE:

27. Please sign and return, in sufficient number, the attached *Medical Authorization*.

RESPONSE:

28. Please sign and return, in sufficient number, the attached *Authorization* for release of employment records.

RESPONSE:

29. Copies of any and all correspondence or documents exchanged between any of the Defendants and either Plaintiff from the commencement of each Plaintiff's employment with Clearfield Hospital through the present time.

RESPONSE:

30. Copies of all correspondence or documents to or from either Plaintiff which relate in any fashion or manner to any aspect of this action.

RESPONSE:

31. Copies of all documents provided at any time by any Defendant to Dawn Retorick, or vice versa, from June 1, 1982 to the present.

RESPONSE:

32. Copies of all documents provided at any time by any Defendant to Frances Selvage, or vice versa, from October 1, 1993 to the present.

RESPONSE:

33. Copies of all correspondence or documents from Plaintiff's to any person, corporation or entity that relates in any fashion or manner to the allegations contained in the Amended Complaint or in any way relates to this action.

RESPONSE:

34. Produce copies of all Plaintiffs' education records including but not limited to, a copy of any degrees or diplomas, transcripts, grade reports, and application materials. This request is for any post-high school education received by either Plaintiff.

RESPONSE:

35. Copies of each and every report, notice, complaint, or document that you provided to Clearfield Hospital that you allege are reports of "wrongdoing and waste" referred to in paragraph 11 of your Complaint.

RESPONSE:

36. Copies of each and every report, notice, or complaint, or any document that refers to a report, notice, or complaint that you provided to Clearfield Hospital during the course of your employment.

RESPONSE:

37. Copies of every document referring or relating to the allegations contained in paragraph 12 of your Amended Complaint.

RESPONSE:

38. Copies of every document referring or relating to the allegations contained in paragraph 14 and each of its subparagraphs of your Amended Complaint.

RESPONSE:

39. Copies of each and every report, notice or complaint that you refer to in paragraph 14(n) of your Amended Complaint that was not attached to your Amended Complaint.

RESPONSE:

40. Any and all documents that refer or relate to any oral reports, notices or complaints that you made while employed with Clearfield Hospital.

RESPONSE:

41. Copies of every document referring or relating to the allegations contained in paragraph 15 of your Amended Complaint.

RESPONSE:

42. Copies of every document referring or relating to the allegations contained in paragraph 16 of your Amended Complaint.

RESPONSE:

43. Copies of every document referring or relating to the allegations contained in paragraph 17 and each of its subparagraphs (a) through (n) of your Amended Complaint.

RESPONSE:

44. Copies of every document referring or relating to the allegations contained in paragraph 18 of your Amended Complaint.

RESPONSE:

45. Copies of every document referring or relating to the allegations contained in paragraph 19 and each of its subparagraphs (a) through (g) of your Amended Complaint.

RESPONSE:

46. Copies of every document referring or relating to the allegations contained in paragraph 29 of your Amended Complaint.

RESPONSE:

47. Copies of every document referring or relating to the allegations contained in paragraph 33 of your Amended Complaint.

RESPONSE:

48. Copies of every document referring or relating to the allegations contained in paragraph 42 and each of its subparagraphs (a) through (h) of your Amended Complaint.

RESPONSE:

49. Copies of every document referring or relating to the allegations contained in paragraph 47 of your Amended Complaint.

RESPONSE:

50. Copies of every document referring or relating to the allegations contained in paragraph 48 of your Amended Complaint.

RESPONSE:

51. Copies of every document referring or relating to the allegations contained in paragraph 50 of your Amended Complaint.

RESPONSE:

52. Copies of every document referring or relating to the allegations contained in paragraph 52 of your Amended Complaint.

RESPONSE:

53. Copies of every document referring or relating to the allegations contained in paragraph 57 of your Amended Complaint.

RESPONSE:

54. Copies of all of Plaintiffs' medical bills/expenses that will be claimed as damages in this action.

RESPONSE:

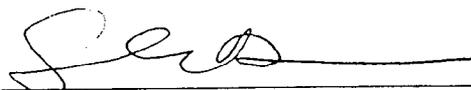
55. All documents prepared or received by either Plaintiff, on either Plaintiffs' behalf or at either Plaintiffs' request, which include or reflect any communications, conversations or meetings with any current or former employee of Clearfield Hospital concerning any of the allegations in Plaintiffs' Amended Complaint.

RESPONSE:

56. Any and all documents that refer or relate to Plaintiffs' "severe emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, irritability, and other alterations of plaintiffs' personalities" referred to in your Amended Complaint.

RESPONSE:

SCHNADER HARRISON SEGAL &
LEWIS, LLP

By: 

Eric T. Smith (PA Id. # 70491)
S. Elaine Diedrich (PA Id. #84077)
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: _____ SSN: _____ DOB: _____

Address: _____ City: _____ State: _____ Zip Code: _____

I. General Release.

I hereby authorize _____ to disclose the information set forth in Section IV of _____
[Name and address of record source: e.g., Employer]

this Authorization for the period from _____ to _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

- a.) Person(s) authorized to disclose the information: _____
[Name of the Provider: Hospital, Doctor, Insurance Co.]
- b.) Information to be disclosed: The Information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____
- c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: _____

[Name of MCS Client]
- I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.
- d.) Purpose of this request: At my request.
- e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____
- f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.
- g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.
- h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Signature of Person Identified Above or his or her Authorized Representative / Guardian_____
Date

By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Car Insurance</u> Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Social Security Benefits</u> Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned individual.</p>
<input type="checkbox"/>	<p><u>School</u> Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>
V. Information Subject to the Health Information Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Pharmacy</u> Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party, from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical Insurance</u> Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical</u> Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>

REQUEST FOR SOCIAL SECURITY EARNINGS INFORMATION

1. From whose record do you need the earnings information?

Print the Name, Social Security Number (SSN), and date of birth below.

Name _____ Social Security Number _____
Other Name(s) Used _____ Date of Birth _____
(Include Maiden Name) (Mo/Day/Yr)

2. What kind of information do you need?

- Detailed Earnings Information** For the period(s)/year(s): _____
(If you check this block, tell us below why you need this information.)

- Certified Total Earnings For Each Year.** For the year(s): _____
(Check this box only if you want the information certified. Otherwise, call 1-800-772-1213 to request Form SSA-7004, Request for Earnings and Benefit Estimate Statement)
-

3. If you owe us a fee for this detailed earnings information, enter the amount due using the chart on page 3 A. \$ _____

Do you want us to certify the information? Yes No
If yes, enter \$15.00 B. \$ _____

ADD the amounts on lines A and B, and enter the TOTAL amount C. \$ _____

- You can pay by CREDIT CARD by completing and returning the form on page 4, or
 - Send your CHECK or MONEY ORDER for the amount on line C with the request and make check or money order payable to "Social Security Administration"
 - DO NOT SEND CASH.
-

4. I am the individual to whom the record pertains (or a person who is authorized to sign on behalf of that individual). I understand that any false representation to knowingly and willfully obtain information from Social Security records is punishable by a fine of not more than \$5,000 or one year in prison.

SIGN your name here _____ Date _____
(Do not print) >

Daytime Phone Number _____
(Area Code) (Telephone Number)

5. Tell us where you want the information sent. (Please print)

Name _____ Address _____
City, State & Zip Code _____

6. Mail Completed Form(s) To: **Exception: If using private contractor (e.g., FedEx) to mail form(s), use:**

Social Security Administration
Division of Earnings Record Operations
P.O. Box 33003
Baltimore Maryland 21290-3003

Social Security Administration
Division of Earnings Record Operations
300 N. Greene St.
Baltimore Maryland 21290-0300

Request for Copy of Tax Return

OMB No. 1545-0429

Department of the Treasury
Internal Revenue Service

- ▶ Do not sign this form unless all applicable parts have been completed.
Read the instructions on page 2.
- ▶ Request may be rejected if the form is incomplete, illegible, or any required part was blank at the time of signature.

TIP: You may be able to get your tax return or return information from other sources. If you had your tax return completed by a paid preparer, they should be able to provide you a copy of the return. The IRS can provide a **Tax Return Transcript** for many returns free of charge. The transcript provides most of the line entries from the tax return and usually contains the information that a third party (such as a mortgage company) requires. See new **Form 4506-T**, Request for Transcript of Tax Return, to order a transcript or you can call 1-800-829-1040 to order a transcript.

1a Name shown on tax return. If a joint return, enter the name shown first.	1b First social security number on tax return or employer identification number (see instructions)
2a If a joint return, enter spouse's name shown on tax return	2b Second social security number if joint tax return

3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code

4 Address, (including apt., room, or suite no.), city, state, and ZIP code shown on the last return filed if different from line 3

5 If the tax return is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number. The IRS has no control over what the third party does with the tax return.

CAUTION: Lines 6 and 7 must be completed if the third party requires you to complete Form 4506. Do not sign Form 4506 if the third party requests that you sign Form 4506 and lines 6 and 7 are blank.

6 Tax return requested (Form 1040, 1120, 941, etc.) and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, or amended returns. Copies of Forms 1040, 1040A, and 1040EZ are generally available for 7 years from filing before they are destroyed by law. Other returns may be available for a longer period of time. Enter only one return number. If you need more than one type of return, you must complete another Form 4506. ▶ _____

Note: If the copies must be certified for court or administrative proceedings, check here.

7 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506.

_ / _ / _ _ / _ / _ _ / _ / _ _ / _ / _

8 Fee. There is a \$39 fee for each return requested. Full payment must be included with your request or it will be rejected. Make your check or money order payable to "United States Treasury." Enter your SSN or EIN and "Form 4506 request" on your check or money order.

a Cost for each return	\$ 39.00
b Number of returns requested on line 7	
c Total cost. Multiply line 8a by line 8b	\$

9 If we cannot find the tax return, we will refund the fee. If the refund should go to the third party listed on line 5, check here

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax return requested. If the request applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506 on behalf of the taxpayer.

	Telephone number of taxpayer on line 1a or 2a ()
Signature (see instructions)	Date
Title (if line 1a above is a corporation, partnership, estate, or trust)	
Spouse's signature	Date

RECORDS AUTHORIZATION

TO:

This will authorize you to furnish all employment-related information and/or documents, including but not limited to a résumé and application concerning:

JOANNE RACE Social Security Number _____ Date of Birth _____

TO:

Eric T. Smith, Esq.
SCHNADER HARRISON SEGAL & LEWIS, LLP
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222

If there is any charge for the reproduction of the requested documents, the invoice should be forwarded with the documents to SCHNADER HARRISON SEGAL & LEWIS, LLP at the above address.

Date _____

Applicant Signature

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2004, a true and correct copy of the foregoing **FIRST REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED UPON PLAINTIFFS** was sent, via U.S. Mail, first class postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

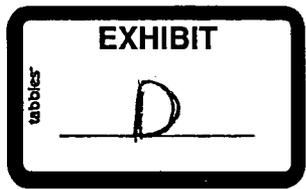
FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

PLAINTIFFS' OBJECTIONS AND ANSWERS TO DEFENDANTS'
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 409 of the Pennsylvania Rules of Civil Procedure the Plaintiffs hereby provide the following objections and responses to the Defendants' First Request for Production of Documents:

GENERAL OBJECTIONS

The Request for Production of Documents are all objected to as being overly broad, burdensome, unreasonable and, in those instances indicated, not calculated to produce relevant evidence within the meaning of the Pennsylvania Rules of Civil Procedure. Moreover, in some instances, such as the request for Plaintiffs to execute various documents and provide them to the Defendants, these requests are unreasonable and not authorized by the Rule governing production of documents that already exists.



1/3/05

Nevertheless, the Plaintiffs have authorized their counsel to copy and turn over all documents they have provided to counsel that are in the nature of witness statements, letters, logs and various contemporaneous notes relating to the retaliation and constructive discharge by Clearfield Hospital. These documents are Bates stamped numbers P1-1 through PL-760.

It should be noted that attorney/client privileged communications and attorney work product is obviously not being turned over but insofar as documents created prior to the retention of counsel and not at counsel's direction, these documents are being made available and represent the known documents in the possession of the Plaintiffs at this point in time which are relevant to this particular case.

REQUESTS

1-2. See general objections made at the beginning of these answers and produced documents Bates stamped P1-1 through PL-760.

4-22. See general objections made at the beginning of these answers and produced documents Bates stamped P1-1 through PL-760.

23. Experts have yet to be retained in this matter and no reports exist at this time.

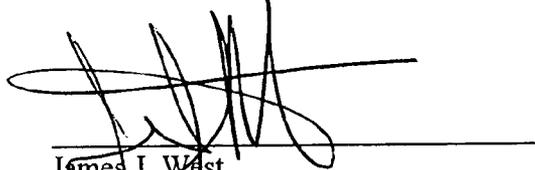
24. See answer to #23 above.

25-28. Objected to as an improper use of a request for production of documents.

29-56. See general objections made at the beginning of these answers and produced documents Bates stamped PL-1 through PL-760.

Respectfully Submitted,

WEST LONG LLC

A handwritten signature in black ink, appearing to read 'James J. West', is written over a horizontal line. The signature is stylized and somewhat illegible.

James J. West
105 North Front Street
Suite 205

Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

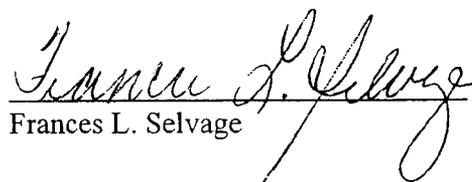
Dated: December 29, 2004

Counsel for Plaintiffs

VERIFICATION

I, Frances L. Selvage, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 12-09-04

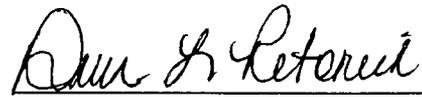


Frances L. Selvage

VERIFICATION

I, Dawn L. Retorick, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

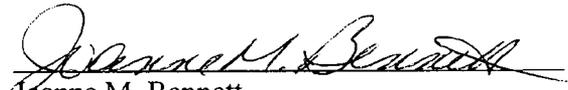
Date: 12-29-04


Dawn L. Retorick

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of **January, 2005**, a true and correct copy of the foregoing document was served upon the party named below via hand delivery, addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal

September 27, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517
and U.S. MAIL

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

I am writing to follow up on discovery responses that are outstanding in this matter.

We have only received medical records for Ms. Selvage from 1999 to the present. For Ms. Retorick, we have only received records from 1996 to the present. We have, however, requested the plaintiffs' medical records from 1980 to the present. While you previously advised me that you would not produce these records because plaintiffs indicated that there would be no relevant information contained in the records related to their emotional distress damages, the records that we have received regarding Ms. Retorick indicate quite to the contrary. Therefore, I am again requesting that you produce the Ms. Selvage's medical records for the entire time period of 1980 to the present. We have been attempting to obtain these records from you since November 3, 2004 and, despite our continued requests, have not received them. Therefore, unless I receive these complete records from you within the next ten (10) days, I will be filing a motion to compel.

In addition, you have not provided any W-2's for the plaintiffs from 1999 to the present. While you provided the joint tax returns and or joint tax information for the plaintiffs' and their spouses, you failed to provide any attachments to those forms, including the W-2 forms for the plaintiffs. In fact, based upon the information you have provided, there is no way to delineate the income that plaintiffs made versus their spouses. The W-2 forms and attachments to the tax forms were requested in our request for production of documents also served on November 3, 2004. We also requested all paycheck stubs from either plaintiff from November 1, 2002 to the present, but have not received these records. In addition, we have not received any tax information related to Ms. Retorick for tax year 2004. Therefore, I am requesting this additional information be provided within the next ten (10) days. If I do not receive these documents within the next ten (10) days, I will be filing a motion to compel also related to these documents.



September 27, 2005
Page 2

During the plaintiffs' depositions, they referred to a notebook in which they took notes. We would like the original notebook. We will make a copy of the notebook and return the original to you. Finally, upon reviewing the documents that you produced in this matter, bates numbers PL 183-219 are missing. Could you kindly forward these documents to my attention.

If you have any questions, please feel free to contact me.

Very truly yours,

Elaine Diedrich
mfh

S. Elaine Diedrich

SED/mfh

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jwest@west-long.com

October 7, 2005

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Re: Selvage and Retorick v. Clearfield Hospital, et al.

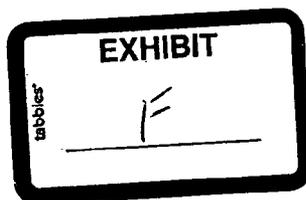
Dear Elaine:

This is in response to your recent letter raising discovery issues.

The reason you have only received medical records for Ms. Selvage for 1999 to present and for Ms. Retorick for 1996 to present is that those were the only records we were able to obtain. A very substantial effort was made by my paralegals to obtain these records, going back as far as possible, and what you have received is what they were able to obtain. In fairness to you, I've had Fran and Dawn travel to my office and execute Releases for the various doctors involved, and you may feel free to use those Releases to attempt to obtain additional records on condition that you provide us with copies of any records obtained pursuant to them.

In reviewing the transcripts, I did note that Dawn Retorick identified a Dr. Brian Anderson of Hershey Medical Center as providing certain services relating to a dermatology problem. I have included a release for Dr. Anderson and would request that if you obtain documents from Dr. Anderson, I be provided with copies of them.

I am also enclosing herein W2 Forms for Dawn Retorick. This should enable you to delineate the income of all the plaintiffs from their spouse's income based on the records that have been produced. During our meeting, I asked Fran and Dawn to look for any pay stubs that they may have retained and if any are forthcoming, I will provide them but they were extremely doubtful, and I believe that you have the best evidence that is available insofar as income is concerned.



S. Elaine Diedrich, Esquire
Re: Clearfield Hospital

Page 2 of 2

October 7, 2005

Finally, our records show that you were provided with a complete copy of the original notebook referred to in their deposition, and it is presently in your possession. Likewise, we believe that you were forwarded Bates No. 183 through 219, which are now missing. We are providing you with replacement copies to bring your records up to date.

As you are aware, I have requested additional documents from you after the various depositions that occurred in this case. It was my understanding that you were going to produce those documents, but given the tenor of your present letter, I have made my requests into a formal discovery request and I am now serving that request on you so that we have some defined time limits and a vehicle to be used to go to Court to compel discovery. Attached to the discovery request are my letters of July 21, 2005 and August 24, 2005 describing these requests. If you can provide these records before the due date, it would be appreciated.

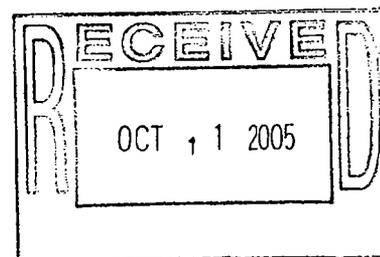
If you have any questions, please do not hesitate to immediately contact me.

Sincerely,

WEST LONG LLC

James J. West

JJW:dlg
Enclosures



DEFINITIONS

As used herein, the following terms have the meanings indicated below:

1. **And** as well as **Or** shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of this Discovery all documents, information or other responses that might otherwise be construed to be outside the scope thereof.
2. **Clearfield Hospital** means Clearfield Hospital a named Defendant herein, and any predecessor, successor, parent, subsidiary, division or affiliate thereof, whether owned wholly or in part, and any present or past officer, director, agent, servant, employee and representative of any of the foregoing.
3. **Communication** means the transfer or transmittal of any information, in or by any form or media, whatsoever, whether oral or written, or formal or informal.
4. **Amended Complaint** means the Amended Complaint filed by Plaintiffs at Civil Action No. 03-393-CD in the Court of Common Pleas of Clearfield County, Pennsylvania.
5. **Concerning** is used in its broadest sense and means regarding, referring to, touching upon, affirming, denying, mentioning, discussing, describing, reflecting, evidencing, containing, constituting or relating to, or relevant to, or likely to lead to, the discovery of admissible evidence.
6. **Defendants** means the named Defendants herein and collectively Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton.
7. **Document**, unless specified otherwise, shall be coextensive with the meaning set forth in the Pennsylvania Rules of Civil Procedure, and means and includes any and all printed, written, typewritten, handwritten or otherwise recorded or graphic

matter, of whatsoever character and however produced, recorded or reproduced, which is in the possession, custody or control of, or is obtainable by the party to whom this discovery request is being made, including, but not limited to, letters, memoranda, interoffice communication, correspondence, minutes of meetings or discussions, notes, diaries, medical records, calendars, date books, brochures, reports, telegrams, records, drawings, plans, specifications, blueprints, graphs, charts, work papers, photographs, slides, motion pictures, phonograph records, recordings, invoices, bills of lading, purchase orders, receipts, checks, transcriptions, transcripts, contracts, agreements, accounting records, microfilms, microfiche, videotapes, advertisements, technical data, test records, computer print-outs, delivery tickets, delivery receipts, other delivery information, sales records, bills, accounting summaries, bulletins, opinions, published articles, investigations, summaries, statements, literature, books, promotional aids, releases, magazines, computer printouts, computer disks, all information and data electronically or magnetically recorded or stored in computers or on tape or cards, any other typewritten, handwritten, or graphic material of any kind or description and any and all drafts or carbon, photostatic, photographic or other copies of any of the foregoing.

8. **Medical** shall mean pertaining, relating or belonging to the study and practice of medicine, or the science and art of the investigation, prevention, cure, and alleviation of disease.

9. **Person** means an individual, trust, firm, corporation, association, partnership, consortium, joint venture, or other governmental, commercial, incorporated, unincorporated, or not-for-profit entity or agency.

10. **Refer, referring, relate or relating** are used in their broadest sense to mean and include direct as well as indirect references to, descriptions of, discussions of or commentary on the subject matter of the request.

11. **Plaintiff or Plaintiffs** mean Frances L. Selvage and/or Dawn L. Retorick.

12. **Support** (or a form thereof), shall mean advocate, affirm, aid, allow, bulwark, confirm, contribute, corroborate, demonstrate, embrace, enable, establish, facilitate, foster, justify, permit, maintain, prove, promote, reinforce, sustain, verify or vouch.

13. **You or your** mean Frances L. Selvage and/or Dawn L. Retorick.

INSTRUCTIONS

Please adhere to the following instructions, to the extent applicable, in responding to each and every discovery request propounded in this Discovery.

I. This Discovery is to be answered separately, fully, in writing and under oath within thirty (30) days after service to the extent required by the Pennsylvania Rules of Civil Procedure. Furthermore, this Discovery is continuing and any responsive information secured subsequent to the filing of your responses should be supplied by supplemental answers pursuant to the Pennsylvania Rules of Civil Procedure.

II. In preparing your response, the singular shall include the plural and *vice versa*, and the past tense in a verb shall include the present tense thereof, and *vice versa*.

III. If an objection is stated to any request for production please set forth fully your objection and your reason for such objection.

IV. If you claim any form of privilege as a ground for not responding to a request for production or any portion therefore, set forth in complete detail each and

every fact upon which the privilege is based, including sufficient facts for the Court to make a full determination whether the claim of privilege is valid.

V. If any document is withheld under a claim of attorney-client privilege or work product doctrine or any other claim of privilege, identify the document withheld by date; author; sender; recipient, including all persons who were shown, had access to, or received a copy; format; title; present or last known location; a general description of the subject matter of the document; and any other information necessary to support the claim of privilege. State the grounds for the assertion of the privilege in sufficient detail to permit the Court to adjudicate the validity of the claim.

VI. If any document requested herein was formerly in your possession, custody or control, and has been lost or destroyed, or otherwise disposed of, state with respect to each document: (i) the date, subject matter and nature of the document; (ii) the name of the author, the author's employer, and the author's position; (iii) if applicable, the name of the recipient, the recipient's employer, and the recipient's position; (iv) the name of each other person who was shown or furnished the document or a copy or any part thereof, each person's employer, and each person's position; (v) the date on which the document was lost or destroyed; and (vi) if destroyed, the conditions of and reasons for such destruction and the names of the persons requesting and performing such destruction, their employer(s) and position(s).

VII. Each document request seeks the production of each document in its entirety, including each attachment or other matter affixed thereto and all marginal notations.

VIII. If any document cannot be produced in full, produce such document to the extent possible, state the reason for your inability to produce the remainder of the document and, with respect to the remainder, state what information, knowledge or belief you have concerning the portion not produced.

IX. The document requests herein seek the production of all non-identical copies, including drafts and copies upon which notes have been made.

X. In responding to any request for production of documents, you are required to furnish such documents and information as are within your personal knowledge, possession, custody and control, as well as that of your representatives, agents, attorneys, partners, investigators or anyone else acting for you, or on or in your behalf.

XI. All documents produced in response to any request for production of documents shall be organized and labeled to correspond with the specific request for production of documents to which they are being produced in response.

XII. To the extent that you consider any of the document requests objectionable, respond to that portion of each document request that is not objectionable in your view, and separately state your objection to that portion of the request and the ground for each such objection.

REQUESTS FOR PRODUCTION

1. Any and all medical documents or records that refer or relate to either Plaintiff from 1980 to the present.

RESPONSE:

SCHNADER HARRISON SEGAL &
LEWIS, LLP

By: 

John K. Gisleson (PA Id. # 62511)
S. Elaine Diedrich (PA Id. #84077)
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2004, a true and correct copy of the foregoing **SECOND REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED UPON PLAINTIFFS** was sent, via U.S. Mail, first class postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

January 6, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517
AND U.S. MAIL

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

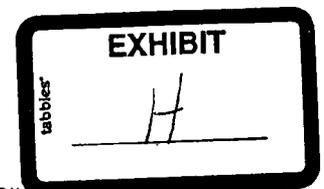
Dear Jim:

Thank you for your cooperation in agreeing that that we will make all reasonable attempts to schedule all of the parties' depositions during the same week and that the depositions will not take place until after I receive plaintiffs' medical records.

Also, thank you for your correspondence dated December 29, 2004 and your discovery responses. I note that you state you will obtain medical records from 1999 to the present from the doctors who have been identified in the plaintiffs' Answers to Interrogatories. However, given the plaintiffs' claims for intentional infliction of emotional distress and claimed injuries for emotional distress, we are entitled to plaintiffs' medical records going further back than 1999. Given the nature of these claims, we are entitled to all of plaintiffs' medical records, without limitation, as the emotional problems of plaintiffs could have arisen at any time during their lifetimes. Thus, plaintiffs' emotional problems may have been preexisting and we are entitled to discovery of this, particularly given the broad scope of discovery permitted. Therefore, we feel that your limitation to only allow us to review records from 1999 to the present is unreasonable.

To allay your clients' concerns regarding privacy, we are willing to enter into a stipulation for protective order regarding confidentiality of documents so plaintiffs can be assured that their medical records will not be seen outside of this litigation. I have also added additional clauses limiting the persons who may view confidential records in the matter. I have enclosed a draft stipulation for protective order for your convenience so that we may be able to resolve this discovery matter.

Please let me know within the next five (5) days your thoughts on the stipulation and whether you will comply with our discovery request for all of plaintiffs' medical records as we need to move on with taking depositions. While I do not wish to do so, I will file a motion to compel the production of these documents if necessary.



January 6, 2005
Page 2

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Elaine Diedrich
mfh

S. Elaine Diedrich

SED/mfh
Enclosure

January 6, 2005
Page 3

bcc: Jon R. Steen, Esq. (w/enc.)
Daniel Burfield (w/enc.)
John K. Gisleson, Esq. (w/enc.)

John K. Gisleson (PA Id. No. 62511)
 S. Elaine Diedrich (PA Id. No. 87044)
 Schnader Harrison Segal & Lewis LLP
 Suite 2700, Fifth Avenue Place
 120 Fifth Avenue
 Pittsburgh, PA 15222
 (412) 577-5200
 Attorneys for Defendants

FRANCES L. SELVAGE and)
 DAWN L. RETORICK,)
)
 Plaintiffs,)
)
 vs.)
)
 CLEARFIELD HOSPITAL,)
 LOIS EISENMAN, Director of Nursing,)
 JACKIE STONE, Vice President of Nursing,)
 THELMA STRATTON, ICU Unit Manager,)
)
 Defendants.)
)

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

No. 03-393-CD

Civil Action - Law

STIPULATION FOR PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto through their respective counsel, as follows:

1. Any documents, data, oral or written material or information disclosed by the parties or produced by the parties in the context of this action, which any party considers to be non-public, confidential, trade secret, proprietary or privileged information, may be designated by such party as "confidential" at the time of production or inspection or at any time thereafter (hereinafter "confidential material"). All confidential material and information, regardless of its form or classification, shall be used only by the persons specified in paragraph 2 below, only in connection with this action, and shall not be used in connection with any other lawsuit or for any other purpose whatsoever.

2. No person shall be given, shown, allowed to examine or shall be privy to any discussions regarding material designated as "confidential" except the following:

- (a) The parties, attorneys for the parties, or employees for the attorneys for the parties, and designated representatives of the parties;
- (b) The Court and any employees of the Court designated by the Court, with or without notice to the parties;
- (c) Any person permitted to review confidential material by Court Order; and
- (d) Experts, consultants and other persons employed by the parties or attorneys for the parties for purposes of this litigation.

3. The inadvertent failure of any party to designate documents, data, oral or written material or information as confidential material shall not constitute, or have the effect of, a waiver of any claim that such material, or any similar material, is confidential within the meaning of this Order, including discovery materials which a party inadvertently fails to designate as confidential at the time of production but which such party subsequently designates as confidential. The treatment by the parties receiving such materials as other than confidential prior to their designation as confidential shall not be construed as a violation of the provisions herein governing the use of confidential materials.

4. The production of documents or other information by the parties pursuant to this Order shall not constitute a waiver of any claim based upon any wrongful use of the confidential material or any use of the confidential material not expressly permitted by this Order.

5. All confidential documents and copies of such documents reproduced pursuant to this Order (other than the "work product" of counsel arising from the examination of such documents), shall be surrendered to or destroyed at the request of the party producing such confidential material at the conclusion of this action, whether by compromise, settlement or final judgment, and the exhaustion of all appellate remedies. Any notes arising from the examination

of confidential material shall continue to be subject to the restrictions set forth herein after the conclusion of this action, whether by compromise, settlement or by final judgment, and the exhaustion of all appellate remedies.

6. This Order shall not limit the parties' right to submit confidential material to the Court as part of their pleadings and to use confidential material at trial provided, however, that either party shall have the right to request that this Court enter a protective order requiring that specified documents, or types of documents, be filed under seal or that a further protective order be adopted by the Court for use at trial.

7. Any disputes concerning the application of any provision of this Order shall be heard by the Court upon application of the aggrieved party.

8. This Order and the provisions herein shall not prejudice the right of any party to seek reconsideration by the Court, upon written application, to modify, extinguish or vacate this Order.

9. If any party objects to the classification or designation of confidential material herein, said party shall first contact the party making such designation or classification and shall confer in good faith within twenty (20) days in an effort to resolve the dispute. If the parties are unable to resolve the dispute, the party objecting to such classification or designation may apply to the Court, by motion or otherwise, for an Order reclassifying or redesignating the confidential material, or any other appropriate Order regarding the treatment of such materials, including, but not limited, to an Order permitting certain specific witnesses and/or parties to review and analyze such confidential material. This Order in no way affects a party's ability to object to the production of documents for any reason permitted under the Pennsylvania Rules of Civil Procedure.

10. Should any person bound hereby receive a subpoena, civil or regulatory investigation demand, or other process from a third party which may be construed to require the disclosure of confidential material in any form, said person shall immediately give notice to the party or his attorney who designated the information sought by the subpoena, demand or other process as confidential. Once notified, it shall be the burden of the party who designated the information confidential to protect the information from disclosure or production pursuant to the subpoena, demand or process.

It is so stipulated.

Dated this _____ day of _____ 2005.

James J. West
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101
ATTORNEY FOR PLAINTIFFS

Dated this 6th day of January, 2005.



S. Elaine Diedrich, PA Id. No. 84077
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
ATTORNEY FOR DEFENDANTS

IT IS SO ORDERED this _____ day of _____, 2005.

_____ J.

MESSAGE CONFIRMATION

01/06/2005 17:25
ID=SCHNADER K2

DATE	S.R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
01/06	01'03"	7172347517	CALLING	06	OK 0000

01/06/2005 17:24 SCHNADER K2 → 17172347517 NO.286 001

Schnader
ATTORNEYS AT LAW

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412.577.5200 FAX 412.765.3858 schnader.com

January 6, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

**VIA FAX (717) 234-7517
AND U.S. MAIL**

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your cooperation in agreeing that that we will make all reasonable attempts to schedule all of the parties' depositions during the same week and that the depositions will not take place until after I receive plaintiffs' medical records.

Also, thank you for your correspondence dated December 29, 2004 and your discovery responses. I note that you state you will obtain medical records from 1999 to the present from the doctors who have been identified in the plaintiffs' Answers to Interrogatories. However,

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(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jbennett@west-long.com

January 13, 2005

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

RE: Selvage and Retorick v. Clearfield Hospital, et al.

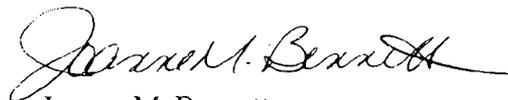
Dear Ms. Diedrich:

Enclosed please find the medical records we received regarding Dawn Retorick. We are still awaiting receipt of the records on behalf of Fran Selvage and will forward same to you as soon as they are received.

Thank you for your attention to this matter.

Sincerely,

WEST LONG LLC



Joanne M. Bennett
Paralegal

Enclosure

JAN 18 2005

January 25, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
Direct Fax 412-765-3858
E-mail: sediedrich@schnader.com

VIA FACSIMILE AND FIRST-CLASS MAIL

James L. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

RE: Frances L. Selvage and Dawn L. Retorick v. Clearfield Hospital, et al.

Dear Jim:

Thank you for the medical records of Ms. Retorick that you forwarded on January 13. However, I noticed that Ms. Retorick's medical records only range from the present back to 1996. It is my understanding that additional medical records for Ms. Retorick will not be forwarded as the cover letter which accompanied the records did not state additional records will follow. In my letter dated, January 6, 2005, I requested that you forward *all* of Plaintiffs' medical records without such date restrictions. We are entitled to these records given Plaintiffs' claims for intentional infliction of emotional distress and claimed injuries of emotional distress. In addition, you have not advised me from whom these medical records were requested and for which dates. By this letter, I am requesting this pertinent information.

To alleviate Plaintiffs' concerns regarding privacy, I enclosed in my January 6 letter a proposed Stipulated Protective Order to ensure the confidentiality of documents. As stated in the Order, documents noted as confidential, by any party, would be treated as such during the course of the litigation. I also requested your thoughts regarding the proposed order, but have received no response from you to date.

As a courtesy to you and your clients, I offered to obtain the records myself. To expedite the matter, I sent you a medical records release authorizations with our First Request for Production of Documents on November 3, 2004, to be signed by each Plaintiff. You have advised me that you will not have your client sign these authorizations and that you would obtain the medical records for us. As a result, I am forwarding you a Second Request for Production of Documents. In an attempt to further compromise the matter without the need of court intervention, I request both Plaintiffs' medical records from the present going back only to 1980. I have also enclosed another copy of the Stipulated Protective Order for your convenience.

Please contact me within the next five (5) days with the information regarding Ms. Retorick's medical records that I have requested above and to discuss how you plan to address our concerns.

James L. West, Esq.
January 25, 2005
Page 2

I have attempted to remedy each concern that you and your clients have brought to my attention. It is my hope that we will be able to resolve our issues without court intervention. However, I will, if necessary, file a motion to compel to obtain the documents that we are entitled to pursuant to the Pennsylvania Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



S. Elaine Diedrich

For SCHNADER HARRISON SEGAL & LEWIS LLP

SED/tjg
Enclosure

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February 1, 2005

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Re: Selvage and Retorick v. Clearfield Hospital, et al.

Dear Ms. Diedrich:

I wanted to bring you up-to-date where we stand. I have written to all of the doctors to get records for the 1999 period up to the present. I will write to them asking if they have any records dealing with any "emotional problems" prior to 1999 and would hope to receive an answer shortly. If there are any such records, I will make them available. We are also working on the tax records and should have something for you shortly.

I have some alternate dates for depositions that I will be calling you to discuss. Those dates are as follows: February 7-9; March 21 and 22; April 4-6; April 18-20; May 2-4; and May 16-18. The only date that is really questionable is the March date, as I commence a jury trial on March 23. I would suggest we use that date only as a last-resort.

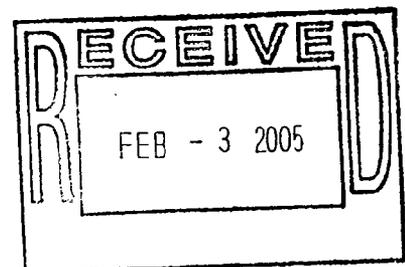
I will be giving you a call shortly so that we can finalize where we're at insofar as discovery is concerned.

Sincerely,

WESTLONG LLC

James J. West

JJW:dlg



February 11, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Mr. West:

Please allow this letter to confirm our discussion yesterday wherein I advised you that I am unavailable for depositions on April 4-6 and May 2-4; I am also unavailable May 17. I will advise you as to my clients' availability for the dates March 21 and 22, April 18-20, and May 16 and 18. In addition, you advised me that you would request all of plaintiffs' medical records from their physicians going back to 1980 and would not limit the request to only records dealing with "emotional problems", but rather, you would request all records from plaintiffs' physicians.

Please contact me after you have obtained the records so that we can discuss how to proceed.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Elaine Diedrich
S. Elaine Diedrich 

SED/mfh

February 11, 2005
Page 2

bcc: Jon R. Steen, Esq.
John K. Gisleson, Esq.

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James J. West
Robert R. Long, Jr.

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June 6, 2005

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Re: Selvage and Retorick v. Clearfield Hospital, et al.

Dear Ms. Diedrich:

Attached to this letter are:

- Exhibit 1** - Medical records received from Dr. Johnson regarding Dawn Retorick;
- Exhibit 2** - Medical records received from Dr. Cardamone regarding Frances Selvage;
- Exhibit 3** - Medical records received from Dr. Conrad regarding Frances Selvage;
- Exhibit 4** - IRS tax information for 1999-2003 regarding John and Dawn Retorick; and
- Exhibit 5** - IRS tax information for 1999-2003 regarding Theodore and Frances Selvage.

Thank you for your attention to these matters.

Sincerely,

WESTLONG LLC

James J. West

JJW:dlg

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2007, a true and correct copy of the foregoing Supplement to Motion to Compel Mental Examinations of Plaintiffs and Motion for Status Conference was provided via hand delivery to plaintiffs' counsel, James West.



S. Elaine Diedrich (PA Id. No. 84077)

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
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412.577.5200 FAX 412.765.3858 schnader.com

July 20, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517
AND U.S. MAIL

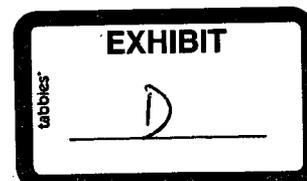
Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

I have reviewed the Notice of Deposition that you sent on July 17. We are going to have to object to the Notice as we do not believe the information requested is relevant to any claim or defense that has been raised in this matter and it would cause unreasonable annoyance, embarrassment, oppression, burden and expense to the Defendants. Specifically, Ms. Stone testified that she resigned her employment with the Hospital and Ms. Eisenman testified that she retired. Both events occurred in October 2004. The date of these events is so remote in time from the dates that plaintiffs resigned their employment with the Hospital (November 2002) that they are simply not relevant.

You advised me that your request was based on the deposition testimony of Talon Condon. Talon Condon testified that he "heard three or four reasons for Ms. Eisenman's resignation, but discounted them because they were hearsay" (he testified he heard nothing about Ms. Stone's resignation). Even if the hearsay that Talon Condon heard concerning Ms. Eisenman was correct, and that Ms. Eisenman's resignation had something to do with not "handling incident [reporting] correctly," (which is not admitted simply by addressing it in this letter), I still do not see how this is relevant. First, the events arose at a time remote to the plaintiffs' employment with the Hospital and, second, not handling incident reporting correctly does not translate into retaliating against employees for submitting incident reports. He did not testify that he heard she was retaliating against people for submitting reports.

We do not see how events in late 2004, which do not have anything to do with alleged retaliation against plaintiffs for submitting reports, have anything to do with the plaintiffs' claims -- *i.e.*, whether or not Ms. Retorick and Ms. Selvage were retaliated against because they submitted reports and, as a result, were forced to quit their jobs in November 2002. Please contact me as soon as possible if you believe there may be some way to resolve this matter. In the absence of a resolution, we will be filing a motion for protective order with the Court early next week.



July 20, 2007
Page 2

In further response to your letter of July 17, 2007, as we have previously discussed, Dr. Bernstein will be preparing a report in this case. However, he is not yet finished with the report. Although we are not required to produce a report until we file our pretrial statement, I assure you that I will provide the report to you as soon as it is complete. In the meantime, you should do what you feel is necessary concerning obtaining your own expert report.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a horizontal line extending to the right.

S. Elaine Diedrich

SED/mfh



Pennsylvania Psychological Services

Paul M. Bernstein, Ph.D., Director

CONFIDENTIAL

PSYCHOLOGICAL EVALUATION

Name: Frances Selvage
Date of Birth: January 4, 1949
Chronological Age: Fifty-eight years, four months
Date of Evaluation: May 21, 2007
Place of Evaluation: Sergeant Court Reporting Services
106 North Second Street
Clearfield, Pennsylvania 16830
Examiners: Paul M. Bernstein, PhD
Stephanie Helsel, M.S. Ed., NCC, LPC

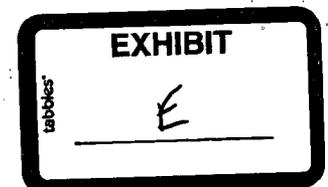
REASON FOR REFERRAL

S. Elaine Diedrich, Esq. referred Frances Selvage, R.N. for psychological evaluation secondary to Mrs. Selvage's lawsuit against Clearfield Hospital.

RECORDS REVIEWED

Documents produced by Selvage/Retorick (Bates Nos. PI-1 through PI-760)
Retorick medical records (Dr. Johnson)
Selvage medical records (Dr. Conrad)
Selvage medical records (Dr. Cardamone)
Documents produced by Clearfield Hospital (Bates Nos. CH 0000 through CH 2199)
Plaintiffs' Expert Report
Deposition transcripts:

- (a) Lois Eisenman (7/18/05)
- (b) Jackie Stone (7/18/05)
- (c) Thelma Stratton (7/18/05)
- (d) Lori Strunk (1/24/06)
- (e) Dawn L. Retorick (8/9/05) with DVDs



Name: Frances Selvage
Date of Evaluation: 05-21-2007
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- (f) Frances L. Selvage (8/8/05) with DVDs
- (g) Frances L. Selvage (8/9/05) with DVDs

Carlisle Hospital employment records for Frances Selvage
Carlisle Hospital employment records for Dawn Retorick
Amended Complaint
Answer and New Matter to Amended Complaint
Memorandum of Law in Support of Defendants' Motion for Summary Judgment
Plaintiffs' Answer and Memorandum of Law in Opposition to Defendants' Motions
for Summary Judgment

ASSESSMENT TECHNIQUES

Clinical Interview
Mental Status Examination
Personal History
Millon Clinical Multiaxial Inventory-III
Minnesota Multiphasic Personality Inventory-2
Bender Visual Motor Gestalt Test
House-Tree-Person Test

BEHAVIORAL OBSERVATIONS

Francis Selvage is a fifty-eight year, four month old, married mother of four children. Arriving on time and alone for her evaluation at 106 North Second Street, the offices of Sergeant Court Reporting Services in Clearfield, Pennsylvania, Mrs. Selvage drove a distance of less than two miles from her home at 302 Merrill Street in the same town.

Of average height and heavy build, Mrs. Selvage was well-groomed, and appropriately attired for climate, age and occasion in black slacks, black low-heeled pump leather shoes, a white blouse, and a cream and white sweater.

Upon entering the examination offices, Mrs. Selvage manifested no discernable anomalies of gait or posture; her speech, hearing, and vision appeared normal. She greeted the two examiners warmly, proffering a firm handshake, a steady gaze and a smile. Remaining pleasant throughout the lengthy assessment, Mrs. Selvage was consistently cooperative and compliant.

Name: Frances Selvage
Date of Evaluation: 05-21-2007
Page: 3

An able informant, Mrs. Selvage's recall of remote, past, recent past and immediate events was intact. By evidence of her good organization of thought, well-developed vocabulary, education, and professional career, it was apparent she possesses good intelligence.

This dark-haired, dark-eyed, Roman Catholic American woman of Italian ancestry said she regularly attends church. Completing testing without complaint or evidence of fatigue, Mrs. Selvage required neither inordinate supervision nor special direction. Generally cheerful, Mrs. Selvage became noticeably unhappy when discussing the work related occurrences she claims led to quitting her long-held charge nurse position with Clearfield Hospital.

Devoid of a discernable mental abnormality, no perceptual disturbances such as auditory or visual hallucinations or illusions were reported or detected. Mrs. Selvage's stream of thought was normal, as her replies were cogent, goal directed and relevant. As no linguistic impairment was manifest, careful listening was unnecessary. Mrs. Selvage denied suicidal or homicidal thoughts, phobias, obsessive ruminations, compulsive rituals, or hypochondriacal symptoms. There was no evidence of a thought disorder such as delusions of grandeur or persecution, or ideas of reference or influence.

Mrs. Selvage's cognitive abilities to: think logically, conceptualize, acquire general knowledge, recall remote facts, attend, concentrate, and understand societal norms, were assessed. Her ability to think abstractly is normal as Mrs. Selvage found commonalities for orally presented pairs of items such as: "Dog/Lion, Red/Blue, North/West, and Air/Water," but she had difficulty associating, "Table/Chair and Enemy/Friend." Able to interpret proverbs such as, "The early bird catches the worm," she also named the capitals of the United States and Pennsylvania, knew the distance from New York to California, cited the direction one would travel if going from Chicago to Panama, and correctly repeated six digits forwards and five backwards. Her test judgment was good, as Mrs. Selvage knew why taxes should be paid, and why child labor laws are needed, but she was uncertain about the rationale for a criminal parole system.

Well oriented to time, place and person, Mrs. Selvage was aware of the time of day, the day of the week, the date, her address, and she answered biographical questions with apparent accuracy. Her memory for remote, recent past, recent and immediate events was intact, as she recalled important aspects of her childhood, her activities during the past few months, and her experiences the evening prior to, and the morning of this evaluation. Mrs. Selvage quickly and accurately performed "Serial Sevens," demonstrating strong concentration skills.

Name: Frances Selvage
Date of Evaluation: 05-21-2007
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Without error, she subtracted seven from one hundred, and continued subtracting seven from the remainder until stopped.

Mrs. Selvage's impulse control and social judgment are good. Appreciative of the consequences of her behavior, she is guided by that comprehension. For instance, there is no record of criminal behavior, sexual promiscuity, violent acting-out or substance abuse. A college graduate, a regular church attendee, and a home owner, Mrs. Selvage maintains and utilizes her Pennsylvania Nursing License, has been married to the same man for almost forty years, successfully raised four children, was legally awarded custody of two of her grandchildren, has a steady work history, and reportedly enjoys a close relationship with her brothers and their families.

RELEVANT BACKGROUND

On January 4, 1949, Frances Selvage nee Lombardo was born in Clearfield, Pennsylvania to Charles and Margaret Lombardo. In March 1983, Mrs. Selvage said her mother, Margaret Lombardo, at age fifty-six, died of a multiple myeloma (sic). In June 1989, at age sixty-nine, Charles Lombardo died of a myocardial infarction. Mrs. Selvage said she had a "very good" relationship with her parents.

The eldest of three children, Mrs. Selvage's fifty-four year old brother, Sam is the married father of two adult sons, and Clearfield County Prison's warden. Charles, 44, a mechanic and resident of Clearfield, Pennsylvania is the married father of two.

Mrs. Selvage exclaimed, "We are a close family. I see my brother Sam when I'm home-not as often as I'd like to, but if I would need him, he's there. I have a great sister-in-law! My nephews are great! One of them is a physician's assistant!" About Charles she said, "He works with my husband. I don't get to see him as often as I'd like to. Sometimes, I feel like I'm out of the loop. I have wonderful brothers and sister in-law. The kids are great!"

In 1968, Frances Lombardo married Theodore "Ted" Selvage, 58. He is a laborer at Glen Gary Corporation in Bigler, Pennsylvania, (a town in close proximity to Clearfield). Although she characterized her husband as healthy, Mrs. Selvage said he smokes one package of cigarettes a day.

Mr. and Mrs. Selvage have three daughters and one adopted son. Barbara Mahlon, 39, is the married mother of two who resides in Chesapeake, Virginia. A

Name: Frances Selvage
Date of Evaluation: 05-21-2007
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part-time high school teacher, Barbara and her mother see one another two to three times a year.

Jennifer Gates, 36, is the married mother of two and lives in Mechanicsburg, Pennsylvania. Since early November 2002, when Mrs. Selvage accepted a nursing position at Carlisle Regional Medical Center, (a two and a half hour drive from Clearfield), she has stayed at Jennifer's home three or four days every workweek so that she only drives to work from home once each week. A case manager, Jennifer works at a drug and alcohol treatment facility.

Denise Derrick, 31, is the divorced mother of two young children. When she was twenty-five, Denise was severely head injured in an automobile accident. Permanently disabled, Denise receives Social Security Disability benefits. Since the crash, Denise and her children have lived with Mr. and Mrs. Selvage, who were awarded custody of their grandchildren.

Jeff Selvage, 24, is a skilled laborer at Glen Gary Construction Corporation, the same business where his father and uncle are employed. Possessing a Bachelor of Arts degree in criminology from Pennsylvania's Lockhaven University, Jeff is considering attaining a master's degree.

Mrs. Selvage attended Clearfield's Fourth Ward Public Elementary School, until transferring to St. Francis Middle School, and later, to St. Francis High School. Reporting to have been a high achieving student in high school, Mrs. Selvage said she was also a cheerleader and member of the Debate Club. In 1993, Mrs. Selvage, who characterized herself as an "excellent" college student, earned a Bachelor of Science degree in Nursing from Penn State University.

From 1975 to 1987, Mrs. Selvage operated a home-based daycare center under the auspices of Clearfield County League of Social Services. At her center, she typically cared for as many as five children at a time. From the spring of 1993 until late October 2002, Mrs. Selvage was a registered nurse at Clearfield Hospital's Intensive Care Unit. She remained at Clearfield Hospital until, "I was pushed out. They made me quit," Mrs. Selvage exclaimed. Subsequently, in early November 2002, Mrs. Selvage accepted a comparable nursing position in the Emergency Department of the Carlisle Regional Medical Center. Because of the considerable distance between Carlisle and Clearfield, Pennsylvania, Mrs. Selvage stays with her daughter three or four days a week, as Jennifer's home is situated near the medical center.

Reporting to be in precarious health, Mrs. Selvage said she suffers from depression, anxiety, insomnia, and hypertension. In April 2007, she experienced

Name: Frances Selvage

Date of Evaluation: 05-21-2007

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an outbreak of shingles that she attributes to stress associated with a recent legal deposition. In 2002, at Clearfield Hospital, a hysterectomy to excise a benign ovarian cyst was successfully performed. Except for the birth of her children, no other surgeries were reported.

In late 1999, Dr. Conrad of Clearfield, Pennsylvania, Mrs. Selvage's primary care physician, prescribed Paxil @ 20 mg., for depression, but the SSRI caused drowsiness. He then prescribed Lexapro. Mrs. Selvage presently takes the SSRI, Lexapro @10mg., once per day, as prescribed by Dr. Daryl Guistwhite, her primary care physician in Carlisle, Pennsylvania.

Medical records indicate from 1999 until 2000, Ativan and Xanax for anxiety, Sonata for insomnia, and Elavil and Zoloft for depression were also prescribed. Benicar @50mg., and Norvasc @5 mg., are currently taken to reduce hypertension. Although Mrs. Selvage denied abusing alcohol or illicit drugs, she is overweight and admitted to smoking half a pack of cigarettes a day.

Mrs. Selvage attributes her emotional dysfunction to the problems she had at Clearfield Hospital. She acknowledged her mood disorder is exacerbated, and maintained by weekly separations from her family.

TEST RESULTS AND INTERPRETATIONS

MILLON CLINICAL MULTIAXIAL INVENTORY-III

The **Millon Clinical Multiaxial Inventory-III (MCMI-III)** is a standardized measure of psychopathology with good reliability and validity. Designed for adults, the instrument focuses on mental disorders along with symptoms that are frequently associated with personality problems. Since its original publication, the Millon has stimulated over six hundred published papers, and has become one of the more frequently used tests in clinical practice. The current version is comprised of one hundred and seventy five items.

Mrs. Selvage's responses show her to be a well-functioning woman for whom social approval and commendation is apparent in her tendency to present herself favorably. Her proclivity is to resist revealing personality traits that would be judged negatively. Highly concerned with her public appearance, Mrs. Selvage wishes to be seen by others as composed, sociable and conventional. It is important that she meet the expectations of others, particularly those in authority. Defensive about admitting to psychological problems, Mrs. Selvage

Name: Frances Selvage

Date of Evaluation: 05-21-2007

Page: 7

fears criticism and derogation. Inclined to be Pollyannaish, she manifests a dependent conformity and inhibition of behavior.

Extremely concerned with minutia, Mrs. Selvage may be distracted from her occasional feelings of minor anxiety and inadequacy. Her façade of propriety is usually successful in repressing whatever resentments she may feel. Notable is Mrs. Selvage's strong sense of self-satisfaction and self-worth often exhibited in overt displays of her admirable traits and accomplishments.

Others may see Mrs. Selvage as egotistical, inconsiderate or arrogant. She feels justified in her claim for special status, and has little conception that her behavior may be objectionable. Also salient is Mrs. Selvage's view of herself as a socially stimulating and charming person; one who seeks to pursue a busy and pleasure-oriented lifestyle, and is invariably perceived by others as appealing and attractive. She lacks insight, however, failing to recognize or to admit recognizing her deeper insecurities, and desperate need to garner attention, and to be well liked. Seeking the reassurance and approval of authority figures, Mrs. Selvage experiences anxiety when she is unsure of their wishes or expectations. This contrasts markedly with her treatment of subordinates, with whom she is autocratic and condemnatory, often appearing pompous and self-righteous. These haughty and deprecatory behaviors are usually cloaked by so-called regulations and legalities.

MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-2

VALIDITY SCALES

SCALES	T-SCORE
Lie (L)	48
Infrequency (F)	57
Correction (K)	59

CLINICAL SCALES

SCALES	T-SCORE
Conversion Hysteria (Hs)	60
Depression (D)	68
Hypochondriasis (Hy)	73
Psychopathic Deviate (Pd)	66
Masculinity-Femininity (Mf)	43
Paranoia (Pa)	64
Psychasthenia (Pt)	63

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Schizophrenia (Sc)	53
Hypomania (Ma)	37
Social Introversion (Si)	47

The **Minnesota Multiphasic Personality Inventory-2** is a highly utilized measure of psychopathology. Presented with true/false items, Mrs. Selvage's approach to the instrument was typical in that she produced results that can be interpreted with a good degree of confidence.

VALIDITY SCALES/CLINICAL SCALES

Possessing few deviant beliefs, Mrs. Selvage tested as well-functioning, comfortable with her self-image, adaptive, self-reliant, and unwilling to seek help. Manifesting moderate defensiveness, there is little acknowledgement of distress.

Testing shows Mrs. Selvage to be empathic, considerate, capable, confident, responsible, conscientious, hardworking, friendly, talkative, and poised. Conversely, Mrs. Selvage may have a specific physiological disorder, as she is observed as complaining, irritable, whining, and preoccupied with her health, dieting, weight, and body functioning. Lacking energy and having trouble concentrating, she reports to be distressed and dysphoric. Possessing little tolerance for boredom or tedium, Mrs. Selvage has difficulty with authority, and responded to the instrument as having recurrent relational and work problems. Flirtatious, histrionic and demanding, she is psychologically naïve, emotionally superficial, lacking insight and overly reliant on the ego defenses of denial and dissociation.

THE BENDER VISUAL MOTOR GESTALT TEST

The **Bender Visual Motor Gestalt Test**, was developed in the 1930's by Loretta Bender and is one of ten most frequently utilized psychological instruments. The device designed to screen for neurological impairment and visual perceptual maturation, is also a good measure of personality and psychopathology.

Mrs. Selvage was requested to reproduce nine geometric designs. The absence of scoreable errors negates concern that she has an organic problem. Her well drawn, logically sequenced, and adequately spaced renderings are demonstrative of good reality contact, emotional balance, logical thinking, and normal planning.

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Variable motor pressure, inconsistent size, erasures, and the presence of gaps, however, show Mrs. Selvage to be emotionally labile, ambivalent, self-critical, and to have interpersonal difficulties.

THE HOUSE-TREE-PERSON TEST

The **House-Tree-Person Test** is another graphic/projective device administered to assess intellect and personality. Mrs. Selvage was found to be emotionally balanced, warm, gregarious and friendly, as evidenced by the realistically drawn, adequately sized human figures that are well-centered and presented face-forward.

The immaturity of her drawings, and the utilization of a base line for the tree denote immaturity and emotional impulsivity. Sketchy line quality suggests anxiety, and the presence of fasteners reveals Mrs. Selvage's awareness that she needs to better control her affective over-reactivity.

CONCLUSION

Within a reasonable degree of psychological certainty, it is this examiner's opinion that there is not sufficient evidence to support Frances Selvage's complaint, nor the conclusion of Dr. Schneider that she has a mood disorder; a condition that meets the criteria for a DSM-IV- TR diagnosis.

Dr. Schneider said he reviewed the following records:

- 9/15/05 letter of referral from Attorney West with amended complaint, including Exhibits #1 through #14
- Review of 8/8/05 video/transcribed deposition of Frances Selvage, RN
- Review of 8/9/05 video/transcribed deposition of Dawn Retorick, RN
- Review of 8/9/05 video/transcribed deposition of Frances Selvage, RN
- Dawn Retorick—medical records 3/96 through 1/05
- Frances Selvage —medical records (cardiology) 7/99-5/02
- 1/30/06 Letter from Attorney West
- March/April 2006-Review of Dawn Retorick's Performance Evaluations from Clearfield Hospital 1982-2002 with attached letters from peers
- Review of Dawn Retorick's Performance Evaluations-Carlisle Regional Medical Center 2002-2005, March-April 2006
- March/April 2006-Review of Frances Selvage's Performance Evaluations from Clearfield Hospital 1993-2002 Selvage/Retorick v. Clearfield Hospital

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- March/April 2006-Review of Frances Selvage's Performance Evaluations-
Carlisle Regional Medical Center

On February 2, 2006, Dr. Schneider met with Dawn Retorick and Frances Selvage for a specified period of time. Upon reviewing the reported records and upon interviewing the two nurses, Dr. Schneider concluded that Mrs. Selvage's and Mrs. Retorick's decision to leave Clearfield Hospital was in their best interest. He found, "...that both Francis and Dawn did experience emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, and irritability. Their anxiety and depression was noted, particularly Francè (sic) Selvage's, in a review of her medical records."

As Dr. Schneider conducted no psychological testing, did not provide a mental status evaluation, relied on the available records and self-reports of the plaintiffs, Mrs. Retorick and Mrs. Selvage, it is my opinion that there was insufficient evidence to support his conclusions. It is unreasonable to hypothesize that Mrs. Selvage's unhappy experiences at Clearfield Hospital five years ago is the primary source of her discontent. It is more likely the time Mrs. Selvage is apart from her immediate family because of the considerable geographical distance from her home and her current nursing position at Carlisle Regional Medical Center is the more probable genesis of her displeasure. A review of her recent history and this comprehensive psychological evaluation failed to substantiate that she has a diagnosable mental disorder.

Since 1993, without interruption, Mrs. Selvage has successfully performed the formidable duties of a registered nurse in highly stressful departments (Intensive Care and Emergency) at two medical institutions. For the last six years, in her home, this fifty-eight year old woman has cared for her seriously disabled daughter, and has been raising her two young grandchildren. By her account, she maintains excellent relationships with her husband, her children, her grandchildren, her brothers, and their families.

Psychological testing found Mrs. Selvage to be warm, well balanced, reality oriented, intelligent, and out-going. Her inordinate need to please those in authority, and to be seen positively by others, however, conflicts markedly with her arrogant treatment of those she considers her subordinates.

The evaluation further determined Mrs. Selvage to manifest histrionic features such as: egocentricity, superficial emotionality, lability, over-reactivity, flirtatiousness, excitability and immaturity. These pervasive, life-long characteristics are personality traits, not symptoms of a mental disorder. Her reporting of staffing issues, patient care issues, and her problems with

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colleagues and superiors at Clearfield Hospital is more likely a manifestation of her personality than the result of administrative mismanagement and staff ineptitude.

Respectfully submitted,



Paul M. Bernstein, Ph.D.

Licensed Psychologist PS#000171-L
Associate Professor-Duquesne University



Pennsylvania Psychological Services

Paul M. Bernstein, Ph.D., Director

CONFIDENTIAL

PSYCHOLOGICAL EVALUATION

Name: Dawn L. Retorick
Date of Birth: August 16, 1961
Chronological Age: Forty-five years, nine months
Dates of Evaluation: May 21, 2007
Place of Evaluation: Sergeant Court Reporting Services
106 North Second Street
Clearfield, Pennsylvania 16830
Examiners: Paul M. Bernstein, PhD
Stephanie Helsel, M.S. Ed., NCC, LPC

REASON FOR REFERRAL

S. Elaine Diedrich, Esq. referred Dawn L. Retorick, R.N. for psychological evaluation secondary to Mrs. Retorick's law suit against Clearfield Hospital.

RECORDS REVIEWED

Documents produced by Selvage/Retorick (Bates Nos. PI-1 through PI-760)
Retorick medical records (Dr. Johnson)
Selvage medical records (Dr. Conrad)
Selvage medical records (Dr. Cardamone)
Documents produced by Clearfield Hospital (Bates Nos. CH 0000 through CH 2199)
Plaintiffs' Expert Report
Deposition transcripts:

- (a) Lois Eisenman (7/18/05)
- (b) Jackie Stone (7/18/05)
- (c) Thelma Stratton (7/18/05)
- (d) Lori Strunk (1/24/06)
- (e) Dawn L. Retorick (8/9/05) with DVDs

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- (f) Frances L. Selvage (8/8/05) with DVDs
- (g) Frances L. Selvage (8/9/05) with DVDs

Carlisle Hospital employment records for Frances Selvage
Carlisle Hospital employment records for Dawn Retorick
Amended Complaint
Answer and New Matter to Amended Complaint
Memorandum of Law in Support of Defendants' Motion for Summary Judgment
Plaintiffs' Answer and Memorandum of Law in Opposition to Defendants' Motions
for Summary Judgment

ASSESSMENT TECHNIQUES

Clinical Interview
Mental Status Examination
Personal History
Millon Clinical Multiaxial Inventory-III
Minnesota Multiphasic Personality Inventory-2
Bender Visual Motor Gestalt Test
House-Tree-Person Test

BEHAVIORAL OBSERVATIONS

Dawn L. Retorick is a forty-five year, nine month old, married Caucasian mother of two children. Of average height (5'4"), and heavy build (200 pounds), this light brown-haired, green eyed registered nurse arrived on time and alone for her psychological evaluation that was conducted at the offices of Sergeant Court Reporting Services at 106 North Second Street in Clearfield, Pennsylvania.

Entering the examiner's offices somewhat hesitatingly, Mrs. Retorick evidenced no anomalies of gait, posture, speech, or hearing, but she wore corrective lenses. Well groomed and appropriately attired for climate, age and occasion, Mrs. Retorick was attired in black slacks, black leather sandals, a red silk under blouse, and a black, white and red shirt.

Although initially apprehensive, Mrs. Retorick became noticeably more comfortable as the session progressed. Cooperative and compliant throughout the lengthy evaluation, her responses seemed earnestly delivered and appeared genuine.

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Well oriented to time, place and person Mrs. Retorick provided a cogent biographical sketch as well as the correct date, the day of the week, the time of day, her address, and telephone number. Her memory for remote, recent past, recent and immediate events was intact as she recalled important aspects of her early childhood, her activities during the past few months, her experiences the evening prior to, and the morning of this evaluation, and she impressively repeated eight digits forwards and five backwards.

Mrs. Retorick's serious mood and narrow range of affective expression were appropriate considering the circumstance. No unusual mannerisms, tics or gestures were observed, and Mrs. Retorick persevered without complaint or sign of fatigue. Completing testing in a reasonable period of time, she did not require inordinate attention.

Mrs. Retorick's impulse control is good as evidenced by her education, steady, professional employment, long term marriage, sexual fidelity, successful raising of two children, and absence of: a criminal history, anti-social behavior, violent acting-out, abuse of alcohol, misuse of prescription drugs, use of illicit substances, or psychiatric/psychological intervention.

Emotionally healthy, no perceptual disturbances such as auditory or visual hallucinations or illusions were reported or observed. Mrs. Retorick's thinking was rational, cogent and realistic. Delusions of grandeur or persecution, and ideas of reference or influence were neither observed nor communicated. No signs or indicia of depersonalization or derealization were detected or reported. Mrs. Retorick was free of obsessive ruminations, phobias, suicidal or homicidal thoughts, hypochondriacal complaints or compulsive rituals. Demonstrating a normal flow of ideas, and absent of tangential or discursive remarks, her stream of thought was adequate.

As evidenced by her training and work, the ease with which she comprehended and followed test directions, her good organization of thought, well-developed vocabulary, and responses to questions concerning abstract reasoning, general knowledge, social judgment, memory, logical thinking and concentration, Mrs. Retorick was shown to possess normal intelligence.

By accurately providing commonalities for orally presented pairs of items such as: "Dog/Lion, Red/Blue, Air/Water, and North/West, Mrs. Retorick demonstrated good abilities to conceptualize. She ably interpreted proverbs, named the capitals of Pennsylvania and the United States, knew the approximate distance from New York to California, identified the Koran, understood why taxes should be paid, why child labor laws are needed, and why we have a criminal parole

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system. Her concentration was good as she solved "Serial Sevens" that required her to subtract seven from one hundred, and continue subtracting seven from the remainder until told to stop.

RELEVANT BACKGROUND

Dawn L. Retorick was born on August 16, 1961, in Harrisburg, Pennsylvania to Delores and Harold Clark. On October 26, 1996, Mrs. Retorick's father, at age sixty-five, died of esophageal cancer. Although she said she had a good relationship with her father, he was not her confidant. Mrs. Retorick, however, claims to be "very close" to her seventy-nine year old mother, a retired high school teacher who lives in Lanse, Pennsylvania.

Mrs. Retorick attended Westbranch Elementary School in Morrisdale, Pennsylvania where she was active in the chorus and the Future Nurses Club. These avocational interests remained throughout her middle school and secondary school years at the Westbranch Schools. For one year during her secondary studies, Mrs. Retorick attended Clearfield County Vocational Technical Institute from which she became a Certificated Health Assistant.

In June of 1982, Mrs. Retorick earned a Registered Nursing degree from Phillipsburg State General Hospital in Pennsylvania. Following that, she became a Certified Critical Care Nurse, and was then certified in Advanced Cardiac Life Support and Pediatric Cardiac Life Support.

On November 3, 2002, Mrs. Retorick became a charge nurse in the Emergency Department of Carlisle Regional Medical Center. She took the new job, a few days after quitting her duties as a charge nurse on the Intensive Care Unit of Clearfield Hospital, where she had worked since June 21, 1982. Before nursing at Clearfield Hospital, Mrs. Retorick was a nurse's aide and companion to the elderly.

About her reasons for leaving Clearfield Hospital, Mrs. Retorick said, "I was written up for medical errors on days I didn't work, and there were lots of other things!" She alleged at Clearfield Hospital, her immediate supervisor, Thelma Stratin harassed her, criticized her publicly, and was generally unsupportive. Mrs. Retorick said when she complained to the Directress of Nursing, Jackie Stone about being mistreated by Ms. Stratton, not only were her grievances not resolved; her problems with Thelma Stratton were exacerbated.

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Because of the considerable distance (more than one hundred miles) between her home in Morrisdale, Pennsylvania, and her job at Carlisle Regional Medical Center, Mrs. Retorick rents a motel room in Carlisle three or four days each workweek. Mrs. Retorick considers her stays in Carlisle a hardship, because she leaves her husband, John, and her fifteen-year-old son, Joshua at home.

When she was thirty-eight years of age, Mrs. Retorick developed avascular necrosis in her right knee. In June of 2006, she underwent surgery at Clearfield Hospital to remove five abscesses in her right lower extremity, necessitating five weeks of medical leave. The following month, Mrs. Retorick was again hospitalized at Clearfield to have a vein in her right leg excised because of the development of multiple abscesses. Recently, superficial septic thrombophlebitis of the right leg was diagnosed. On March 17, 2007, cellulitis detected in both legs required a two-day stay at the Carlisle Regional Medical Center. Problems with her legs make the long drive from Morrisdale to Carlisle arduous. When she discussed her law suit, Mrs. Retorick became tearful.

While hospitalized at Carlisle Regional Medical Center in July 2006, the anti-coagulant, Lovenox @80 mg., bid was administered. Because of circulatory difficulties, Aspirin @325 mg., is now taken daily.

Ten years ago, at Clearfield Hospital, Mrs. Retorick's diseased gall bladder was removed. Hypertension and supraventricular tachycardia (SVT); conditions reportedly related to an inconsistently functioning thyroid gland were diagnosed. Her thyroid problem was assumed, by Mrs. Retorick, to have been caused by the dye injected when she was given a CT scan.

Lopressor @ 100mg., bid is prescribed by Dr. Randy Cardell to treat the high blood pressure and SVT, and Neurotin @ 300mg., hs for leg pain is prescribed by Richard Johnson, MD. Mrs. Retorick complained her weight gain is caused by the Neurotin. Restless leg syndrome was detected in June 2006. Although chest pains are occasionally experienced, Mrs. Retorick expressed relatively little concern, attributing the discomfort to medication rather than cardiac problems. Mrs. Retorick complained of bilateral amblyopia (reduction of vision), and blurred double vision in her left eye. She also suffers from migraine headaches. In April of this year she experienced an outbreak of shingles that she attributes to stress related to her litigation. It is interesting that Mrs. Retorick misspelled many of her medical diagnoses.

On November 27, 1982, Dawn Retorick nee Clark married John Retorick, a carpenter employed by DW Reed of Clearfield, Pennsylvania. She reports her husband's health as good, and spoke positively of their relationship. Mrs.

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Retorick's teenage son, Joshua will enter his high school junior year this coming fall.

Mrs. Retorick's twenty-one year old married daughter, Brittany lives in Grassflat, Pennsylvania with her sixteen-month-old son. Brittany manages a Unimart Convenience Store and is a part-time nurse's aide. With the exception of having had many ear infections as a child that required the insertion of tubes in her Eustachian canals, and having had adjustment problems as an adolescent, Brittany is in good emotional and medical health.

On October 31, 2002, Mrs. Retorick left her position as an Intensive Care Unit charge nurse at Clearfield Hospital where she had been employed since June 21, 1982. Mrs. Retorick said, "I was forced out due to conflicts with nursing management!" On one occasion she said she was "written-up" by her immediate supervisor, Thelma Stratton for medication errors on a day she didn't work. About Ms. Stratton, Mrs. Retorick said, "I don't know what her problem was. It was bad. It got to the point that evaluations that were supposed to be confidential were put out for everyone to see," adding, Jackie Stone, Directress of Nursing would tell Thelma about my complaints and then she would retaliate. There was no support for the staff."

Within a few days of leaving Clearfield Hospital, Mrs. Retorick accepted the position of Emergency Department charge nurse at Carlisle Regional Medical Center in Pennsylvania. As there is a considerable distance between the medical center and her home in Morrisville, Pennsylvania, Mrs. Retorick works four shifts back to back; typically spending three nights and four days in Carlisle. Mrs. Retorick said the long drive to and from work causes her considerable leg pain, and she misses her family. She also complained of the expense of renting a motel room and eating meals out.

TEST RESULTS AND INTERPRETATIONS

MILLON CLINICAL MULTIAXIAL INVENTORY-III

The **Millon Clinical Multiaxial Inventory-III (MCMI-III)** is a standardized test of psychopathology with good reliability and validity. Designed for adults, the instrument focuses on mental disorders along with symptoms that are frequently associated with personality problems. Since its original publication, the Millon has stimulated over six hundred published papers, and has become one of the more frequently used tests in clinical practice. The current version is comprised of one hundred and seventy five items.

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Her responses show Mrs. Retorick to have little self-confidence, and she identified some familial problems. The protocol reveals her to be a well-functioning adult with only minor life difficulties. Having a strong need for social approval, Mrs. Retorick is generally naive about psychological matters. Obsessive-compulsive, histrionic and narcissistic personality traits are noted.

Making a great effort to be sociable, Mrs. Retorick closely conforms to rules and authority. There is, however, an undercurrent of resentment that is not readily displayed, and a strong inclination to deny conflicts for fear of losing control. Denial, tension and conformity are characteristic features. Defensive about admitting to psychological problems, Mrs. Retorick fears criticism and derogation.

Although possessing strong beliefs, Mrs. Retorick's fear of expressing her opinions causes others to perceive her as grim and somber. Her reluctance to make mistakes or to appear unconventional inhibits her actions and provides her limited expression of her opinions and attitudes. Self-doubt and need for security attracts her to traditional institutions where she can maintain a consistent behavioral pattern and avoid assuming personal autonomy.

Overly concerned with minor details, her façade of propriety is usually successful in repressing her resentments. Generally, Mrs. Retorick is efficient, meticulous and industrious. She values conscientiousness, discipline, prudence and loyalty.

Minnesota Multiphasic Personality Inventory- 2

VALIDITY SCALES	T-SCORES
Lie (L)	48
Infrequency (F)	57
Correction (K)	59

CLINICAL SCALES

SCALES	T-SCORE
Conversion Hysteria (Hs)	60
Depression (D)	68
Hypochondriasis (Hy)	73
Psychopathic Deviate (Pd)	66
Masculinity-Femininity (Mf)	43
Paranoia (Pa)	64
Psychasthenia (Pt)	63
Schizophrenia (Sc)	53

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Hypomania (Ma)	37
Social Introversion (Si)	47

The **Minnesota Multiphasic Personality Inventory-2** is a highly utilized measure of psychopathology. Presented with true/false items, Mrs. Retorick's honest approach to the instrument allowed her test results to be interpreted with confidence.

VALIDITY SCALES

By candidly responding to items on the three measures that constitute the Validity Scales, (Lie, Infrequency and Correction), by approaching the instrument in a typical manner, and earning scores that fell within the normal range Mrs. Retorick was shown to be conventional, socially conforming, sincere, and to perceive the world as do most others. Tending to deny difficulties, and demonstrating moderate defensiveness, she has difficulty asking for support. Compliant and moralistic, she is rigidly virtuous. Possessing adequate ego strength, excellent coping skills, effective emotional defenses, Mrs. Retorick has good contact with reality.

CLINICAL SCALES

Mrs. Retorick's responses to the Clinical Scales reveal her as reserved, self-effacing, serious, cautious, and socially inept. She is, however, responsible, trusting, realistic, adaptable, dependable, critical, clear thinking, vigorous and sincere. The instrument further finds that she over-reacts to problems, exaggerates physical symptoms, possesses a bitter, cynical outlook, and is irritable, timid, pessimistic, worrying, immature and manipulative. Inhibited and moody, Mrs. Retorick is often self-dissatisfied, and seen by others as introverted.

THE BENDER VISUAL MOTOR GESTALT TEST

The **Bender Visual Motor Gestalt Test** is a well-respected graphic/projective instrument. This device asked Mrs. Retorick to copy nine geometric designs so that her visual perceptual abilities and personality be measured.

The absence of scoreable errors negates concern that Mrs. Retorick has a neurological or perceptual problem. Her protocol was normal. The reproductions were representative, logically sequenced, adequately spaced and detailed. The good quality of her renderings negates the presence of psychopathology.

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Faint motor pressure, placement of the designs along the left margin, and flattened curvature suggest low self-esteem, strong dependency needs, and emotional blunting. These characteristics are deviations found within a normal personality.

THE HOUSE-TREE-PERSON TEST

The **House-Tree-Person Test** is a graphic/projective measure designed to yield information about Mrs. Retorick's intellect and personality. The presence of relevant and important details, particularly in response to the human drawings, coupled with the three dimensionality of the house show Mrs. Retorick to possess good cognitive functioning.

Placement of the juvenile appearing human figures along the left margin denotes excessive reliance on others. Sketchy motor quality and faint motor pressure reveals feelings of inadequacy and anxiety, and the truncated upper extremities are suggestive of helplessness. Conversely, placement of the tree and house in the upper quadrant indicates positive aspirations. The protocol reveals Mrs. Retorick to be a warm, receptive and pleasant individual, who enjoys relating with others.

CONCLUSION

Within a reasonable degree of psychological certainty, it is this examiner's opinion Mrs. Dawn Retorick is a well-functioning person. She neither reports nor was found by psychological assessment or history to have a mental disorder. Conscientious, dutiful and hardworking, she is fearful of criticism or being perceived as unusual. Her conforming, compliant orientation constricts her emotional reactions, and inhibits the sharing of her strongly held opinions.

Dr. Schneider said that he reviewed the following records:

- 9/15/05 letter of referral from Attorney West with amended complaint, including Exhibits #1 through #14
- Review of 8/8/05 video/transcribed deposition of Frances Selvage, RN
- Review of 8/9/05 video/transcribed deposition of Dawn Retorick, RN
- Review of 8/9/05 video/transcribed deposition of Frances Selvage, RN
- Dawn Retorick—medical records 3/96 through 1/05
- Frances Selvage —medical records (cardiology) 7/99-5/02
- 1/30/06 Letter from Attorney West
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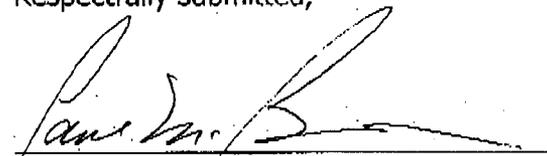
- Review of Dawn Retorick's Performance Evaluations-Carlisle Regional Medical Center 2002-2005, March-April 2006
- March/April 2006-Review of Frances Selvage's Performance Evaluations from Clearfield Hospital 1993-2002 Selvage/Retorick v. Clearfield Hospital
- March/April 2006-Review of Frances Selvage's Performance Evaluations-Carlisle Regional Medical Center

On February 2, 2006, he also met with Dawn Retorick and Frances Selvage for a specified period of time. Upon reviewing the reported records and upon interviewing the two nurses Dr. Schneider concludes that Ms. Selvage's and Retorick's decision to leave Clearfield Hospital was in their best interest. He found, "...that both Francis and Dawn did experience emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, and irritability. Their anxiety and depression was noted, particularly France (sic) Selvage's, in a review of her medical records."

It should be noted Dr. Schneider provided no psychological tests, did not conduct a mental status evaluation and relied exclusively on the records reviewed and the statements of Ms. Retorick and Selvage. It is my opinion that there is not evidence to support Dr. Schneider's conclusions.

With regard to Mrs. Retorick's complaints about staffing and patient care at Clearfield Hospital, it would appear that her issues are primarily the result of her self-doubt and insecurity. Mrs. Retorick's problems with the hospital staff and administration are likely a manifestation of her personality difficulties.

Respectfully submitted,



Paul M. Bernstein, Ph.D.

Licensed Psychologist PS#000171-L
Associate Professor-Duquesne University



Michelle M. McGonigal, RN MSN
102 Fairdale Street
Pittsburgh, PA 15237
412.366.3087

August 1, 2007

S. Elaine Diedrich, Esq.
Schnader, Harrison, Segal & Lewis, LLP
Fifth Avenue Place
120 Fifth Avenue Suite 2700
Pittsburgh, PA 15222-3001

RE: Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital; Lois Eisenman, Director of Nursing; Jackie Stone, Vice President of Nursing; and Thelma Stratton, ICU Manager, Court of Common Pleas of Clearfield County, Pennsylvania, GD 03-393

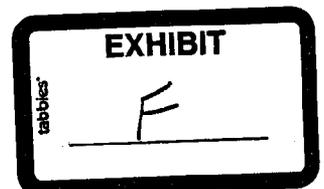
Dear Ms. Diedrich:

At your request, I have reviewed the documents listed below in regards to the complaint submitted by Frances L. Selvage and Dawn L. Retorick against Clearfield Hospital and its nursing administrators:

- Deposition of Jackie Stone, Vice President of Nursing
- Deposition of Lois Eisenman, Director of Nursing
- Deposition of Thelma Stratton, ICU Manager
- Deposition of Frances L. Selvage, RN
- Deposition of Dawn Retorick, RN
- Deposition of Lori Strunk, RN
- Document numbers PL 1 – 760
- Document numbers CH 1-2199
- Hospital Personnel Files of the plaintiffs
- Plaintiff's expert report by Stanley E. Schneider

I was asked to evaluate the nature and the number of reports submitted by plaintiffs; whether such reports were reportable to the Department of Health; whether nursing administration used appropriate and reasonable standards in supervising plaintiffs, responding to plaintiffs reports, evaluating plaintiffs, disciplining plaintiffs and managing the intensive care unit; the working conditions and the staffing of the intensive care unit and whether such conditions were so unpleasant or intolerable that a reasonable person in the plaintiffs shoes would resign; and issues concerning precepting, mandation, breaks and lunches, time off to attend seminars and classes, use of licensed practical nurses, supervision of LPNs by an RN and/or charge nurse and the role of the RN and charge nurses in the intensive care unit.

I am providing my expert opinion based on over eighteen years of critical care experience both at the bedside and in a nursing management position at a



large teaching facility. I currently hold the position of Nursing Director of the Surgical Intensive Care Unit. My duties involve overseeing the daily operations and functioning of the critical care unit and its staff of over eighty employees.

Brief Case Overview:

This case involves the claims of two registered nurses that were employed in the intensive care unit at Clearfield Hospital working the 3 – 11pm shift. They filed reports concerning various issues that they encountered during their employment in regards to staffing of the unit, personnel changes within the unit, and nursing management's responses to their reports. Their reports are limited to the timeframe from 1999 to 2002 when they resigned from their positions at Clearfield Hospital.

Opinion of Case Review

After reviewing the testimony of all of the parties and others including the materials listed above, my opinion, based on years of critical care nursing experience as well as management experience, is that the concerns of the registered nurses are not unlike others nationwide. Due to the nationwide nursing shortage, many hospitals have had similar challenges when it comes to the task of staffing nursing units. Nursing administrators have had to alter and adjust staffing patterns to assure that patients are getting the care that they require. Critical care units can be especially difficult to staff due to the stressful nature of the position, the ever-changing acuity of the patients, and fluctuating patient census.

In review of this case in particular, my opinion is that the nursing administrators did what any prudent administrator would do in order to adjust staffing levels within the ICU. Per the testimony of all involved, there was a nurse vacancy for the 3 – 11 pm shift in ICU. Ms. Stratton, nursing manager, decided to post and hire a LPN in order to assist the nurses that were working that shift. She had knowledge of Ms. Strunk's nursing abilities since she had worked with her previously in another hospital's ICU. She was aware, per her testimony, that Ms. Strunk was attending nursing school and was in the process of obtaining her RN degree. It is noted in the testimony; the LPN could assist with transcribing physician orders in the absence of a unit clerk, as well as complete the basic nursing functions within the scope of a LPN license. Ms. Selvage and Ms. Retorick filed different reports in regards to this issue, as well as others. Within the reports, and the letters written to Ms. Stone, there is an absence of problem solving strategies by these nurses. For instance, the statement: "hire qualified RN" is an unrealistic expectation if there is not a candidate to hire. Their criticism is not limited to the LPN that was hired. There were complaints submitted to nursing administration in regards to another RN new to the ICU, Tammy Charles. Per the letter submitted to Ms. Stone by Ms. Retorick, it was stated that Nurse Charles did not meet the qualifications in order to work in the ICU. Ms. Retorick states that this nurse was a graduate nurse when hired and that with time became a good nurse in the unit. In my ICU, I routinely hire graduate nurses and have done this for many years. In my experience, with proper mentorship and orientation, these graduate nurses become fully functional within the critical care unit.

After orientation, the charge nurses are the resource person for the new graduate nurses. This process has worked well throughout our hospital.

Mandating nurses to work is not a popular staffing solution; however, it does occur within our profession. Due to staffing within hospitals, there are times when a nurse is mandated to work. As vacancies are filled, the need for mandating is eliminated. The act of hiring graduate nurses and LPNs in Clearfield Hospital ICU could have decreased the need for mandating of the staff. In addition, nurses have the tendency to miss lunch and dinner breaks. This is common in intensive care units. Most nurses take a break when they can, but patient needs prevail. I encourage my staff to leave the unit, even if for short periods of time, but due to the professional traits of my nurses, most break on unit.

When a unit is short staffed, patient care comes first. Therefore, allowing nurses to take time off to attend seminars and classes would not be an effective staffing strategy. There are CEUs that can be obtained on-line and in professional magazines. In order to avoid worsening the staffing of a unit, many managers encourage staff to participate in those types of educational activities. Nursing administration must balance the use of agency nurses due to budgetary concerns. The situation described in which Ms. Retorick was denied the ability to attend ACLS, in my opinion was an acceptable managerial decision. If she was aware that the plaintiff was leaving her position within the hospital, denying the staff nurse an educational opportunity and instead sending a nurse that was going to stay in the unit would be a prudent decision. The desire would be to educate that staff that was going to be working within the unit.

I reviewed the evaluations of each of the plaintiffs. The review process appears to be fair and equitable. The evaluations were mostly positive and offered constructive criticism. Constructive criticism is part of the evaluation process. There are comments in each of the nurses' evaluations in regards to being more positive and mentoring the new staff. In review of the numerous reports and review of each of the plaintiff's sworn testimony, there appears to have been discord on the 3 - 11pm shift. Bringing the issue to the attention of the employee is the duty of the nursing manager. Morale in a unit is affected by negativity of co-workers. Creating a positive environment is fostered by the charge nurses within a shift. Critical care units are stressful environments. Negativity can add to the stress of the working environment. In my opinion, it was reasonable that the nursing managers and administrators would be concerned in regards to these two employees. None of the nursing administrators state that they retaliated against these employees for the actions taken against the hospital. Ms. Stratton does state that she would not recommend the nurses eligible for rehire. This would not be unusual considering the letters authored by co-workers regarding these employees.

I reviewed the reports filed by the plaintiffs in regards to issues within the ICU. These were related to isolated, non-recurring emergent events in the ICU. In addition, the number of reports submitted by the plaintiffs seems reasonable and not excessive over a three-year period. There were many channels of communication for the staff to relay information to the nursing management at Clearfield Hospital. I reviewed the responses to the different reports by management. There are not always clear-cut answers to every problem in a critical care unit or a regular nursing unit. The problems presented are not easy problems to solve; however they are common to

critical care. Patient acuity can change quickly, unanticipated staffing issues occur, staff performance issues can happen. The nursing supervisor relies on the charge nurse to deal with these day to day issues. Bringing these issues to the attention of nursing management is a charge nurse responsibility. Assuming leadership and working through these issues to find acceptable solutions is the responsibility of nursing management and the staff nurse. Complaining about issues does not solve anything. Finding solutions is the key to success and a positive work environment. My review of the problem reports did not identify any negligent patient care issues. Many of the issues described are common to intensive care units. The incidents described are not out of the ordinary occurrences. The plaintiffs deny that patient harm was occurring in this unit. Therefore, my opinion is that none of these reports would be reportable events to the Department of Health. This is a consistent finding with the 2002 Department of Health survey.

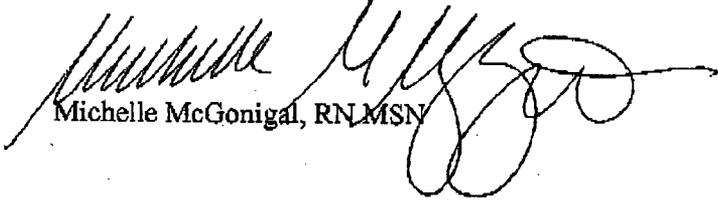
Clearfield Hospital Nursing Administration decided to hire a LPN in this unit as a staffing strategy. LPNs can function in critical care units performing tasks within their scope of nursing. Hiring a LPN is reasonable and appropriate in an intensive care unit. Although the plaintiffs do not appreciate this move by nursing management, it was not their decision to remove this staff member. This staffing solution would be under the discretion of human resources and nursing administration. This practice was discussed in the minutes of the "meet and discuss" sessions with the nursing union. Per the testimony of Lori Strunk, she practiced within her scope of nursing. The registered nurses would be responsible for overseeing the LPN.

The plaintiffs raise issue to the disciplinary action received during their employment regarding medication errors, lovenox in particular. Registered Nurses are responsible for administering medications to patients. Many medications can be harmful if given incorrectly. The discipline was due to the seriousness of the errors. Although the plaintiffs state that there was not disciplines to other employees for making medication errors that would be assumption on their part. Personnel disciplinary issues are confidential. Nursing administration recognized reasonable judgment in dealing with the medication occurrence discipline process.

Summary of opinion:

My opinion, based on years of critical care experience, is that intensive care units can be stressful environments in which to work. Although stressful at times, the environment described by the plaintiffs is typical of other ICUs and the situation a reasonable nurse, in this position, should accept and tolerate. In my opinion, the working conditions of the plaintiffs were not so intolerable that a reasonable person in their shoes would resign. The staff has to be flexible and open to change in order to function effectively in the critical care environment. Nurses have to be able to nurture and mentor new staff in order to create a positive working relationship in which staff is respected and retained. In my opinion, Nurse Retorick and Nurse Salvage failed to positively work with nursing administration to foster growth within this ICU. Their resistance to change

affected their professionalism in the unit. Although they may be outstanding care providers, nurses must be compassionate with their team members including nursing managers. All of my opinions are based on reasonable degree of nursing certainty and are based on the documents and records that I have reviewed to date. I reserve the right to amend or supplement my report if any additional information is brought to my attention.



Michelle McGonigal, RN, MSN



during discovery. As such, this request is premature. Such information will be made available at the time of trial or as required by the Court. By way of further response, Defendants retain the right to supplement this response.

4. Identify each expert you intend to call as a witness at the trial of this matter and for each expert state:

- a. The subject matter about which the expert is expected to testify;
- b. The substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.
- c. State in detail the facts or information supplied to or obtained by each expert which was used as a basis for forming his or her opinion(s) including all documents, reports or records, statements and reference materials provided to or obtained by each expert for review or inspection.
- d. The qualifications of each such expert witness, and in doing so as to each expert list formal education, the schools attended, including years of experience in particular fields, including names and addresses of employers with inclusive years of employment and positions held; teaching positions or other affiliations; and a list of all publications authored by said persons, including the title of the work, the name of the periodical or book in which it was printed, and the date of its printing.

ANSWER:

Defendants object to Interrogatory No. 4 on the grounds that it seeks a legal and factual conclusion/analysis and information protected by the attorney work product doctrine.

However, in good faith and without waiving the foregoing general and specific objections, Defendants respond that they have not yet retained any person in the capacity of an expert with respect to this action, and have not yet determined which experts, if any, will be called as witnesses at trial. Such information will be made available at the time of trial or as required by the Court.

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Pittsburgh, PA 15211

CURRICULUM VITAE

EDUCATION

- Ph. D. Ohio University, Athens, OH - 1971 - Counseling
C. A. S. Springfield College, Springfield, MA - 1964 - Psychology
M. Ed. Springfield College, Springfield, MA - 1963 - Psychology
B. A. Hartwick College, Oneonta, NY - 1961 - Psychology

EMPLOYMENT

- 1972 to Present Director, Pennsylvania Psychological Services, 428 Forbes Avenue, Suite 1500, Pittsburgh, Pennsylvania
1972 to Present Associate Professor, Duquesne University, Department of Counseling, Psychology and Special Education
1994 to Present Pressley Ridge Schools KINSHIP Program, Northwestern Human Services, KidsNet, Community Alternatives, II-VI, Inc., Hinkel-Hoffman Corporation
1996 to Present Medical Staff, Allegheny University Hospital System, 2570 Haymaker Road, Monroeville, Pennsylvania
1998 to Present Member Pennsylvania Sexual Offenders Assessment Board

PROFESSIONAL ORGANIZATIONS

- American Psychological Association - Member
Pennsylvania Psychological Association - Fellow
National Register of Health Service Providers in Psychology - Member
American Association of Marriage and Family Therapists - Clinical Member
American Board of Forensic Examiners-Diplomate in Psychology
Chi Sigma Iota - International Honors Fraternity in Counseling-Member
American Counseling Association-Member



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CURRICULUM VITAE
Page Two

LICENSES

Licensed Psychologist - Pennsylvania #000171-L
Certified School Psychologist - Pennsylvania #062-32-7559
National Board Certified Counselor (NCC) #142
Appointed by Governor Ridge to the Sexual Offender Assessment Board,
October 2nd, 1998
Associate Psychologist, Allegheny University Hospital System
Licensed Professional Counselor - Pennsylvania #PC001251

PUBLICATIONS

A Comparison of Counselor Ratings by Male Volunteers and Referral Clients.
Bernstein, Paul M. and Barcikowski, Robert S. Measurement and Evaluation in
Guidance, Vol. (October, 1972) Pp 443-445.

Applying Japanese Management Principles to Small American Businesses,
Business World, January, 1984.

A Measurement of Constructural Discrepancy in the Acute and Chronic
Schizophrenic Unpublished paper.

Resistance, Counterresistance and Balance: A Framework For Managing
The Experience of Impasse In Psychotherapy. Journal of
Contemporary Psychotherapy, Vol. 22, No.1., Spring, 1992.

Bernstein, Paul M. (2001) Workbook For Counseling and Consulting Theories.
Erudition Books, North Chelmsford, Massachusetts. Second Edition.

Giving Sexual Harassment the Cold Shoulder Bernstein, Paul M. and Szeles,
Herrmina S. Dynamic Business, Vol. 56, No. 7, September 2001.

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CURRICULUM VITAE
Page Three

PSYCHOLOGICAL ASSESSMENT SERVICES

II-VI, Inc.
Allegheny County Police Academy
Braddock Police Department
Bureau of Disability Determination-Office of Social Security
Commonwealth of Pennsylvania, Department of Public Welfare
Community Alternatives
Conco, Incorporated
Court of Common Pleas of Allegheny County - Family Division
Edgewood Borough Police Department
Federal Public Defender's Office
Federal Reserve Bank
Hanover Township Police Department
Hinkel-Hoffman Corporation
Indiana University of Pennsylvania
KidsNet
Kilbuck Township Police Department
Moon Township Police Department
Mount Oliver Police Department
Northwestern Human Services
Office of Vocational Rehabilitation
Paula Teacher and Associates
Pennsylvania Bureau of Probation and Parole
Pittsburgh Public School's Police
Pressley Ridge Schools KINSHIP Program
Rankin Borough Police Department
Springdale Township Police
VLOC, Incorporated



GUIDANCE ASSOCIATES OF PENNSYLVANIA

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Stanley E. Schneider, Ed.D.
Director

May 8, 2006

James J. West, Esq.
West Long, LLC
105 N. Front St.
Suite 205
Harrisburg, PA 17101

RE: Selvage/Retorick v. Clearfield Hospital

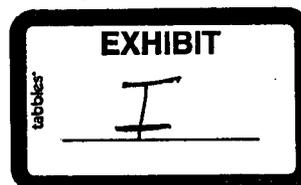
Dear Attorney West:

In your correspondence of September 15, 2005 and January 30, 2006, you asked that I evaluate whether 1) did Dawn Retorick and Frances Selvage suffer any emotional distress related to their employment conditions and if so, 2) was that distress related to a hostile and retaliatory work environment which existed between 1999 and 2002. A third inquiry relates to whether a reasonable nurse faced with similar intolerable circumstances would quit their job rather than stay.

I met with and interviewed Dawn and Frances on February 2, 2006.

In addition, I reviewed the following:

- 9/15/05 letter of referral from Attorney West with amended complaint, including Exhibits #1 through #14.
- Review of 8/8/05 video/transcribed deposition of Frances Selvage, RN
- Review of 8/9/05 video/transcribed deposition of Dawn Retorick, RN
- Review of 8/9/05 video/transcribed deposition of Frances Selvage, RN
- Dawn Retorick -- medical records 3/96 through 1/05
- Frances Selvage -- medical records (cardiology) 7/99-5/02
- Frances Selvage -- medical records (primary care physician) 2/98-11/03
- 1/30/06 letter from Attorney West
- March/April 2006 -- Review of Dawn Retorick's Performance Evaluations from Clearfield Hospital 1982-2002 with attached letters from peers
- Review of Dawn Retorick's Performance Evaluations -- Carlisle Regional Medical Center 2002-2005, March-April 2006
- March/April 2006 -- Review of Frances Selvage's Performance Evaluations from Clearfield Hospital 1993-2002



NTC

- March/April 2006 – Review of Frances Selvage’s Performance Evaluations – Carlisle Regional Medical Center

Your Amended Complaint includes a summary of the case, specific factual allegations, nursing statutory, regulatory and ethical standards, duties and issues related to the law. You note (Count VI) “as a direct and proximate result of the defendant’s conduct, the Plaintiffs have suffered severe emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, irritability....”

Dawn Retorick, was interviewed on February 2, 2006. On that occasion, she presented as open, accessible, and somewhat dysphoric, becoming upset as she recalled her history and experiences during 1999-2002 at Clearfield Hospital.

Currently, she is working at Carlisle Regional Medical Center in the Emergency Room, 7:00 p.m. – 7:00 a.m. shift. She commutes 2 ½ hours each way from her home to the hospital. She has been there a little over three years.

Ms. Retorick relates being on the following medications: Lopressor, for blood pressure, Lasix, Neurontin, for restless legs, and Benadryl, for eczema. She reports having a thyroid problem which relates to heart palpitations and also relates that her Circadian Rhythm may be off.

Background information indicates that she was born in Central Pennsylvania. There were five children born to her parents, three older than she, and one younger. Her next older sister died from cancer (7/05).

She describes her family as good, with her parents being somewhat strict. There was no abuse or neglect. Her dad worked as a Supervisor of Housekeeping Services at Penn State University. Her mother worked at a pre-school program. There is no evidence of any abuse or neglect nor any evidence of any drug or alcohol use, misuse or abuse in her family. Basically, she experienced a normal, typical childhood.

Dawn reports liking school and indicates that she was an Honor Roll student. There is no pattern of any detentions, suspensions or expulsions. She graduated high school in 1979. There was no military service.

She began her nursing program in Phillipsburg – a hospital-based program. She completed her RN Degree in 1982 without incident. As she progressed through her RN career, her patient care responsibilities increased.

She was hired as an RN at Clearfield Hospital in June 1982. She was at that hospital working as an RN for approximately 20 years (1982-2002). She reports no difficulties at the hospital until Ms. Thelma Stratton, RN started as the Intensive Care Unit (ICU) Supervisor.

Review of Dawn’s Performance Evaluations from 1982 through 2001 are satisfactory. Apparently, their performance evaluation process involves both a quantitative and qualitative

approach. Quantitatively, she received Satisfactory to Above Average ratings, meeting the position's requirements and, at times over those years, exceeding the position requirements. Some of the comments include, "...able to work at ICU with confidence regarding actions taken in emergencies, positive attitude, self-starter, continues through on her own, functions well in her role as ICU nurse, makes sound judgments...is good member of the team, works well with other ICU staff members as a team, handles all situations well, contributes to overall functioning of the unit on a day-to-day basis, functions well as both staff and Charge Nurse, is a good ICU nurse, she identifies problems...and possible solutions, makes excellent decisions as Charge Nurse, she cares about the place and its people...stable force on evening (shift), excellent critical care skills and knowledge, conscientious, is an efficient Charge Nurse, efficiently oversees personnel and patients, functions well in emergent situations."

The sole evaluation provided by Thelma Stratton, dated 8/13/02, is the only evaluation over the years that Ms. Retorick commented on in her defense. The manager/supervisor's evaluation comments include an incident of transcription error, medication error, as well as Ms. Retorick having "difficulty mentoring in a positive manner." An area of improvement is noted and includes the need to "refrain from discussing Union Business on Company time."

Included with the packet of Performance Evaluations from Clearfield Hospital are letters from peers. Letters were reviewed from Bonnie Maines, Karin Lucas, Diana Dale, Brenda English, and Cheryl Smeal. Ms. Smeal seems to have summarized the sentiments presented by the others when she wrote, "...you have to realize they are responsible for the patients' lives when they are in charge. They have their own patients' lives, plus the lives of patients under the other nurses' care. This is an awesome responsibility. They cannot watch everything another nurse does when they have their own critical patient/s that need/s their attention...Dawn and Fran are very caring, sensitive people...."

Evaluations from Carlisle Regional Medical Center from November 2002 through February 2003 note that Ms. Retorick consistently meets expectations/exhibits behavior. A note is made that she "takes personal responsibility for ensuring all areas are safe and clean while providing a friendly and caring atmosphere. By November 2005, she received the highest rating with a comment, "provides direction to ancillary/professional personnel."

In her deposition of August 2005 and my interview with her in February 2006, Ms. Retorick identified the stressors she dealt with prior to her leaving her position in November 2002. She identified the specific factual allegations included in the Complaint, in addition to her attempts to have those addressed by administrative, supervisory, and managerial staff. She referred to her attempts to resolve issues using the system, filing appropriate notifications, using the Grievance Process, meet and discuss and mediation, saying, "it was hopeless."

In her interview of February 2006, she talked about her situation during those years. She reported being responsible for "everything that happened on my shift." She admits to being worried about her license being compromised in some fashion, saying, "if they mess up and something happened, they would come back and take my license." She felt violated by the ICU manager, who shared information with other staff. She reported her judgment not being trusted

and being undermined. She talked about her professional integrity being questioned. She was cited for a medication error when not on duty. She felt humiliated and embarrassed. She felt singled out and discriminated against, referring to having her personal time compromised. She referred to her need to work through lunches and breaks because of insufficient and unqualified ICU staff and being able to meet continuing education credits.

She describes symptoms consistent with depression, including a sense of helplessness and hopelessness. She said, "I was a wreck." She felt demeaned and degraded and experienced constant turmoil. Anxiety symptoms were noted through her experiencing continuing apprehension and tenseness, in addition to sleep problems. She talked about feeling emotionally abused and in a state of chronic vigilance in that she could not predict her work environment from day to day. She felt singled out in that information was shared with other staff and "people were talking about you." Socially and personally, she talked about her marital relationship being affected, and "almost came to a divorce." She was unavailable to assist her husband raising their children. As the situation progressed, she continued to experience lack of support and said, "I couldn't take it anymore...there was too much turmoil...they forced me out of my job by all of the things they were doing..." She felt humiliated in a meeting in the September/October 2002 timeframe in that she was embarrassed in that meeting which was with a "room full of peers." She felt no administrative support and basically identified herself as a "persona non grata."

Review of her medical records from 1996 through 2005 identify her having dermatitis, allergic rhinitis, arthralgia, and other minor difficulties such as sinus infections and sore throats from 1996 through 1999. She did have borderline high blood pressure identified in 1998. In 1999, the records indicate that she was experiencing headaches, elevated blood pressure, and her gastrointestinal reflux disease (GERD) was no longer controlled with medications. By the end of 1999, her headaches were noted to be severe. These conditions continue with some relief noted over the years. In 2002, the record (July) reflects "working a lot (as) ICU nurse with little time for much else," and by August the records state "burned out with work." Ms. Retorick did not present any psychological or emotional symptoms needing of medication. It appears that she converted her stress into physical symptoms. After 2002, there is no reference to headaches.

Frances Selvage is currently working at Carlisle Regional Medical Center on a 7:00 p.m. to 7:00 a.m. shift in the Emergency Room. She works 76 hours every two weeks and like Dawn Retorick, commutes from Clearfield County to Carlisle. She has partial custody of two grandchildren, ages 12 and 8, and has the children on Sundays from 10:00 a.m. until 7:00 p.m. when she has to work at the hospital and the entire weekend, Friday through Sunday, when she does not work. She reported that her daughter, the mother of the children, was in an accident in 2002 and experienced a brain injury, with short-term memory loss.

Frances began her interview in an apparent normal way. She did not evidence any acute distress and her presentation was unremarkable. There was no evidence or sign of any major affective, cognitive, or behavioral problem. Initially, there were no symptoms or signs of any depression. However, as the interview progressed, she became more anxious and depressed, and at times was tearful when recalling some of her experiences at Clearfield Hospital. Her discussing experiences during that timeframe continue to be emotional triggers.

Background information obtained indicates that she was born and raised in Clearfield County. She is the oldest of three children, having two younger brothers. She felt loved by both parents. She describes her family as "Italian," and described dad as a "bit distant." There was no abuse or neglect. There is no evidence of any drug or alcohol use, misuse or abuse.

Educationally, she attended public schools, from kindergarten through 4th, and Catholic School from 5th through the 12th. She related positively with teachers and administrators. There were no disciplinary problems. She had friends and she was an Honor Roll student. She graduated high school at age 17. In 1966, Fran started the Clearfield Hospital School of Nursing Program, attending two years. In 1968, she married and they relocated to New Jersey.

She returned to Clearfield after five years. She bore three children and adopted a son. Her husband worked construction in New Jersey and was away from home a lot. She was a stay-at-home mom during that time. She began to take part-time classes beginning in 1989 and received her Bachelor of Nursing Degree in 1993. She reports working at Clearfield Hospital from 1993 without any problem until November of 2002. Review of her Performance Evaluations reflect her being a dedicated, responsible, and professional nurse.

She enjoyed working in the Intensive Care Unit, saying, "the ICU was your family. It was a small town...your work family were your stress relievers...we were always there for each other...." She took pride in her work and enjoyed caring for her patients.

Her current medications include Norvasc, Lexapro, and Benicar. She has been taking some sort of antidepressant medication since her difficulties began at Clearfield Hospital.

Frances presented the same concerns, issues, and experiences, as did Dawn Retorick. She notes that when Thelma Stratton became Unit Supervisor, "everything changed." She talked about frustrations having an LPN assigned to the Intensive Care Unit without having the necessary experience and training needed to care for patients, resulting in potential "unpredictable crises."

Frances reports that she would worry, was chronically apprehensive, concerned about losing her license, and also would not eat in order to take care of patients during lunch breaks. She identified it going on for a number of months.

Ms. Selvage also indicated that her ability to be in charge was always questioned. She experienced a number of reactions to the same kinds of stressors noted above. She noted, for example, "it made me a nervous wreck (crying)." She went on to say, "patient families heard Thelma say things...." Frances admits to having expectations – professional expectations that people had to perform. She apparently has very high standards.

Ms. Selvage felt that she was being "abused for being a good nurse." As a result of the work environment during that time period, she experienced a number of reactions.

Physically, she reports an increase in blood pressure, chest pains, sleeplessness, feeling chronically nervous and anxious. She was especially concerned about potential citations

resulting in her license being compromised. Emotionally, she reports apprehensiveness, nervousness, frustration, and irritation concerning her feeling degraded, discounted, and humiliated.

Review of her medical records indicates that she was on antidepressant medication beginning in the fall of 1999. Dr. Ralph Cardamone was treating her hypertension. His notes indicate that in the Spring of 2002, she was experiencing a lot of stress and chest pain. There is a note in May stating, "she has been having a lot of stress at work."

Dr. Conrad was her primary care physician beginning in 1998. Ms. Selvage was on no anxiolytics nor antidepressants until May 1999. His records indicate Situational Anxiety and Sleeplessness. She was prescribed Xanax for anxiety, and Sonata for sleep. Elavil and Zoloft, in addition to Adavan, were also tried from 1999 through 2002. The records indicate Chronic Depression and Situational Anxiety in 2002. Her diagnosis was changed to Chronic Anxiety by the fall of 2002, shortly before she left Clearfield Hospital.

After leaving the hospital, she remained on Zoloft, had quit smoking for a period of time, her depression was stabilized, but she was placed on Lexapro, which is noted to be helping her. This suggests that her depressive disorder continues.

Review of Ms. Selvage's Performance Evaluations indicate a satisfactory rating. Comments include, "...she functions well as a Charge Nurse and Team Nurse...a flexible worker...has a somewhat abrupt personality and difficulty with coworkers on occasion...a very willing worker...provides comprehensive nursing care utilizing the nursing process...functions well in a critical care setting...provides excellent nursing care, functions as a patient advocate, maintains open lines of communication."

Her first negative review occurred in August 2002. It is noted that she "has a tendency to be excitable in emergency situations." Earlier evaluations do not contain a similar content or reference. In fact, a 2001 evaluation notes that she "functions effectively in emergency situations...."

Her 2002 evaluation also includes the following comment: "There is a problem in the Unit of hiring and retraining staff in the Unit and those leaving are refusing to accept positions in the ICU relate that it is because of their treatment and criticism from this employee...." It further states, "I have had three nurses leave the ICU staff and relate their reason for leaving was due to their treatment...criticism which they received from this employee...."

In August 2002, there is a comment that notes, "(she)...confronts and addresses (unreadable) such a manner as to promote a negative atmosphere and ...a disruptive environment in the Unit." A contrasting comment was noted in her 2001 Performance Evaluation: "fosters a positive work environment by acting as a role model and preceptor to all new staff, especially 3-11 personnel."

Letters were received from peers including Kevin Hallin, Cheryl Smeal, Bonnie Maines, Brenda English, Diana Dale, and Karin Lucas, all in support of Ms. Selvage.

Review of the Carlisle Regional Medical Center evaluation in 2004 indicates that Ms. Selvage "consistently meets expectations. The comment includes "serves as a role model and resource person to mentor new employees...." All the areas evaluated noted her performing and demonstrating the roles and responsibilities as a Charge Nurse and her consistently meeting expectations. A similar evaluation was noted in December 2005. There was a lower rating in the area of her needing to delegate, with that rating reflecting that she usually meets expectations.

Regarding the referral questions, my findings support the averment identified above, that is, that there was a direct and proximate result of the defendant's conduct in that both Frances and Dawn did experience emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, and irritability. Their anxiety and depression was noted, particularly France Selvage's, in a review of her medical records.

Regarding the third question, I believe, in my clinical judgment, that being in an environment so hostile and intolerable as the one these nurses experienced would result in a reasonable nurse leaving the position rather than staying. Any work situation that compromises a professional's ethics and challenges their professional integrity, creating the level of stress they experienced, is an unacceptable situation.

In conclusion, it is my clinical judgment, to a reasonable degree of psychological certainty, that the conditions noted in the Complaint were such that Ms. Selvage's and Ms Retorick's decisions to leave that environment were in theirs and their patients' best interests.

Respectfully,



Stanley E. Schneider, Ed.D.
Psychologist

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2007, the foregoing Response in Opposition to Plaintiffs' Motion in Limine to Exclude the Testimony of Defendants' Expert Witnesses was sent *via* UPS Express to the following:

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West Long, LLC
105 N. Front Street, Suite 205
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S. Elaine Diedrich

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(717) 234-7517

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager,
Defendants

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

:

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: No. 03-393-CD

:

: Civil Action - Law

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:

:

:

PRAECIPE

To the Prothonotary:

Kindly enter the attached supplemental expert report Stanley E. Schneider, Ed.D. as part
of the record on the above-referenced matter.

Respectfully Submitted,

JAMES J. WEST LLC



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Dated: October 5, 2007

Counsel for Plaintiffs

FILED
112:5361
OCT 09 2007
cc
GK

William A. Shaw
Prothonotary/Clerk of Courts

GUIDANCE ASSOCIATES OF PENNSYLVANIA

412 Erford Road, Camp Hill, PA 17011 (717) 732-2917; FAX: (717) 732-5375
20 Briarcrest Square, Suite 205, Hershey PA 17033 (717) 533-4312

Stanley E. Schneider, Ed.D.
Director

October 4, 2007

James J. West, Esq.
West, Long, LLC
105 N. Front St.
Suite 205
Harrisburg, PA 17101

RE: Selvage/Retorick

Dear Attorney West:

At your request, I reviewed the psychological evaluations on Dawn Retorick and Frances Selvage performed by Dr. Paul M. Bernstein.

I will comment on his approach, methods, and interpretation used which led Dr. Bernstein to his conclusions.

Dr. Bernstein spends the first two to four pages in his reports discussing results of his mental status assessments. To help in understanding his report, a mental status is the sum total of the examiner's observations and impressions derived from the interview.

Mental status typically covers ten areas. The first include a general description of the client, behavior and psychomotor activity such as gestures or mannerisms, and attitude toward the examiner (1). The next section refers to mood, feelings, and affect (2). A mood is a pervasive and sustained emotion that influences the person's perceptions of the world. One's affective response refers to one's emotional state. The appropriateness of the affect or emotional expression is also assessed. The third area relates to the presence of any perceptual disturbances such as hallucinations, extreme feelings of detachment from oneself or the environment (3). The fourth area discusses thought processes, including one's stream of thought such as productivity, continuity and any language impairments (4). Also assessed is the thought content, which would include any preoccupations, obsessions, phobias, suicidal thought or homicidal thinking by the client. Thought disturbances such as delusions or ideas of reference (paranoia) are also identified. One's abstract thinking, estimated level of information and intelligence are also noted. One's level of concentration is also noted. The remaining sections make reference to one's orientation (5), memory (6), impulse control (7), judgment (8), insight (9) and reliability (10).

RE: Selvage/Retorick

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Further diagnostic studies can include psychological tests. The type and purpose of the tests the examiner or the evaluator selects must relate to the question under the investigation.

In this case, Dr. Bernstein used four psychological instruments: Two personality inventories including the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and the Millon Clinical Multiaxial Inventory-III (MCMI-III). The last two tests are the Bender Visual Motor Gestalt Test and the House-Tree-Person.

A forensic evaluation consists of an integration of information from a variety of sources and through a variety of assessment techniques. Objective psychological testing combined with record review, clinical interviews and collateral information is generally accepted practice.

I have a number of concerns related to Dr. Bernstein's reports.

Dr. Bernstein's reports dated May 21, 2007 on both Ms. Selvage and Ms. Retorick presents identical MMPI-2 scores. As a result of this situation, I had the raw test results of both the MMPI-2 and MCMI-III on both women scored by Pearson Assessments, a widely utilized, respected and accepted scoring service. He also reported that both Ms. Selvage and Ms. Retorick had outbreaks of Shingles in April 2007.

Dr. Bernstein does not present the MCMI-III test results, although he does include an interpretation. The authors of the MCMI-III state in the initial paragraph of their interpretative report that, "the MCMI-III report cannot be considered definitive. It should be evaluated in conjunction with additional clinical data." A gross omission by Dr. Bernstein is his not including clinical information related to both plaintiffs which impacted them resulting in their seeking intervention from health care professionals. An interpretation of the MCMI-III is actuarial data and does not necessarily reflect the individual person under study. Dr. Bernstein does not indicate the source of his interpretation. He notes that, "her (Frances Salvage) proclivity is to resist revealing personality traits..." and then he discusses her personality traits which appear to be largely unrelated to the circumstances causing her to seek treatment in earlier years and inconsistent with her performance prior to 1999, when she sought treatment for anxiety and depression.

A review of her performance evaluations at her current hospital, are consistent with those prior to 1999. Dr. Bernstein omits this finding. The scoring of the MMPI-2 by Pearson Assessments shows some variations from those noted by Dr. Bernstein on Frances Selvage. The automated scoring results show an elevation on a content scale related to depression, as well as two of the depressive subscales, which are used as an aid in interpreting the parent scale of depression. She also yielded an elevation on a scale that relates to Post Traumatic Stress. Her MMPI-2 profile is valid and does not show any indications of deception or malingering. Persons whose elevations on Ms. Selvage's two highest clinical codes typically do not experience disabling anxiety, but do report feeling nervous, agitated, tense, and worried. They also report symptoms related to depression. These findings were not discussed by Dr. Bernstein. He opines further that, "the evaluation further determined Ms. Selvage to manifest histrionic features but does not cite the basis for his opinion.

RE: Selvage/Retorick

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Ms. Retorick's MMPI-2 automated score results and findings revealed elevations in three pertinent clinical scales. Although it must again be emphasized that the descriptions provided represent modal patterns. Not every descriptor will apply to every person with the particular code type. Nevertheless, in this particular case, her MMPI-2 results are consistent with persons usually diagnosed with an anxiety or depressive disorder, as well as a somatoform disorder. Her physical status historically, and currently, has been somewhat compromised and although on page 3, Dr. Bernstein describes Ms. Retorick as being "emotionally healthy," he subsequently identifies on page 5, a number of physical and medical ailments which are related to the events in the timeframe under review as well as the experience of protracted litigation. He notes that she suffers from migraine headaches and, reportedly, recently experienced, approximately a month prior to his assessment of her, her having an outbreak of Shingles (as did Ms. Selvage?). Her various physical and medical conditions will have an impact on her emotional status.

A psychological investigation of a historical event includes interview, review of historical data, and integration of all available information given to the evaluator. Dr. Bernstein presents relevant background information including the Plaintiffs' families of origins, marital and family histories, and in Ms. Selvage's case, the events leading to Ms. Selvage being awarded custody of their grandchildren. He further includes educational and job history. To review, Dr. Bernstein omits a careful discussion and inclusion of historical factual medical treatments given to both Ms. Retorick and Ms. Selvage to ameliorate various disorders.

In Ms. Retorick's case, although my review of the records indicate that she did not present in need of medication for anxiety and depression, her medical records do indicate that she apparently converted her stress into physical symptoms. She did report anxiety symptoms with her feeling continually apprehensive and tense, in addition to experiencing sleep difficulties. She describes symptoms consistent with depression, including a sense of helplessness, feeling demeaned, degraded, and discounted, given her very responsible position at Clearfield Hospital. This woman was hired, as an R. N. in 1982, and a review of her performance evaluations from that time through 2001 are satisfactory. In the 2002 timeframe, her anxiety and depressive symptoms emerged as a result of a change in supervisory personnel in the hospital. Dr. Bernstein does not consider this relevant information.

Ms. Selvage's medical records indicate that, beginning in 1999, she was experiencing situational anxiety and sleeplessness and was prescribed a number of medications for both anxiety and depression. She received the diagnosis of Chronic Depression and by the end of 2002, a diagnosis of Chronic Anxiety.

Dr. Bernstein refers to medications that both nurses are taking, but omits the development of symptoms of behavioral changes that culminated in their seeking assistance from healthcare professionals during the timeframe under question.

Dr. Bernstein used two additional tests. The first is the Bender Visual Motor Gestalt Test (Bender). This test was originally assembled by the author in 1938 for the purpose of providing an index of perceptual motor maturation. Dr. Bernstein used this test to identify personality traits and characteristic. The Bender was not designed for this purpose and his use of it as a "projective" test suffers from a lack of reliability and validity and depends mainly on the

RE: Selvage/Retorick

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psychologist's general impressionistic evaluation. Similarly, the House-Tree-Person (HTP) has extremely weak psychometric properties and its interpretation also does not meet the standards of psychological tests. Standardized methods such as the MMPI-2 and the MCMI-III, if used properly, promote objectivity. Further, his use of two additional tests do not represent sound assessment practices and may result in invalid assessment as well in that there is no standardized interpretative approach.

Dr. Bernstein's findings are not directly related to the question at issue in that he omits any discussion of relevant medical information. Further, his use of psychological testing in this case, the two "projective" tests encourages over-reaching in causal inferences.

Dr. Bernstein concludes that personality characteristics or psychological concepts, in the case of Ms. Retorick, self-doubt and insecurity, were her primary issues. He states, "Mrs. Retorick's problems with the hospital staff and administration are likely a manifestation of her personality difficulties." This is inconsistent with Ms. Retorick's performance evaluation prior to 1999 and after her leaving Clearfield Hospital.

With respect to Ms. Selvage, he writes that, "her reporting of staffing issues, patient care issues, problems with colleagues and superiors at Clearfield Hospital is more likely a manifestation of her personality than the result of administrative mismanagement and staff ineptitude." Once again, he attempts to introduce the notion of personality characteristics resulting in a proximate cause of her documented medical diagnoses and subsequent treatment while at Clearfield Hospital during the timeframe under discussion.

Dr. Bernstein's conclusions are totally inconsistent with the exemplary levels of performance both nurses evidenced prior to the timeframe in question, and subsequent to their leaving Clearfield Hospital.

Dr. Bernstein's reliance on psychological tests, which in this case are highly questionable in their current presentation, without his including a close examination of historical collateral information, in my judgment, results in his presenting an improper and invalid forensic opinion.

Respectfully,



Stanley E. Schneider, Ed.D.
Psychologist

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of **October 2007** a true and correct copy of the foregoing document was served upon the party named below via United States First Class Mail, addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bartley
Assistant to James J. West, Esquire

VA

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

FRANCES L. SELVAGE and
DAWN L. RETORICK,
Plaintiffs

NO. 03-393-CD

V.

CLEARFIELD HOSPITAL, LOIS
EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager,
Defendants

ORDER

AND NOW, this 10th day of October, 2007, it is the ORDER of this Court that Plaintiff's Motion in Limine to Exclude the Testimony of Defendants' Expert Witnesses is GRANTED in part and DENIED in part. Defendant's expert testimony of psychologist Paul M. Bernstein shall be permitted. Defendant's are precluded from offering the expert testimony of Michelle M. McGonigal.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
01:47:57
OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

2CC Atty's
West
Gisleson-Smith

GR

FILED

OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/10/07 You are responsible for serving all appropriate parties.

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

Plaintiff(s) Attorney Other

Plaintiff(s) Defendant(s) Attorney

Defendant(s) Special Instructions:

UP

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

FRANCES L. SELVAGE and	:	NO. 03-393-CD
DAWN L. RETORICK,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
CLEARFIELD HOSPITAL, LOIS	:	
EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU	:	
Unit Manager,	:	
Defendants	:	

FILED 2cc Atty's
 OCT 10 2007 West
 Giesler & Smith
 William A. Shaw
 Prothonotary/Clerk of Courts (WS)

ORDER

AND NOW, this 10th day of October, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' memorandum of Law in Support of their Motion in Limine to Preclude Argument or Evidence Concerning the Plaintiffs' Damages is hereby GRANTED.

It is FURTHER ORDERED that any evidence concerning back wages is hereby precluded.

It is FURTHER ORDERED that any evidence concerning the value of the time Plaintiffs spent commuting to their new positions is hereby precluded.

It is FURTHER ORDERED that any evidence concerning Plaintiffs' expenses commuting to and staying in Carlisle, Pennsylvania, is hereby precluded.

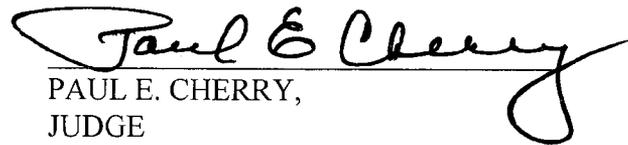
It is FURTHER ORDERED that any evidence concerning Plaintiffs' emotional distress and pain and suffering damages, is hereby precluded.

It is FURTHER ORDERED that any evidence concerning Plaintiffs' loss of

seniority, is hereby precluded.

It is FURTHER ORDERED that any evidence concerning punitive damages is hereby precluded with respect to Plaintiffs' Pennsylvania Whistleblower Law and MCARE Act claims.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/10/07

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:

CA

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

FRANCES L. SELVAGE and	:	NO. 03-393-CD
DAWN L. RETORICK,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
CLEARFIELD HOSPITAL, LOIS	:	
EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU	:	
Unit Manager,	:	
Defendants	:	

ORDER

AND NOW, this 10th day of October, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Motion in Limine to Preclude Plaintiffs from Introducing Evidence that After They Resigned their Employment, Thelma Stratton Did Not Recommend Them for Rehire shall be and is hereby DENIED.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED
OCT 10 2007

2cc Attys:
West
Giles and Smith

William A. Shaw
Prothonotary/Clerk of Courts

60

FILED

OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/10/07

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:

5A

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

FRANCES L. SELVAGE and	:	NO. 03-393-CD
DAWN L. RETORICK,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
CLEARFIELD HOSPITAL, LOIS	:	
EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU	:	
Unit Manager,	:	
Defendants	:	

ORDER

AND NOW, this 10th day of October, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Motion in Limine to Preclude Plaintiffs' Expert Report and Testimony of Stanley E. Schneider shall be and is hereby DENIED.

BY THE COURT,



PAUL E. CHERRY,
JUDGE

FILED *acc Atty:*
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 OCT 10 2007 *West*
Gisleson Smith
 William A. Shaw
 Prothonotary/Clerk of Courts *GP*

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FILED

OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/10/07

____ 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:

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

FRANCES L. SELVAGE and
DAWN L. RETORICK,
Plaintiffs

NO. 03-393-CD

V.

CLEARFIELD HOSPITAL, LOIS
EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager,
Defendants

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OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

JCC Atty's West

Gibson & Smith

WR

ORDER

AND NOW, this 10th day of October, 2007, it is hereby ORDERED, ADJUDGED
and DECREED that Defendants' Motion in Limine to Preclude Evidence at Trial
Concerning the 2004 Department of Health Survey of Clearfield Hospital and the
Reasons for Defendants Eisenman and Stone Leaving their Employment with Clearfield
Hospital in 2004 is GRANTED.

It is FURTHER ORDERED that any evidence concerning the 2004 Department of
Health Survey of Clearfield Hospital is hereby precluded.

It is FURTHER ORDERED that any evidence concerning the reasons for
Defendants Eisenman and Stone leaving heir employment with Clearfield Hospital in
2004 is hereby precluded.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

OCT 10 2007

**William A. Shaw
Prothonotary/Clerk of Courts**

DATE: 10/10/07

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:

UP

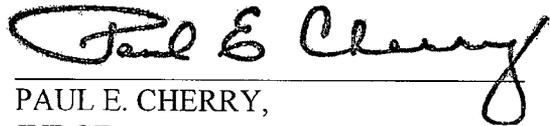
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

FRANCES L. SELVAGE and	:	NO. 03-393-CD
DAWN L. RETORICK,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
CLEARFIELD HOSPITAL, LOIS	:	
EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU	:	
Unit Manager,	:	
Defendants	:	

ORDER

AND NOW, this 10th day of October, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Motion to Strike Plaintiffs' Jury Demand on Their Whistleblower and MCARE Act Claims or, in the Alternative, to Preclude Plaintiffs' Counsel from Describing the Plaintiffs at Trial as "Whistleblowers" or Referencing the Term "Whistleblower" or the "Whistleblower Law" shall be and is hereby GRANTED and Plaintiff is hereby precluded from describing Plaintiffs at trial as Whistleblowers or referencing the term Whistleblower or Whistleblower Law.

BY THE COURT,



PAUL E. CHERRY,
JUDGE

FILED *acc Atty's:*
0/1:47/61 *West*
OCT 10 2007 *Gisleson Smith*

William A. Shaw
Prothonotary/Clerk of Courts



FILED

OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/10/07

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:

CA

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

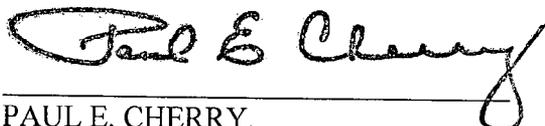
FRANCES L. SELVAGE and	:	NO. 03-393-CD
DAWN L. RETORICK,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
CLEARFIELD HOSPITAL, LOIS	:	
EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU	:	
Unit Manager,	:	
Defendants	:	

ORDER

AND NOW, this 10th day of October, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Motion in Limine to Preclude Any Evidence of Retaliation Against Plaintiffs Occurring Prior to September 21, 2002 is hereby GRANTED.

It is FURTHER ORDERED that Plaintiffs may not introduce any evidence of retaliatory acts or reprisal occurring prior to September 21, 2002. Plaintiffs may only introduce evidence of events occurring prior to September 21, 2002, for the limited purpose of providing background to events that occurred after that date.

BY THE COURT,



PAUL E. CHERRY,
JUDGE

FILED *acc Atty's:*
01:47 PM
OCT 10 2007 *West*
Gisleson & Smith

William A. Shaw
Prothonotary/Clerk of Courts


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FILED
OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/10/07

___ 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:

03

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

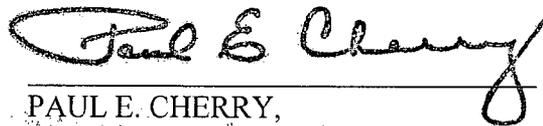
FRANCES L. SELVAGE and	:	NO. 03-393-CD
DAWN L. RETORICK,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
CLEARFIELD HOSPITAL, LOIS	:	
EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU	:	
Unit Manager,	:	
Defendants	:	

ORDER

AND NOW, this 10th day of October, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Motion in Limine to Preclude Evidence Concerning "Chest Pains" Allegedly Suffered by Fran Selvage in 2002 is hereby GRANTED.

It is FURTHER ORDERED that any evidence concerning chest pains that Plaintiff Fran Selvage experienced in 2002 is hereby precluded.

BY THE COURT,



PAUL E. CHERRY,
JUDGE

FILED
OCT 10 2007

2cc Attys:
West
Gisleson & Smith

William A. Shaw
Prothonotary/Clerk of Courts

CK

FILED

OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/10/07

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:

07

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

FRANCES L. SELVAGE and	:	NO. 03-393-CD
DAWN L. RETORICK,	:	
Plaintiffs	:	
	:	
V.	:	
	:	
CLEARFIELD HOSPITAL, LOIS	:	
EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU	:	
Unit Manager,	:	
Defendants	:	

ORDER

AND NOW, this 10th day of October, 2007, it is hereby ORDERED, ADJUDGED and DECREED that Defendants' Motion in Limine to Preclude Argument or Evidence on Plaintiff Retorick's Leg Condition or Related Pain is hereby GRANTED.

It is FURTHER ORDERED that any evidence concerning Plaintiff Retorick's leg condition, related pain, or pain allegedly suffered traveling to Carlisle, Pennsylvania is hereby precluded.

BY THE COURT,



PAUL E. CHERRY,
JUDGE

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OCT 10 2007
G:isleson Smith
West

William A. Shaw
Prothonotary/Clerk of Courts

(610)

FILED

OCT 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/10/07

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:

JAMES J. WEST LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517

FRANCES L. SELVAGE and
DAWN L. RETORICK
Plaintiffs

v.

CLEARFIELD HOSPITAL,
LOIS EISENMAN, Director of Nursing,
JACKIE STONE, Vice President of
Nursing, THELMA STRATTON, ICU
Unit Manager,
Defendants

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

:
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: No. 03-393-CD

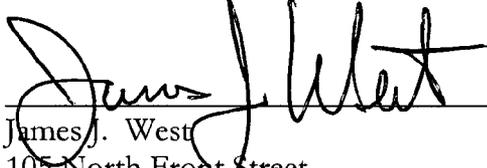
:
: Civil Action - Law

MOTION TO DISMISS

AND NOW, comes James J. West, Esquire, counsel for the Plaintiffs in the above-captioned case and moves to dismiss the above-captioned action against all Defendants (Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton) with prejudice for the reasons that full and final settlement has been reached.

Respectfully Submitted,

JAMES J. WEST LLC


James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

FILED^{icc}
m 14:00 BY Amy West
NOV 26 2007


William A. Shaw
Prothonotary/Clerk of Courts

Dated: November 21, 2007

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this **21st** day of **November 2007** a true and correct copy of the foregoing document was served upon the party named below via United States First Class Mail, addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bartley
Assistant to James J. West, Esquire

Name: Dawn L. Retorick
Date of Evaluation: 05-21-2007
Page: 7

B

Her responses show Mrs. Retorick to have little self-confidence, and she identified some familial problems. The protocol reveals her to be a well-functioning adult with only minor life difficulties. Having a strong need for social approval, Mrs. Retorick is generally naive about psychological matters. Obsessive-compulsive, histrionic and narcissistic personality traits are noted.

Making a great effort to be sociable, Mrs. Retorick closely conforms to rules and authority. There is, however, an undercurrent of resentment that is not readily displayed, and a strong inclination to deny conflicts for fear of losing control. Denial, tension and conformity are characteristic features. Defensive about admitting to psychological problems, Mrs. Retorick fears criticism and derogation.

Although possessing strong beliefs, Mrs. Retorick's fear of expressing her opinions causes others to perceive her as grim and somber. Her reluctance to make mistakes or to appear unconventional inhibits her actions and provides her limited expression of her opinions and attitudes. Self-doubt and need for security attracts her to traditional institutions where she can maintain a consistent behavioral pattern and avoid assuming personal autonomy.

Overly concerned with minor details, her façade of propriety is usually successful in repressing her resentments. Generally, Mrs. Retorick is efficient, meticulous and industrious. She values conscientiousness, discipline, prudence and loyalty.

Minnesota Multiphasic Personality Inventory- 2

VALIDITY SCALES	T-SCORES
Lie (L)	48
Infrequency (F)	57
Correction (K)	59

CLINICAL SCALES	
SCALES	T-SCORE
Conversion Hysteria (Hs)	60
Depression (D)	68
Hypochondriasis (Hy)	73
Psychopathic Deviate (Pd)	66
Masculinity-Femininity (Mf)	43
Paranoia (Pa)	64
Psychasthenia (Pt)	63
Schizophrenia (Sc)	53

Name: Dawn L. Retorick
Date of Evaluation: 05-21-2007
Page: 8

Hypomania (Ma)	37
Social Introversion (SI)	47

The **Minnesota Multiphasic Personality Inventory-2** is a highly utilized measure of psychopathology. Presented with true/false items, Mrs. Retorick's honest approach to the instrument allowed her test results to be interpreted with confidence.

VALIDITY SCALES

By candidly responding to items on the three measures that constitute the Validity Scales, (Lie, Infrequency and Correction), by approaching the instrument in a typical manner, and earning scores that fell within the normal range Mrs. Retorick was shown to be conventional, socially conforming, sincere, and to perceive the world as do most others. Tending to deny difficulties, and demonstrating moderate defensiveness, she has difficulty asking for support. Compliant and moralistic, she is rigidly virtuous. Possessing adequate ego strength, excellent coping skills, effective emotional defenses, Mrs. Retorick has good contact with reality.

CLINICAL SCALES

Mrs. Retorick's responses to the Clinical Scales reveal her as reserved, self-effacing, serious, cautious, and socially inept. She is, however, responsible, trusting, realistic, adaptable, dependable, critical, clear thinking, vigorous and sincere. The instrument further finds that she over-reacts to problems, exaggerates physical symptoms, possesses a bitter, cynical outlook, and is irritable, timid, pessimistic, worrying, immature and manipulative. Inhibited and moody, Mrs. Retorick is often self-dissatisfied, and seen by others as introverted.

THE BENDER VISUAL MOTOR GESTALT TEST

The **Bender Visual Motor Gestalt Test** is a well-respected graphic/projective instrument. This device asked Mrs. Retorick to copy nine geometric designs so that her visual perceptual abilities and personality be measured.

The absence of scoreable errors negates concern that Mrs. Retorick has a neurological or perceptual problem. Her protocol was normal. The reproductions were representative, logically sequenced, adequately spaced and detailed. The good quality of her renderings negates the presence of psychopathology.

Name: Frances Selvage
Date of Evaluation: 05-21-2007
Page: 7

fears criticism and derogation. Inclined to be Pollyannaish, she manifests a dependent conformity and inhibition of behavior.

Extremely concerned with minutia, Mrs. Selvage may be distracted from her occasional feelings of minor anxiety and inadequacy. Her façade of propriety is usually successful in repressing whatever resentments she may feel. Notable is Mrs. Selvage's strong sense of self-satisfaction and self-worth often exhibited in overt displays of her admirable traits and accomplishments.

Others may see Mrs. Selvage as egotistical, inconsiderate or arrogant. She feels justified in her claim for special status, and has little conception that her behavior may be objectionable. Also salient is Mrs. Selvage's view of herself as a socially stimulating and charming person; one who seeks to pursue a busy and pleasure-oriented lifestyle, and is invariably perceived by others as appealing and attractive. She lacks insight, however, failing to recognize or to admit recognizing her deeper insecurities, and desperate need to garner attention, and to be well liked. Seeking the reassurance and approval of authority figures, Mrs. Selvage experiences anxiety when she is unsure of their wishes or expectations. This contrasts markedly with her treatment of subordinates, with whom she is autocratic and condemnatory, often appearing pompous and self-righteous. These haughty and deprecatory behaviors are usually cloaked by so-called regulations and legalities.

MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-2

VALIDITY SCALES

SCALES	T-SCORE
Lie (L)	48
Infrequency (F)	57
Correction (K)	59

CLINICAL SCALES

SCALES	T-SCORE
Conversion Hysteria (Hs)	60
Depression (D)	68
Hypochondriasis (Hy)	73
Psychopathic Deviate (Pd)	66
Masculinity-Femininity (MF)	43
Paranoia (Pa)	64
Psychasthenia (Pt)	63

Name: Frances Selvage
Date of Evaluation: 05-21-2007
Page: 8

Schizophrenia (Sc)	53
Hypomania (Ma)	37
Social Introversion (Si)	47

The **Minnesota Multiphasic Personality Inventory-2** is a highly utilized measure of psychopathology. Presented with true/false items, Mrs. Selvage's approach to the instrument was typical in that she produced results that can be interpreted with a good degree of confidence.

VALIDITY SCALES/CLINICAL SCALES

Possessing few deviant beliefs, Mrs. Selvage tested as well-functioning, comfortable with her self-image, adaptive, self-reliant, and unwilling to seek help. Manifesting moderate defensiveness, there is little acknowledgement of distress.

Testing shows Mrs. Selvage to be empathic, considerate, capable, confident, responsible, conscientious, hardworking, friendly, talkative, and poised. Conversely, Mrs. Selvage may have a specific physiological disorder, as she is observed as complaining, irritable, whining, and preoccupied with her health, dieting, weight, and body functioning. Lacking energy and having trouble concentrating, she reports to be distressed and dysphoric. Possessing little tolerance for boredom or tedium, Mrs. Selvage has difficulty with authority, and responded to the instrument as having recurrent relational and work problems. Flirtatious, histrionic and demanding, she is psychologically naïve, emotionally superficial, lacking insight and overly reliant on the ego defenses of denial and dissociation.

THE BENDER VISUAL MOTOR GESTALT TEST

The **Bender Visual Motor Gestalt Test**, was developed in the 1930's by Loretta Bender and is one of ten most frequently utilized psychological instruments. The device designed to screen for neurological impairment and visual perceptual maturation, is also a good measure of personality and psychopathology.

Mrs. Selvage was requested to reproduce nine geometric designs. The absence of scoreable errors negates concern that she has an organic problem. Her well drawn, logically sequenced, and adequately spaced renderings are demonstrative of good reality contact, emotional balance, logical thinking, and normal planning.

Schnader
ATTORNEYS AT LAW

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412.577.5200 FAX 412.765.3858 schnader.com

April 3, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
Direct Fax 412-765-3858
E-mail: sediedrich@schnader.com

RECEIVED
4-3-07

The Hon. Paul E. Cherry
Clearfield County Court of Common Pleas
230 East Market Street
Clearfield, PA 16830

VIA HAND DELIVERY

Re: *Frances L. Selvage and Dawn L. Retorick v. Clearfield Hospital, et al.*
No. 03-393-CD, Civil Action Law

Dear Judge Cherry:

Enclosed please find a courtesy copy of Defendants' Supplement to Motion to Compel Mental Examinations of Plaintiffs and Motion for Status Conference which will be presented before Your Honor following the call of the list today.

Sincerely yours,



S. Elaine Diedrich

SED/mfh
Enclosure

cc: James J. West, Esq. (w/enc.) (VIA HAND DELIVERY)

2. In addition to responding to plaintiffs' expert report,¹ defendants seek to have their expert examine plaintiffs for the purpose of analyzing any pre-existing conditions of plaintiffs. Further, if plaintiffs intend to seek damages to include emotional distress damages post-dating their date of departure from Clearfield Hospital, defendants would like their expert to examine plaintiffs concerning this issue as well.

3. Concerning the timing of the mental examinations, defendants' expert report in this matter is due to be filed with its pretrial statement on April 13. As such, on March 20, defense counsel sent a letter to plaintiffs' counsel requesting whether plaintiffs' would consent to a mental examination. A copy of this letter is attached to defendants original Motion to Compel Mental Examinations of the Plaintiffs as Exhibit "B." After receiving no response, on March 26, another letter was sent requesting whether plaintiffs could be available on Saturday, March 31 for the examination or, in the alternative, Sunday April 1. A copy of the March 26 letter is attached to defendants original Motion as Exhibit "C."

4. After plaintiffs' counsel advised that his clients would not be available on Saturday, March 31, defense counsel requested the examinations take place on Sunday, April 1, or Wednesday, April 4. A true and correct copy of defense counsel's letter dated March 28, 2007, is attached hereto as Exhibit "A." Plaintiffs' counsel responded advising that his clients were not available through a letter dated March 28, which is attached hereto as Exhibit "B." In

¹ Plaintiffs' expert analyzed whether plaintiffs suffered emotional distress while at Clearfield Hospital and whether this emotional distress was the direct and proximate result of defendants' alleged conduct. He states that in response to a third question posed, that he believed in his clinical judgment that being in the environment at Clearfield Hospital would result in a reasonable nurse leaving their position and that their decisions were in theirs and their patients' best interests. Plaintiffs' expert report is attached to defendants' Motion to Compel Mental Examinations of plaintiffs as Exhibit "A."

addition, plaintiffs' counsel advised that his clients are only available on Tuesdays. Defendants' expert teaches a course on Tuesdays and cannot conduct the examinations on that day.

5. As Such, defendants respectfully request that plaintiffs be required to make themselves available on a Saturday or Sunday, April 7 or 8, due to the impending date of defendants' expert reports.

6. In the event that plaintiffs cannot be made available on those dates, defendants respectfully request an extension of time to file the expert report of their psychiatrist expert, Dr. Paul Bernstein.

II. Additional facts concerning Motion for Status Conference

7. The great majority of information currently being sought in this matter by defendants concerns plaintiffs' damages and items that defendants have been attempting to obtain from plaintiffs for several years.

8. Discovery in this case resulted in various discovery disputes between the parties as defense counsel has been forced to chase documents responsive to its discovery requests which were as elementary as plaintiffs' medical records and income information.²

A. Plaintiffs' failure to produce income and medical records in response to Defendants' repeated requests for this information has unreasonably resulted in defendants being forced to expend great time and efforts to obtain this information.

9. On November 3, 2004, Defendants served their First Request for Production of Documents on Plaintiffs requesting, *inter alia*, plaintiffs' income tax returns, together with all W-2s, schedules and attachments from 1999 to the time of trial (request 4), requested that

² Plaintiffs claimed damages include, *inter alia*, front pay, expenses of finding and engaging in other employment, amounts for emotional harm, pain and suffering and medical expenses.

plaintiffs each sign an authorization to release transcripts of their tax forms (request 25), an authorization to request social security earnings information (request 26), and medical authorizations (request 27). A true and correct copy of defendants First Request for Production of Documents is attached hereto as Exhibit "C".

10. In response, plaintiffs' counsel objected to and refused to have his clients sign the authorizations for tax, social security and physicians records on the grounds that they were "not authorized by the Rule governing production of documents that already exist" and asserting that the requests to sign authorizations were "unreasonable". A true and correct copy of Plaintiffs' Response to Defendants' First Request for Production of Documents is attached hereto as Exhibit "D."

11. Despite many calls and correspondence from defense counsel to plaintiffs' counsel and promises from the plaintiffs concerning the production of these records, plaintiffs never produced all of the information requested in defendants' discovery requests. This resulted in several of the items currently being sought.

12. In addition to refusing to sign authorizations provided to plaintiffs in November 2004 to obtain their income information, plaintiffs failed and/or refused to produce items as simple as copies of their W-2 forms.

13. On June 6, 2005, plaintiffs finally produced tax records in response to defendants' First Request for Production of Documents. However, the records produced included only their joint tax returns with their husbands, with no attachments, so that their incomes could not be determined. These were therefore useless to determine plaintiffs' incomes during and after leaving Clearfield Hospital.

14. On September 27, 2005, defense counsel sent a letter to plaintiffs' counsel identifying the problems with the tax records produced and again requesting plaintiffs' W-2 Forms so their incomes could be determined. A true and correct copy of this letter is attached hereto as Exhibit "E."

15. In responding to this request, on October 7, 2005, plaintiffs' counsel produced only Retorick's W-2 forms for 1999-2004, and failed to produce Selvage's W-2s. Plaintiffs' counsel claimed in that letter that he was providing Retorick's W-2s and that these "should enable you to delineate the income of all plaintiffs from their spouse's income based on the records that have been produced." A true and correct copy of plaintiff's counsel's October 7, 2005 letter is attached hereto as Exhibit "F."

16. In preparing for trial, it was discovered that plaintiffs had actually never produced Selvage's W-2 forms and that they still did not know her income after she quit her position with Clearfield Hospital. On March 20, 2007, defense counsel *again* sent a letter to plaintiffs' counsel requesting, *inter alia*, Selvage's W-2 forms that had never been provided. A true and correct copy of defense counsel's March 20, 2007 letter is attached to defendant's Motion for Status Conference as Exhibit "C."

17. The next day, on March 21, 2007, over 3 years after they were originally requested, plaintiffs' counsel finally produced Ms. Selvage's W-2 forms. The reason why plaintiffs were able to produce these records the next day after being requested at least three times was not explained by plaintiffs' counsel. A true and correct copy of plaintiffs' counsel's March 21, 2007 letter with attachments is attached to defendants' Motion for Status Conference as Exhibit "D."

18. Selvage's W-2s produced on March 21, 2007, revealed that Selvage was earning *substantially* more money at Carlisle Hospital than at Clearfield Hospital. Selvage is now earning over \$94,000 compared to her income while at Clearfield (which was approximately \$60,000).

19. Moreover, Selvage is making substantially more money than Retorick - Retorick is earning \$81,000 per year at Carlisle. Thus, despite plaintiffs' counsel's October 7 representation, there was no way for defendants to determine Selvage's income from Retorick's W-2 forms.

20. Thus, the reason why plaintiffs would try to play "hide the ball" concerning Selvage's income is understandable, but certainly not excusable. Clearly, obtaining and producing W-2 forms for Selvage was not difficult, as plaintiffs' counsel was able to produce these records the day after they were requested on March 20th.

21. Moreover, with respect to plaintiffs' medical records, in addition to refusing to provide authorizations for plaintiffs' physicians in response to defendants' requests, plaintiffs' counsel refused to produce *any* of plaintiffs' medical records prior to 1999 - despite plaintiffs' alleged damage claims for emotional distress and defendants' right to examine plaintiffs' medical records for preexisting conditions.

22. A Second Request for Production of Documents requesting plaintiffs' medical records was served on plaintiffs on January 25, 2007. A true and correct copy of defendants' Second Request for Production of Document is attached hereto as Exhibit "G."

23. Letters to plaintiffs' counsel objecting to plaintiffs' proposed production of limited medical records dating back to 1999 were sent by defense counsel on January 5 and 25, 2005, and a telephone call was made to plaintiffs' counsel by defense counsel on February 10,

2005. Defense counsel bent over backwards to work with plaintiffs' counsel to obtain the medical records, including agreeing to enter into a confidentiality agreement and limiting the medical records request to records dating back to 1980. Plaintiffs' counsel finally agreed to produce plaintiffs' medical records dating back to 1980. True and correct copies of the exchange of correspondence between plaintiffs' and defendants' counsel concerning medical records are attached hereto as Exhibit "H."

24. However, after agreeing to this, when medical records were finally produced by plaintiffs, they were only produced for plaintiff Retorick dating back to 1996 and for Selvage dating back to 1999.

25. In a letter dated September 27, 2005, defense counsel again requested full responses to the medical records requests. Plaintiffs' counsel provided authorizations for some, but not all, of plaintiffs' physicians. An authorization for Selvage's primary care physician, Dr. Cardamone, was omitted. See Exhibits "E" and "F."

26. These authorizations were received while defense counsel was on maternity leave. When they were sent out to physicians, they were either not responded to by the physicians because the physicians required their own specific releases or they were stale.

27. As a result, in letters dated March 12 and 20, 2007, plaintiffs were simply requested to re-sign authorizations for these records, defendants again requested for Selvage's W-2 Forms, Selvage was requested to sign a first authorization for her primary care physician, Dr. Cardamone, and plaintiffs' were again requested to sign authorizations for their income tax and social security records (given the lack of information ever produced by them).

28. Ironically, it is with these requests that plaintiffs' counsel began asserting that discovery was closed in this case with the filing of defendants' motion for summary judgment.

29. The discovery being sought by the defendants deals largely with damages as well as several outstanding documents requested from plaintiffs long ago.

30. Further, prior to the filing of defendants' motion for summary judgment in March 2006, substantial discovery had been undertaken.

31. Specifically, all of the defendants' depositions had been taken, plaintiffs' depositions had been taken and two third-party witnesses' depositions had been taken. In addition, plaintiffs had served four requests for production of documents and one set of interrogatories, all of which were responded to by defendants. Defendants had served two sets of document requests and interrogatories.

32. Plaintiffs were granted an extension of time to respond to defendants motion for summary judgment and filed an expert report with their response.

33. Clearly, if a party files a summary judgment motion, it does not prohibits further discovery in the absence of a court order or agreement of the parties providing for the close of discovery.

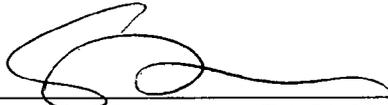
34. The parties have not entered into any agreements as to the close of discovery in this matter and there has been no order of court setting a date for the close of discovery.

WHEREFORE, Defendants respectfully request that this Honorable Court grant its Motion to Compel Mental Examinations of Plaintiffs to include examination of plaintiffs for the purpose of responding to plaintiffs' expert report, to analyze any pre-existing conditions of plaintiffs and emotional distress experienced by plaintiffs post-dating their departure from Clearfield Hospital, if applicable. Moreover, defendants respectfully request that this Honorable Court schedule plaintiffs' examinations for a time in the immediate future or grant an extension of time for defendants to file an expert report by their expert, Dr. Paul Bernstein. Finally,

defendants respectfully request that this Honorable Court schedule a status conference to determine a date for the close of discovery or, in the alternative, schedule a date for the close of discovery in this matter.

Respectfully Submitted,

SCHNADER HARRISON SEGAL & LEWIS LLP

By: 

John K. Gisleon (PA Id. No. 62511)
S. Elaine Dieddrich (Pa Id. No. 84077)
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone and Thelma Stratton

March 28, 2007

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517

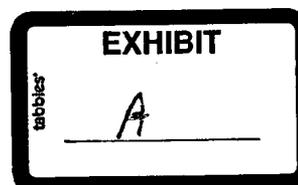
Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Pursuant to our discussion yesterday evening, Dr. Bernstein can also make himself available on Sunday, April 1, to examine the plaintiffs. He may also be available on Wednesday, April 4. If either of those days works better for your clients or another day, please let me know and we will try to work it out.

It is my understanding that you will contact your clients today and request whether they will consent to an examination by Dr. Bernstein. It is my understanding that your clients object because they want to move on with the case and go to trial. As I explained, we do not intend to delay the trial in any way, but are simply attempting to have our expert examine the plaintiffs (as we are entitled to do) and be able to file a report on April 13 with our pretrial statement when expert reports are due. Also, I reiterate that our original request to whether you would consent to this examination was made on March 20. We did not receive a response from you and again requested this information on March 26.

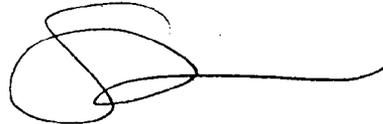
Concerning your issue with the close of discovery, I reiterate that we do not agree with your position that Rule 1035.2 concerning summary judgment provides that discovery "closes" in a case (thereby prohibiting any further discovery) when a party files a summary judgment motion. Not only does the rule not state this, but I note that the great majority of items we have requested in the past few weeks are not novel items, such as plaintiffs' income information, that we requested in our first request for production of documents, but never received despite correspondence concerning same.



March 28, 2007
Page 2

I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

S. Elaine Diedrich

SED/mfh

cc: John K. Gisleson, Esq.

TRANSMISSION VERIFICATION REPORT

TIME : 03/28/2007 12:02
NAME :
FAX :
TEL :
SER. # : BR0M5J406428

DATE, TIME	03/28 12:02
FAX NO./NAME	17172347517
DURATION	00:00:20
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

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March 28, 2007

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James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
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VIA FAX (717) 234-7517

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

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JAMES J. WEST, LLC

105 North Front Street, Suite 205

Harrisburg, PA 17101

Telephone: (717) 233-5051

Facsimile: (717) 234-7517

James J. West

jwest@jwestlaw.com

March 28, 2007

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

VIA FACSIMILE

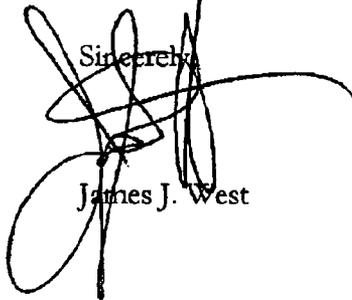
RE: Retorick/Selvage v. Clearfield Hospital

Dear Elaine:

I contacted both Plaintiffs yesterday concerning their positions on the examination. Of course, they are very anxious for trial, felt discovery was closed having noticed the trial back in December, etc. In addition, Fran Selvage is scheduled to work this weekend. Likewise, Dawn Retorick canceled her visit with me. She was recently hospitalized and is still undergoing outpatient wound care. Notwithstanding the issue on whether or not this is a timely Motion, the Plaintiffs are unavailable for this weekend on such short notice.

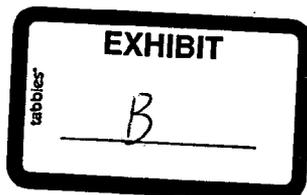
I received your Motion this morning. I will attempt to discuss it with the Plaintiffs and get back to you but it will probably be this afternoon.

Sincerely,



James J. West

JJW/jmb



Eric T. Smith (PA Id. No. 70491)
S. Elaine Diedrich (PA Id. No. 87044)
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

FRANCES L. SELVAGE and)
DAWN L. RETORICK,)
)
Plaintiffs,)
)
vs.)
)
CLEARFIELD HOSPITAL,)
LOIS EISENMAN, Director of Nursing,)
JACKIE STONE, Vice President of Nursing,)
THELMA STRATTON, ICU Unit Manager,)
)
Defendants.)
)

IN THE COURT OF COMMON
PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

No. 03-393-CD

Civil Action - Law

**FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
PROPOUNDED UPON PLAINTIFFS**

Defendants, Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton, by and through their undersigned counsel, Schnader Harrison Segal & Lewis LLP, hereby propound this First Request for Production of Documents upon Plaintiffs, Frances L. Selvage and Dawn L. Retorick, pursuant to the Pennsylvania Rules of Civil Procedure. In accordance with the foregoing rules, Plaintiffs shall respond in writing to this discovery, and produce the requested documents, at the offices of Schnader Harrison Segal & Lewis LLP, Suite 2700, Fifth Avenue Place, 120 Fifth Avenue, Pittsburgh, Pennsylvania, 15222-3010, on or before the date required by the Pennsylvania Rules.



11/3/04

DEFINITIONS

As used herein, the following terms have the meanings indicated below:

1. **And** as well as **Or** shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of this Discovery all documents, information or other responses that might otherwise be construed to be outside the scope thereof.

2. **Clearfield Hospital** means Clearfield Hospital a named Defendant herein, and any predecessor, successor, parent, subsidiary, division or affiliate thereof, whether owned wholly or in part, and any present or past officer, director, agent, servant, employee and representative of any of the foregoing.

3. **Communication** means the transfer or transmittal of any information, in or by any form or media, whatsoever, whether oral or written, or formal or informal.

4. **Amended Complaint** means the Amended Complaint filed by Plaintiffs at Civil Action No. 03-393-CD in the Court of Common Pleas of Clearfield County, Pennsylvania.

5. **Concerning** is used in its broadest sense and means regarding, referring to, touching upon, affirming, denying, mentioning, discussing, describing, reflecting, evidencing, containing, constituting or relating to, or relevant to, or likely to lead to, the discovery of admissible evidence.

6. **Defendants** means the named Defendants herein and collectively Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton.

7. **Document**, unless specified otherwise, shall be coextensive with the meaning set forth in the Pennsylvania Rules of Civil Procedure, and means and includes any and all printed, written, typewritten, handwritten or otherwise recorded or graphic

matter, of whatsoever character and however produced, recorded or reproduced, which is in the possession, custody or control of, or is obtainable by the party to whom this discovery request is being made, including, but not limited to, letters, memoranda, interoffice communication, correspondence, minutes of meetings or discussions, notes, diaries, medical records, calendars, date books, brochures, reports, telegrams, records, drawings, plans, specifications, blueprints, graphs, charts, work papers, photographs, slides, motion pictures, phonograph records, recordings, invoices, bills of lading, purchase orders, receipts, checks, transcriptions, transcripts, contracts, agreements, accounting records, microfilms, microfiche, videotapes, advertisements, technical data, test records, computer print-outs, delivery tickets, delivery receipts, other delivery information, sales records, bills, accounting summaries, bulletins, opinions, published articles, investigations, summaries, statements, literature, books, promotional aids, releases, magazines, computer printouts, computer disks, all information and data electronically or magnetically recorded or stored in computers or on tape or cards, any other typewritten, handwritten, or graphic material of any kind or description and any and all drafts or carbon, photostatic, photographic or other copies of any of the foregoing.

10. **Person** means an individual, trust, firm, corporation, association, partnership, consortium, joint venture, or other governmental, commercial, incorporated, unincorporated, or not-for-profit entity or agency.

11. **Refer, referring, relate or relating** are used in their broadest sense to mean and include direct as well as indirect references to, descriptions of, discussions of or commentary on the subject matter of the request.

12. **Plaintiff or Plaintiffs** mean Frances L. Selvage and/or Dawn L. Retorick.

13. **Support** (or a form thereof), shall mean advocate, affirm, aid, allow, bulwark, confirm, contribute, corroborate, demonstrate, embrace, enable, establish, facilitate, foster, justify, permit, maintain, prove, promote, reinforce, sustain, verify or vouch.

14. **You or your** mean Frances L. Selvage and/or Dawn L. Retorick.

INSTRUCTIONS

Please adhere to the following instructions, to the extent applicable, in responding to each and every discovery request propounded in this Discovery.

I. This Discovery is to be answered separately, fully, in writing and under oath within thirty (30) days after service to the extent required by the Pennsylvania Rules of Civil Procedure. Furthermore, this Discovery is continuing and any responsive information secured subsequent to the filing of your responses should be supplied by supplemental answers pursuant to the Pennsylvania Rules of Civil Procedure.

II. In preparing your response, the singular shall include the plural and *vice versa*, and the past tense in a verb shall include the present tense thereof, and *vice versa*.

III. If an objection is stated to any request for production please set forth fully your objection and your reason for such objection.

IV. If you claim any form of privilege as a ground for not responding to a request for production or any portion therefore, set forth in complete detail each and every fact upon which the privilege is based, including sufficient facts for the Court to make a full determination whether the claim of privilege is valid.

V. If any document is withheld under a claim of attorney-client privilege or work product doctrine or any other claim of privilege, identify the document withheld by

date; author; sender; recipient, including all persons who were shown, had access to, or received a copy; format; title; present or last known location; a general description of the subject matter of the document; and any other information necessary to support the claim of privilege. State the grounds for the assertion of the privilege in sufficient detail to permit the Court to adjudicate the validity of the claim.

VI. If any document requested herein was formerly in your possession, custody or control, and has been lost or destroyed, or otherwise disposed of, state with respect to each document: (i) the date, subject matter and nature of the document; (ii) the name of the author, the author's employer, and the author's position; (iii) if applicable, the name of the recipient, the recipient's employer, and the recipient's position; (iv) the name of each other person who was shown or furnished the document or a copy or any part thereof, each person's employer, and each person's position; (v) the date on which the document was lost or destroyed; and (vi) if destroyed, the conditions of and reasons for such destruction and the names of the persons requesting and performing such destruction, their employer(s) and position(s).

VII. Each document request seeks the production of each document in its entirety, including each attachment or other matter affixed thereto and all marginal notations.

VIII. If any document cannot be produced in full, produce such document to the extent possible, state the reason for your inability to produce the remainder of the document and, with respect to the remainder, state what information, knowledge or belief you have concerning the portion not produced.

IX. The document requests herein seek the production of all non-identical copies, including drafts and copies upon which notes have been made.

X. In responding to any request for production of documents, you are required to furnish such documents and information as are within your personal knowledge, possession, custody and control, as well as that of your representatives, agents, attorneys, partners, investigators or anyone else acting for you, or on or in your behalf.

XI. All documents produced in response to any request for production of documents shall be organized and labeled to correspond with the specific request for production of documents to which they are being produced in response.

XII. To the extent that you consider any of the document requests objectionable, respond to that portion of each document request that is not objectionable in your view, and separately state your objection to that portion of the request and the ground for each such objection.

REQUESTS FOR PRODUCTION

1. Produce each and every document identified or requested to be identified in response to, or to which you referred, in preparing your responses to the First Set of Interrogatories Propounded Upon Plaintiffs by Defendants.

RESPONSE:

2. Copies of all documents concerning, referring or relating to, or otherwise supporting, any allegation made in the Amended Complaint or Plaintiffs' answers to Defendants' First Set of Interrogatories.

RESPONSE:

4. Copies of all income tax returns submitted to the United States, any state and/or local government, together with all W-2's, schedules and attachments prepared or filed by either Plaintiff (or on their behalf) beginning with calendar year 1999 and continuing for each and every successive year until the time of trial.

RESPONSE:

5. Copies of all documents and correspondence pertaining or relating to Plaintiffs' claims.

RESPONSE:

6. Copies of any documents, correspondence, notes, logs, diaries or any other writing which relates in any fashion or manner to any aspect of either Plaintiff's employment with Clearfield hospital.

RESPONSE:

7. Copies of any documents, correspondence, notes, logs, diaries or any other writing which relates in any fashion or manner to retaliation of any sort against any other employee or former employee of Clearfield Hospital.

RESPONSE:

8. Copies of any documents, correspondence, notes, logs, diaries or any other writing that relates in any fashion or manner to any of the Defendants.

RESPONSE:

9. Copies of any documents, correspondence, notes, logs, diaries or any other writing that relates in any fashion or manner to either Plaintiffs' employment with Clearfield Hospital.

RESPONSE:

10. Copies of all written statements or affidavits in any form regardless of who prepared the statement or affidavit by either Plaintiff that relates in any way to this action.

RESPONSE:

11. Copies of all written statements or affidavits in any form regardless of who prepared the statement or affidavit by any other individual that relates in any way to this action.

RESPONSE:

12. Copies of all documents, recordings, or statements from, or information provided by any of Clearfield Hospital's employees or any other person that pertains or relates in any way to this action.

RESPONSE:

13. Copies of all documents provided by any named Defendant herein to either Plaintiff at any time during or after their employment with Clearfield Hospital.

RESPONSE:

14. Copies of all documents that will be used in Plaintiffs' prosecution of this case at trial.

RESPONSE:

15. Copies of all correspondence or documents sent or provided to either Plaintiff from any person, corporation or other entity which relate in any fashion or manner to any aspect of either Plaintiff's employment with Clearfield Hospital or in any way to this action.

RESPONSE:

16. Copies of all correspondence from either plaintiff to any person, corporation or other entity which relate in any way to any attempt by either Plaintiff to secure employment from January 1, 1999 to the present.

RESPONSE:

17. Copies of all correspondence to either Plaintiff from any person, corporation or other entity which relate in any way to any attempt by either Plaintiff to secure employment or the response to said application for employment from January 1, 1999 to the present.

RESPONSE:

18. Copies of all written offers of employment made by any entity to either Plaintiff from January 1, 1999 to the present.

RESPONSE:

19. Copies of all of either of Plaintiff's responses to any written offers of employment made by any entity to either Plaintiff from January 1, 1999 to the present.

RESPONSE:

20. Copies of all check stubs from any salary or wage checks received by either Plaintiff from November 1, 2002 through the present.

RESPONSE:

21. Copies of all versions of any resumes prepared or used by either Plaintiff, and any drafts thereof, since January 1, 1999.

RESPONSE:

22. Copies of all help wanted ads to which either Plaintiff has responded since January 1, 1999.

RESPONSE:

23. Copies of all expert witness reports, written statements or other investigation materials that either Plaintiff intends to use at trial and/or during the prosecution of this case.

RESPONSE:

24. A copy of the curriculum vitae of any expert retained.

RESPONSE:

25. Please complete, sign and return the attached *Request for Copy or Transcript of Tax Form*.

RESPONSE:

26. Please sign and return the attached *Request for Social Security Earnings Information*.

RESPONSE:

27. Please sign and return, in sufficient number, the attached *Medical Authorization*.

RESPONSE:

28. Please sign and return, in sufficient number, the attached *Authorization for release of employment records*.

RESPONSE:

29. Copies of any and all correspondence or documents exchanged between any of the Defendants and either Plaintiff from the commencement of each Plaintiff's employment with Clearfield Hospital through the present time.

RESPONSE:

30. Copies of all correspondence or documents to or from either Plaintiff which relate in any fashion or manner to any aspect of this action.

RESPONSE:

31. Copies of all documents provided at any time by any Defendant to Dawn Retorick, or vice versa, from June 1, 1982 to the present.

RESPONSE:

32. Copies of all documents provided at any time by any Defendant to Frances Selvage, or vice versa, from October 1, 1993 to the present.

RESPONSE:

33. Copies of all correspondence or documents from Plaintiff's to any person, corporation or entity that relates in any fashion or manner to the allegations contained in the Amended Complaint or in any way relates to this action.

RESPONSE:

34. Produce copies of all Plaintiffs' education records including but not limited to, a copy of any degrees or diplomas, transcripts, grade reports, and application materials. This request is for any post-high school education received by either Plaintiff.

RESPONSE:

35. Copies of each and every report, notice, complaint, or document that you provided to Clearfield Hospital that you allege are reports of "wrongdoing and waste" referred to in paragraph 11 of your Complaint.

RESPONSE:

36. Copies of each and every report, notice, or complaint, or any document that refers to a report, notice, or complaint that you provided to Clearfield Hospital during the course of your employment.

RESPONSE:

37. Copies of every document referring or relating to the allegations contained in paragraph 12 of your Amended Complaint.

RESPONSE:

38. Copies of every document referring or relating to the allegations contained in paragraph 14 and each of its subparagraphs of your Amended Complaint.

RESPONSE:

39. Copies of each and every report, notice or complaint that you refer to in paragraph 14(n) of your Amended Complaint that was not attached to your Amended Complaint.

RESPONSE:

40. Any and all documents that refer or relate to any oral reports, notices or complaints that you made while employed with Clearfield Hospital.

RESPONSE:

41. Copies of every document referring or relating to the allegations contained in paragraph 15 of your Amended Complaint.

RESPONSE:

42. Copies of every document referring or relating to the allegations contained in paragraph 16 of your Amended Complaint.

RESPONSE:

43. Copies of every document referring or relating to the allegations contained in paragraph 17 and each of its subparagraphs (a) through (n) of your Amended Complaint.

RESPONSE:

44. Copies of every document referring or relating to the allegations contained in paragraph 18 of your Amended Complaint.

RESPONSE:

45. Copies of every document referring or relating to the allegations contained in paragraph 19 and each of its subparagraphs (a) through (g) of your Amended Complaint.

RESPONSE:

46. Copies of every document referring or relating to the allegations contained in paragraph 29 of your Amended Complaint.

RESPONSE:

47. Copies of every document referring or relating to the allegations contained in paragraph 33 of your Amended Complaint.

RESPONSE:

48. Copies of every document referring or relating to the allegations contained in paragraph 42 and each of its subparagraphs (a) through (h) of your Amended Complaint.

RESPONSE:

49. Copies of every document referring or relating to the allegations contained in paragraph 47 of your Amended Complaint.

RESPONSE:

50. Copies of every document referring or relating to the allegations contained in paragraph 48 of your Amended Complaint.

RESPONSE:

51. Copies of every document referring or relating to the allegations contained in paragraph 50 of your Amended Complaint.

RESPONSE:

52. Copies of every document referring or relating to the allegations contained in paragraph 52 of your Amended Complaint.

RESPONSE:

53. Copies of every document referring or relating to the allegations contained in paragraph 57 of your Amended Complaint.

RESPONSE:

54. Copies of all of Plaintiffs' medical bills/expenses that will be claimed as damages in this action.

RESPONSE:

55. All documents prepared or received by either Plaintiff, on either Plaintiffs' behalf or at either Plaintiffs' request, which include or reflect any communications, conversations or meetings with any current or former employee of Clearfield Hospital concerning any of the allegations in Plaintiffs' Amended Complaint.

RESPONSE:

56. Any and all documents that refer or relate to Plaintiffs' "severe emotional distress, mental suffering, mental anguish, sleeplessness, moodiness, irritability, and other alterations of plaintiffs' personalities" referred to in your Amended Complaint.

RESPONSE:

SCHNADER HARRISON SEGAL &
LEWIS, LLP

By: 

Eric T. Smith (PA Id. # 70491)
S. Elaine Diedrich (PA Id. #84077)
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

Name: _____ SSN: _____ DOB: _____

Address: _____ City: _____ State: _____ Zip Code: _____

I. General Release.

I hereby authorize _____ to disclose the information set forth in Section IV of _____
[Name and address of record source: e.g., Employer]

this Authorization for the period from _____ to _____. The released information is required for litigation. I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.

II. Health Information Release. I hereby authorize the disclosure of my health information, as described in this authorization:

- a.) Person(s) authorized to disclose the information: _____
[Name of the Provider: Hospital, Doctor, Insurance Co.]
- b.) Information to be disclosed: The Information set forth in Section V of this Authorization. I understand that the health information may include information pertaining to treatment of drug and alcohol abuse, mental health including without limitation psychiatric information, acquired immunodeficiency syndrome (AIDS), or human immunodeficiency virus (HIV), sexually transmitted diseases, sick cell anemia treatment, tuberculosis information or genetic information. **THIS INFORMATION WILL BE RELEASED UNLESS I INDICATE OTHERWISE BY CHECKING HERE:** _____
- c.) Person(s) authorized to receive the disclosed information: The MCS Group, Inc. on behalf of: _____
[Name of MCS Client]
- I further authorize The MCS Group, Inc., a private record reproduction company, upon presentation of this authorization or a copy thereof, to photocopy such records as are reasonably necessary for the above-state purposes.
- d.) Purpose of this request: At my request.
- e.) Expiration Date: Unless otherwise revoked, this authorization will expire one year after the date of this authorization or later as indicated here _____.
- f.) Right to revoke: I understand that I have the right to revoke this authorization at any time by notifying in writing each Person identified in Section (a). I understand that the revocation is only effective after it is received and logged by such Person. I understand that any disclosure made prior to the revocation under this authorization will not be affected by the revocation.
- g.) Subsequent Disclosure: I understand that any disclosure of information may be subject to re-disclosure by the recipient and may no longer be protected by federal or state law.
- h.) Impact on Medical Treatment: I understand that I do not need to sign this authorization to assure any medical treatment. I understand that I may inspect and/or copy the information to be disclosed. I understand that authorizing this disclosure is voluntary. I understand that if I have any questions about disclosure of my health information, I may contact the privacy officer for each Person identified in Section (a).

III. Signature/Certification.

Signature of Person Identified Above or his or her Authorized Representative / Guardian

Date

By signing this authorization, the Authorized Representative and/or Guardian warrants that he or she has the authority to act on behalf of the person identified above on the basis of: _____

AUTHORIZATION FOR RELEASE OF INFORMATION

MCSFile: _____

IV. Information Subject to the General Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Car Insurance</u> Copies of any and all claims files concerning claims including but not limited to PIP pay out sheets, medical records, bills and reports of treating an examining physician's statements of claims, correspondence, notes and documents concerning of any and all property damage claims files including but not limited to photographs, estimates, appraisals, payouts for property damage, and any documentation regarding property damage. Insured: Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Social Security Benefits</u> Any and all records showing all payments and benefits received, and all benefits still available and not used by the Person identified on the front of this Authorization Form, including but not limited to any and all disability benefits, application for benefits, approval or denial of benefits and other social security benefits records regarding the above mentioned individual.</p>
<input type="checkbox"/>	<p><u>School</u> Copies of any and all school records, transcripts, attendance records, disciplinary reports, extracurricular activities, and cumulative records regarding the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>
V. Information Subject to the Health Information Release.	
<input type="checkbox"/>	<p><u>Provider</u></p> <p><u>Employment</u> Copies of any and all records including but not limited to all applications for employment, all prior employment verification information, all pre-employment background or health documentation, applications for insurance, insurance forms, all physician or medical reports or records of any kind pertaining to physical examination required for employment, continued employment, or health or disability insurance, all reports or records of job or other injury, attendance records, sick time records, vacation records, payroll records, W-2 forms, salary history, progress records, letters of complaint, layoffs or termination for any and all times, occasions or reasons, pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Pharmacy</u> Any and all prescription records kept in the regular course of business including but not limited to prescription prescribed, physicians prescribing medications, medication description, medication side effect print out, frequency medication being taken, billing, insurance and payment records, etc., and any and all records kept in your file regarding the below listed party; from the first date of treatment to the present (pertaining to the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical Insurance</u> Copies of any and all claim files concerning claims made by the below listed party including but not limited to pay out sheets, medical records, bills and reports of treating and examining physicians, state of claims, correspondence, notes and documents concerning any payments made to medical providers under the provisions of the policy. Insured: (the Person identified on the front of this Authorization Form).</p>
<input type="checkbox"/>	<p><u>Medical</u> Copies of any and all medical records, reports, charts, notes, diagrams, documents, papers, correspondence, memoranda, microfilmed document emergency room reports, billing information, x-ray films, MRI films, and/or films or of radiological studies and any and all other records of reports in your possession, custody or control, from the inception of your records to the present pertaining to the Person identified on the front of this Authorization Form.</p>
<input type="checkbox"/>	<p><u>Other</u></p>

REQUEST FOR SOCIAL SECURITY EARNINGS INFORMATION

1. From whose record do you need the earnings information?

Print the Name, Social Security Number (SSN), and date of birth below.

Name _____	Social Security Number _____
Other Name(s) Used (Include Maiden Name) _____	Date of Birth (Mo/Day/Yr) _____

2. What kind of information do you need?

- Detailed Earnings Information** For the period(s)/year(s): _____
(If you check this block, tell us below why you need this information.)

- Certified Total Earnings For Each Year.** For the year(s): _____
(Check this box only if you want the information certified. Otherwise, call 1-800-772-1213 to request Form SSA-7004, Request for Earnings and Benefit Estimate Statement)
-

3. If you owe us a fee for this detailed earnings information, enter the amount due using the chart on page 3 A. \$ _____

Do you want us to certify the information? Yes No

If yes, enter \$15.00 B. \$ _____

ADD the amounts on lines A and B, and enter the TOTAL amount C. \$ _____

- You can pay by CREDIT CARD by completing and returning the form on page 4, or
 - Send your CHECK or MONEY ORDER for the amount on line C with the request and make check or money order payable to "Social Security Administration"
 - DO NOT SEND CASH.
-

4. I am the individual to whom the record pertains (or a person who is authorized to sign on behalf of that individual). I understand that any false representation to knowingly and willfully obtain information from Social Security records is punishable by a fine of not more than \$5,000 or one year in prison.

SIGN your name here
(Do not print) > _____ Date _____

Daytime Phone Number _____
(Area Code) (Telephone Number)

5. Tell us where you want the information sent. (Please print)

Name _____ Address _____
City, State & Zip Code _____

6. Mail Completed Form(s) To: **Exception:** If using private contractor (e.g., FedEx) to mail form(s), use:

Social Security Administration
Division of Earnings Record Operations
P.O. Box 33003
Baltimore Maryland 21290-3003

Social Security Administration
Division of Earnings Record Operations
300 N. Greene St.
Baltimore Maryland 21290-0300

Request for Copy of Tax Return

OMB No. 1545-0429

Department of the Treasury
Internal Revenue Service

- ▶ Do not sign this form unless all applicable parts have been completed.
Read the instructions on page 2.
- ▶ Request may be rejected if the form is incomplete, illegible, or any required part was blank at the time of signature.

TIP: You may be able to get your tax return or return information from other sources. If you had your tax return completed by a paid preparer, they should be able to provide you a copy of the return. The IRS can provide a **Tax Return Transcript** for many returns free of charge. The transcript provides most of the line entries from the tax return and usually contains the information that a third party (such as a mortgage company) requires. See new **Form 4506-T**, Request for Transcript of Tax Return, to order a transcript or you can call 1-800-829-1040 to order a transcript.

1a Name shown on tax return. If a joint return, enter the name shown first.	1b First social security number on tax return or employer identification number (see instructions)
2a If a joint return, enter spouse's name shown on tax return	2b Second social security number if joint tax return

3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code

4 Address, (including apt., room, or suite no.), city, state, and ZIP code shown on the last return filed if different from line 3

5 If the tax return is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number. The IRS has no control over what the third party does with the tax return.

CAUTION: Lines 6 and 7 must be completed if the third party requires you to complete Form 4506. Do not sign Form 4506 if the third party requests that you sign Form 4506 and lines 6 and 7 are blank.

6 Tax return requested (Form 1040, 1120, 941, etc.) and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, or amended returns. Copies of Forms 1040, 1040A, and 1040EZ are generally available for 7 years from filing before they are destroyed by law. Other returns may be available for a longer period of time. Enter only one return number. If you need more than one type of return, you must complete another Form 4506. ▶ _____

Note: If the copies must be certified for court or administrative proceedings, check here.

7 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than four years or periods, you must attach another Form 4506.

____ / ____ / ____ ____ / ____ / ____ ____ / ____ / ____ ____ / ____ / ____

8 Fee. There is a \$39 fee for each return requested. Full payment must be included with your request or it will be rejected. Make your check or money order payable to "United States Treasury." Enter your SSN or EIN and "Form 4506 request" on your check or money order.	
a Cost for each return	\$ 39.00
b Number of returns requested on line 7	
c Total cost. Multiply line 8a by line 8b	\$

9 If we cannot find the tax return, we will refund the fee. If the refund should go to the third party listed on line 5, check here

Signature of taxpayer(s). I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax return requested. If the request applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506 on behalf of the taxpayer.

Signature (see instructions)	Date	Telephone number of taxpayer on line 1a or 2a ()
Title (if line 1a above is a corporation, partnership, estate, or trust)		
Spouse's signature	Date	

Sign Here

RECORDS AUTHORIZATION

TO:

This will authorize you to furnish all employment-related information and/or documents, including but not limited to a résumé and application concerning:

JOANNE RACE Social Security Number _____ Date of Birth _____

TO:

Eric T. Smith, Esq.
SCHNADER HARRISON SEGAL & LEWIS, LLP
Fifth Avenue Place, Suite 2700
120 Fifth Avenue
Pittsburgh, PA 15222

If there is any charge for the reproduction of the requested documents, the invoice should be forwarded with the documents to SCHNADER HARRISON SEGAL & LEWIS, LLP at the above address.

Date _____

Applicant Signature

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2004, a true and correct copy of the foregoing **FIRST REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED UPON PLAINTIFFS** was sent, via U.S. Mail, first class postage prepaid, to the following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

West Long LLC
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051

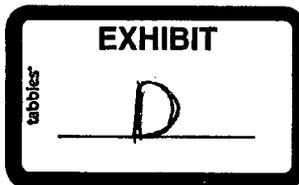
FRANCES L. SELVAGE and	:	IN THE COURT OF COMMON PLEAS
DAWN L. RETORICK	:	CLEARFIELD COUNTY, PENNSYLVANIA
Plaintiffs	:	
	:	
v.	:	No. 03-393-CD
	:	
CLEARFIELD HOSPITAL,	:	Civil Action - Law
LOIS EISENMAN, Director of Nursing,	:	
JACKIE STONE, Vice President of	:	
Nursing, THELMA STRATTON, ICU Unit	:	
Manager,	:	
Defendants	:	

PLAINTIFFS' OBJECTIONS AND ANSWERS TO DEFENDANTS'
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 409 of the Pennsylvania Rules of Civil Procedure the Plaintiffs hereby provide the following objections and responses to the Defendants' First Request for Production of Documents:

GENERAL OBJECTIONS

The Request for Production of Documents are all objected to as being overly broad, burdensome, unreasonable and, in those instances indicated, not calculated to produce relevant evidence within the meaning of the Pennsylvania Rules of Civil Procedure. Moreover, in some instances, such as the request for Plaintiffs to execute various documents and provide them to the Defendants, these requests are unreasonable and not authorized by the Rule governing production of documents that already exists.



Nevertheless, the Plaintiffs have authorized their counsel to copy and turn over all documents they have provided to counsel that are in the nature of witness statements, letters, logs and various contemporaneous notes relating to the retaliation and constructive discharge by Clearfield Hospital. These documents are Bates stamped numbers PI-1 through PL-760.

It should be noted that attorney/client privileged communications and attorney work product is obviously not being turned over but insofar as documents created prior to the retention of counsel and not at counsel's direction, these documents are being made available and represent the known documents in the possession of the Plaintiffs at this point in time which are relevant to this particular case.

REQUESTS

1-2. See general objections made at the beginning of these answers and produced documents Bates stamped PI-1 through PL-760.

4-22. See general objections made at the beginning of these answers and produced documents Bates stamped PI-1 through PL-760.

23. Experts have yet to be retained in this matter and no reports exist at this time.

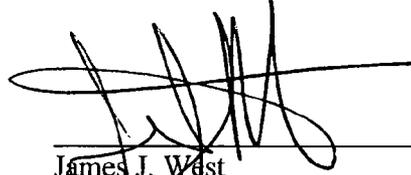
24. See answer to #23 above.

25-28. Objected to as an improper use of a request for production of documents.

29-56. See general objections made at the beginning of these answers and produced documents Bates stamped PI-1 through PL-760.

Respectfully Submitted,

WEST LONG LLC

A handwritten signature in black ink, appearing to be 'James J. West', is written over a horizontal line. The signature is stylized and somewhat illegible.

James J. West
105 North Front Street
Suite 205
Harrisburg, PA 17101
(717) 233-5051
(717) 234-7517 - fax

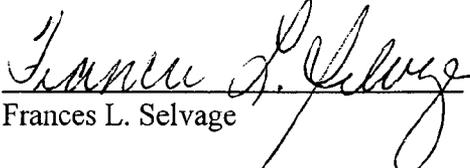
Dated: December 29, 2004

Counsel for Plaintiffs

VERIFICATION

I, Frances L. Selvage, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 12-29-04



Frances L. Selvage

VERIFICATION

I, Dawn L. Retorick, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 12-29-04

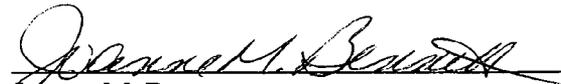


Dawn L. Retorick

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of **January, 2005**, a true and correct copy of the foregoing document was served upon the party named below via hand delivery, addressed as follows:

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222


Joanne M. Bennett
Paralegal



September 27, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517
and U.S. MAIL

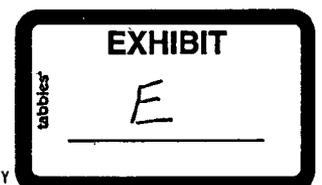
Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

I am writing to follow up on discovery responses that are outstanding in this matter.

We have only received medical records for Ms. Selvage from 1999 to the present. For Ms. Retorick, we have only received records from 1996 to the present. We have, however, requested the plaintiffs' medical records from 1980 to the present. While you previously advised me that you would not produce these records because plaintiffs indicated that there would be no relevant information contained in the records related to their emotional distress damages, the records that we have received regarding Ms. Retorick indicate quite to the contrary. Therefore, I am again requesting that you produce the Ms. Selvage's medical records for the entire time period of 1980 to the present. We have been attempting to obtain these records from you since November 3, 2004 and, despite our continued requests, have not received them. Therefore, unless I receive these complete records from you within the next ten (10) days, I will be filing a motion to compel.

In addition, you have not provided any W-2's for the plaintiffs from 1999 to the present. While you provided the joint tax returns and or joint tax information for the plaintiffs' and their spouses, you failed to provide any attachments to those forms, including the W-2 forms for the plaintiffs. In fact, based upon the information you have provided, there is no way to delineate the income that plaintiffs made versus their spouses. The W-2 forms and attachments to the tax forms were requested in our request for production of documents also served on November 3, 2004. We also requested all paycheck stubs from either plaintiff from November 1, 2002 to the present, but have not received these records. In addition, we have not received any tax information related to Ms. Retorick for tax year 2004. Therefore, I am requesting this additional information be provided within the next ten (10) days. If I do not receive these documents within the next ten (10) days, I will be filing a motion to compel also related to these documents.



September 27, 2005
Page 2

During the plaintiffs' depositions, they referred to a notebook in which they took notes. We would like the original notebook. We will make a copy of the notebook and return the original to you. Finally, upon reviewing the documents that you produced in this matter, bates numbers PL 183-219 are missing. Could you kindly forward these documents to my attention.

If you have any questions, please feel free to contact me.

Very truly yours,

Elaine Diedrich
S. Elaine Diedrich *myh*

SED/mfh

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jwest@west-long.com

October 7, 2005

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Re: Selvage and Retorick v. Clearfield Hospital, et al.

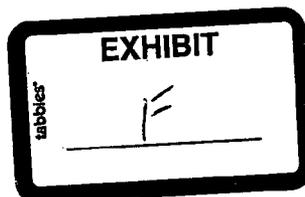
Dear Elaine:

This is in response to your recent letter raising discovery issues.

The reason you have only received medical records for Ms. Selvage for 1999 to present and for Ms. Retorick for 1996 to present is that those were the only records we were able to obtain. A very substantial effort was made by my paralegals to obtain these records, going back as far as possible, and what you have received is what they were able to obtain. In fairness to you, I've had Fran and Dawn travel to my office and execute Releases for the various doctors involved, and you may feel free to use those Releases to attempt to obtain additional records on condition that you provide us with copies of any records obtained pursuant to them.

In reviewing the transcripts, I did note that Dawn Retorick identified a Dr. Brian Anderson of Hershey Medical Center as providing certain services relating to a dermatology problem. I have included a release for Dr. Anderson and would request that if you obtain documents from Dr. Anderson, I be provided with copies of them.

I am also enclosing herein W2 Forms for Dawn Retorick. This should enable you to delineate the income of all the plaintiffs from their spouse's income based on the records that have been produced. During our meeting, I asked Fran and Dawn to look for any pay stubs that they may have retained and if any are forthcoming, I will provide them but they were extremely doubtful, and I believe that you have the best evidence that is available insofar as income is concerned.



S. Elaine Diedrich, Esquire
Re: Clearfield Hospital

Page 2 of 2

October 7, 2005

Finally, our records show that you were provided with a complete copy of the original notebook referred to in their deposition, and it is presently in your possession. Likewise, we believe that you were forwarded Bates No. 183 through 219, which are now missing. We are providing you with replacement copies to bring your records up to date.

As you are aware, I have requested additional documents from you after the various depositions that occurred in this case. It was my understanding that you were going to produce those documents, but given the tenor of your present letter, I have made my requests into a formal discovery request and I am now serving that request on you so that we have some defined time limits and a vehicle to be used to go to Court to compel discovery. Attached to the discovery request are my letters of July 21, 2005 and August 24, 2005 describing these requests. If you can provide these records before the due date, it would be appreciated.

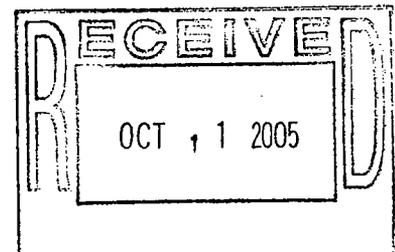
If you have any questions, please do not hesitate to immediately contact me.

Sincerely,

WEST LONG LLC

James J. West

JJW:dlg
Enclosures



DEFINITIONS

As used herein, the following terms have the meanings indicated below:

1. **And** as well as **Or** shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of this Discovery all documents, information or other responses that might otherwise be construed to be outside the scope thereof.
2. **Clearfield Hospital** means Clearfield Hospital a named Defendant herein, and any predecessor, successor, parent, subsidiary, division or affiliate thereof, whether owned wholly or in part, and any present or past officer, director, agent, servant, employee and representative of any of the foregoing.
3. **Communication** means the transfer or transmittal of any information, in or by any form or media, whatsoever, whether oral or written, or formal or informal.
4. **Amended Complaint** means the Amended Complaint filed by Plaintiffs at Civil Action No. 03-393-CD in the Court of Common Pleas of Clearfield County, Pennsylvania.
5. **Concerning** is used in its broadest sense and means regarding, referring to, touching upon, affirming, denying, mentioning, discussing, describing, reflecting, evidencing, containing, constituting or relating to, or relevant to, or likely to lead to, the discovery of admissible evidence.
6. **Defendants** means the named Defendants herein and collectively Clearfield Hospital, Lois Eisenman, Jackie Stone, and Thelma Stratton.
7. **Document**, unless specified otherwise, shall be coextensive with the meaning set forth in the Pennsylvania Rules of Civil Procedure, and means and includes any and all printed, written, typewritten, handwritten or otherwise recorded or graphic

matter, of whatsoever character and however produced, recorded or reproduced, which is in the possession, custody or control of, or is obtainable by the party to whom this discovery request is being made, including, but not limited to, letters, memoranda, interoffice communication, correspondence, minutes of meetings or discussions, notes, diaries, medical records, calendars, date books, brochures, reports, telegrams, records, drawings, plans, specifications, blueprints, graphs, charts, work papers, photographs, slides, motion pictures, phonograph records, recordings, invoices, bills of lading, purchase orders, receipts, checks, transcriptions, transcripts, contracts, agreements, accounting records, microfilms, microfiche, videotapes, advertisements, technical data, test records, computer print-outs, delivery tickets, delivery receipts, other delivery information, sales records, bills, accounting summaries, bulletins, opinions, published articles, investigations, summaries, statements, literature, books, promotional aids, releases, magazines, computer printouts, computer disks, all information and data electronically or magnetically recorded or stored in computers or on tape or cards, any other typewritten, handwritten, or graphic material of any kind or description and any and all drafts or carbon, photostatic, photographic or other copies of any of the foregoing.

8. **Medical** shall mean pertaining, relating or belonging to the study and practice of medicine, or the science and art of the investigation, prevention, cure, and alleviation of disease.

9. **Person** means an individual, trust, firm, corporation, association, partnership, consortium, joint venture, or other governmental, commercial, incorporated, unincorporated, or not-for-profit entity or agency.

10. **Refer, referring, relate or relating** are used in their broadest sense to mean and include direct as well as indirect references to, descriptions of, discussions of or commentary on the subject matter of the request.

11. **Plaintiff or Plaintiffs** mean Frances L. Selvage and/or Dawn L. Retorick.

12. **Support** (or a form thereof), shall mean advocate, affirm, aid, allow, bulwark, confirm, contribute, corroborate, demonstrate, embrace, enable, establish, facilitate, foster, justify, permit, maintain, prove, promote, reinforce, sustain, verify or vouch.

13. **You or your** mean Frances L. Selvage and/or Dawn L. Retorick.

INSTRUCTIONS

Please adhere to the following instructions, to the extent applicable, in responding to each and every discovery request propounded in this Discovery.

I. This Discovery is to be answered separately, fully, in writing and under oath within thirty (30) days after service to the extent required by the Pennsylvania Rules of Civil Procedure. Furthermore, this Discovery is continuing and any responsive information secured subsequent to the filing of your responses should be supplied by supplemental answers pursuant to the Pennsylvania Rules of Civil Procedure.

II. In preparing your response, the singular shall include the plural and *vice versa*, and the past tense in a verb shall include the present tense thereof, and *vice versa*.

III. If an objection is stated to any request for production please set forth fully your objection and your reason for such objection.

IV. If you claim any form of privilege as a ground for not responding to a request for production or any portion therefore, set forth in complete detail each and

every fact upon which the privilege is based, including sufficient facts for the Court to make a full determination whether the claim of privilege is valid.

V. If any document is withheld under a claim of attorney-client privilege or work product doctrine or any other claim of privilege, identify the document withheld by date; author; sender; recipient, including all persons who were shown, had access to, or received a copy; format; title; present or last known location; a general description of the subject matter of the document; and any other information necessary to support the claim of privilege. State the grounds for the assertion of the privilege in sufficient detail to permit the Court to adjudicate the validity of the claim.

VI. If any document requested herein was formerly in your possession, custody or control, and has been lost or destroyed, or otherwise disposed of, state with respect to each document: (i) the date, subject matter and nature of the document; (ii) the name of the author, the author's employer, and the author's position; (iii) if applicable, the name of the recipient, the recipient's employer, and the recipient's position; (iv) the name of each other person who was shown or furnished the document or a copy or any part thereof, each person's employer, and each person's position; (v) the date on which the document was lost or destroyed; and (vi) if destroyed, the conditions of and reasons for such destruction and the names of the persons requesting and performing such destruction, their employer(s) and position(s).

VII. Each document request seeks the production of each document in its entirety, including each attachment or other matter affixed thereto and all marginal notations.

VIII. If any document cannot be produced in full, produce such document to the extent possible, state the reason for your inability to produce the remainder of the document and, with respect to the remainder, state what information, knowledge or belief you have concerning the portion not produced.

IX. The document requests herein seek the production of all non-identical copies, including drafts and copies upon which notes have been made.

X. In responding to any request for production of documents, you are required to furnish such documents and information as are within your personal knowledge, possession, custody and control, as well as that of your representatives, agents, attorneys, partners, investigators or anyone else acting for you, or on or in your behalf.

XI. All documents produced in response to any request for production of documents shall be organized and labeled to correspond with the specific request for production of documents to which they are being produced in response.

XII. To the extent that you consider any of the document requests objectionable, respond to that portion of each document request that is not objectionable in your view, and separately state your objection to that portion of the request and the ground for each such objection.

REQUESTS FOR PRODUCTION

1. Any and all medical documents or records that refer or relate to either Plaintiff from 1980 to the present.

RESPONSE:

SCHNADER HARRISON SEGAL &
LEWIS, LLP

By: 

John K. Gisleson (PA Id. # 62511)
S. Elaine Diedrich (PA Id. #84077)
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2004, a true and correct copy of the foregoing
**SECOND REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED
UPON PLAINTIFFS** was sent, via U.S. Mail, first class postage prepaid, to the
following:

James J. West, Esq.
West Long, LLC
105 N. Front Street, Suite 205
Harrisburg PA 17101



S. Elaine Diedrich

January 6, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

VIA FAX (717) 234-7517
AND U.S. MAIL

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

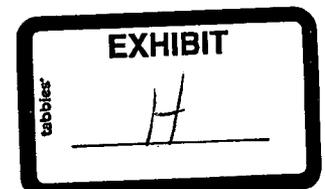
Dear Jim:

Thank you for your cooperation in agreeing that that we will make all reasonable attempts to schedule all of the parties' depositions during the same week and that the depositions will not take place until after I receive plaintiffs' medical records.

Also, thank you for your correspondence dated December 29, 2004 and your discovery responses. I note that you state you will obtain medical records from 1999 to the present from the doctors who have been identified in the plaintiffs' Answers to Interrogatories. However, given the plaintiffs' claims for intentional infliction of emotional distress and claimed injuries for emotional distress, we are entitled to plaintiffs' medical records going further back than 1999. Given the nature of these claims, we are entitled to all of plaintiffs' medical records, without limitation, as the emotional problems of plaintiffs could have arisen at any time during their lifetimes. Thus, plaintiffs' emotional problems may have been preexisting and we are entitled to discovery of this, particularly given the broad scope of discovery permitted. Therefore, we feel that your limitation to only allow us to review records from 1999 to the present is unreasonable.

To allay your clients' concerns regarding privacy, we are willing to enter into a stipulation for protective order regarding confidentiality of documents so plaintiffs can be assured that their medical records will not be seen outside of this litigation. I have also added additional clauses limiting the persons who may view confidential records in the matter. I have enclosed a draft stipulation for protective order for your convenience so that we may be able to resolve this discovery matter.

Please let me know within the next five (5) days your thoughts on the stipulation and whether you will comply with our discovery request for all of plaintiffs' medical records as we need to move on with taking depositions. While I do not wish to do so, I will file a motion to compel the production of these documents if necessary.



January 6, 2005
Page 2

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Elaine Diedrich
mfh

S. Elaine Diedrich

SED/mfh
Enclosure

January 6, 2005
Page 3

bcc: Jon R. Steen, Esq. (w/enc.)
Daniel Burfield (w/enc.)
John K. Gisleson, Esq. (w/enc.)

John K. Gisleson (PA Id. No. 62511)
S. Elaine Diedrich (PA Id. No. 87044)
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
(412) 577-5200
Attorneys for Defendants

FRANCES L. SELVAGE and)
DAWN L. RETORICK,)
)
Plaintiffs,)

vs.)

CLEARFIELD HOSPITAL,)
LOIS EISENMAN, Director of Nursing,)
JACKIE STONE, Vice President of Nursing,)
THELMA STRATTON, ICU Unit Manager,)
)
Defendants.)

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

No. 03-393-CD

Civil Action - Law

STIPULATION FOR PROTECTIVE ORDER

IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto through their respective counsel, as follows:

1. Any documents, data, oral or written material or information disclosed by the parties or produced by the parties in the context of this action, which any party considers to be non-public, confidential, trade secret, proprietary or privileged information, may be designated by such party as "confidential" at the time of production or inspection or at any time thereafter (hereinafter "confidential material"). All confidential material and information, regardless of its form or classification, shall be used only by the persons specified in paragraph 2 below, only in connection with this action, and shall not be used in connection with any other lawsuit or for any other purpose whatsoever.

2. No person shall be given, shown, allowed to examine or shall be privy to any discussions regarding material designated as “confidential” except the following:

- (a) The parties, attorneys for the parties, or employees for the attorneys for the parties, and designated representatives of the parties;
- (b) The Court and any employees of the Court designated by the Court, with or without notice to the parties;
- (c) Any person permitted to review confidential material by Court Order; and
- (d) Experts, consultants and other persons employed by the parties or attorneys for the parties for purposes of this litigation.

3. The inadvertent failure of any party to designate documents, data, oral or written material or information as confidential material shall not constitute, or have the effect of, a waiver of any claim that such material, or any similar material, is confidential within the meaning of this Order, including discovery materials which a party inadvertently fails to designate as confidential at the time of production but which such party subsequently designates as confidential. The treatment by the parties receiving such materials as other than confidential prior to their designation as confidential shall not be construed as a violation of the provisions herein governing the use of confidential materials.

4. The production of documents or other information by the parties pursuant to this Order shall not constitute a waiver of any claim based upon any wrongful use of the confidential material or any use of the confidential material not expressly permitted by this Order.

5. All confidential documents and copies of such documents reproduced pursuant to this Order (other than the “work product” of counsel arising from the examination of such documents), shall be surrendered to or destroyed at the request of the party producing such confidential material at the conclusion of this action, whether by compromise, settlement or final judgment, and the exhaustion of all appellate remedies. Any notes arising from the examination

of confidential material shall continue to be subject to the restrictions set forth herein after the conclusion of this action, whether by compromise, settlement or by final judgment, and the exhaustion of all appellate remedies.

6. This Order shall not limit the parties' right to submit confidential material to the Court as part of their pleadings and to use confidential material at trial provided, however, that either party shall have the right to request that this Court enter a protective order requiring that specified documents, or types of documents, be filed under seal or that a further protective order be adopted by the Court for use at trial.

7. Any disputes concerning the application of any provision of this Order shall be heard by the Court upon application of the aggrieved party.

8. This Order and the provisions herein shall not prejudice the right of any party to seek reconsideration by the Court, upon written application, to modify, extinguish or vacate this Order.

9. If any party objects to the classification or designation of confidential material herein, said party shall first contact the party making such designation or classification and shall confer in good faith within twenty (20) days in an effort to resolve the dispute. If the parties are unable to resolve the dispute, the party objecting to such classification or designation may apply to the Court, by motion or otherwise, for an Order reclassifying or redesignating the confidential material, or any other appropriate Order regarding the treatment of such materials, including, but not limited, to an Order permitting certain specific witnesses and/or parties to review and analyze such confidential material. This Order in no way affects a party's ability to object to the production of documents for any reason permitted under the Pennsylvania Rules of Civil Procedure.

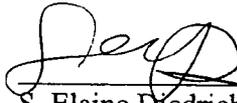
10. Should any person bound hereby receive a subpoena, civil or regulatory investigation demand, or other process from a third party which may be construed to require the disclosure of confidential material in any form, said person shall immediately give notice to the party or his attorney who designated the information sought by the subpoena, demand or other process as confidential. Once notified, it shall be the burden of the party who designated the information confidential to protect the information from disclosure or production pursuant to the subpoena, demand or process.

It is so stipulated.

Dated this _____ day of _____, 2005.

James J. West
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101
ATTORNEY FOR PLAINTIFFS

Dated this 6th day of January, 2005.


S. Elaine Diedrich, PA Id. No. 84077
Schnader Harrison Segal & Lewis LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222
ATTORNEY FOR DEFENDANTS

IT IS SO ORDERED this _____ day of _____, 2005.

J.

MESSAGE CONFIRMATION

01/06/2005 17:25
ID=SCHNADER K2

DATE	S,R-TIME	DISTANT STATION ID	MODE	PAGES	RESULT
01/06	01'03"	7172347517	CALLING	06	OK 0000

01/06/2005 17:24 SCHNADER K2 → 17172347517 NO.286 001

Schnader
ATTORNEYS AT LAW

FIFTH AVENUE PLACE
120 FIFTH AVENUE SUITE 2700 PITTSBURGH, PA 15222-3001
412.577.5200 FAX 412.785.3858 schnader.com

January 6, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

**VIA FAX (717) 234-7517
AND U.S. MAIL**

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Jim:

Thank you for your cooperation in agreeing that that we will make all reasonable attempts to schedule all of the parties' depositions during the same week and that the depositions will not take place until after I receive plaintiffs' medical records.

Also, thank you for your correspondence dated December 29, 2004 and your discovery responses. I note that you state you will obtain medical records from 1999 to the present from the doctors who have been identified in the plaintiffs' Answers to Interrogatories. However,

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jbennett@west-long.com

January 13, 2005

S. Elaine Diedrich, Esquire
Schnader Harrison Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

RE: Selvage and Retorick v. Clearfield Hospital, et al.

Dear Ms. Diedrich:

Enclosed please find the medical records we received regarding Dawn Retorick. We are still awaiting receipt of the records on behalf of Fran Selvage and will forward same to you as soon as they are received.

Thank you for your attention to this matter.

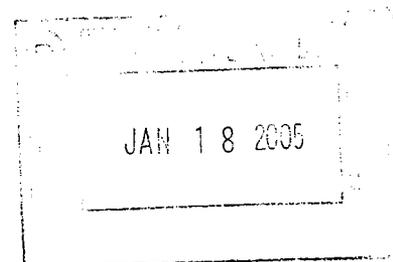
Sincerely,

WEST LONG LLC



Joanne M. Bennett
Paralegal

Enclosure



January 25, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
Direct Fax 412-765-3858
E-mail: sediedrich@schnader.com

VIA FACSIMILE AND FIRST-CLASS MAIL

James L. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

RE: Frances L. Selvage and Dawn L. Retorick v. Clearfield Hospital, et al.

Dear Jim:

Thank you for the medical records of Ms. Retorick that you forwarded on January 13. However, I noticed that Ms. Retorick's medical records only range from the present back to 1996. It is my understanding that additional medical records for Ms. Retorick will not be forwarded as the cover letter which accompanied the records did not state additional records will follow. In my letter dated, January 6, 2005, I requested that you forward *all* of Plaintiffs' medical records without such date restrictions. We are entitled to these records given Plaintiffs' claims for intentional infliction of emotional distress and claimed injuries of emotional distress. In addition, you have not advised me from whom these medical records were requested and for which dates. By this letter, I am requesting this pertinent information.

To alleviate Plaintiffs' concerns regarding privacy, I enclosed in my January 6 letter a proposed Stipulated Protective Order to ensure the confidentiality of documents. As stated in the Order, documents noted as confidential, by any party, would be treated as such during the course of the litigation. I also requested your thoughts regarding the proposed order, but have received no response from you to date.

As a courtesy to you and your clients, I offered to obtain the records myself. To expedite the matter, I sent you a medical records release authorizations with our First Request for Production of Documents on November 3, 2004, to be signed by each Plaintiff. You have advised me that you will not have your client sign these authorizations and that you would obtain the medical records for us. As a result, I am forwarding you a Second Request for Production of Documents. In an attempt to further compromise the matter without the need of court intervention, I request both Plaintiffs' medical records from the present going back only to 1980. I have also enclosed another copy of the Stipulated Protective Order for your convenience.

Please contact me within the next five (5) days with the information regarding Ms. Retorick's medical records that I have requested above and to discuss how you plan to address our concerns.

James L. West, Esq.
January 25, 2005
Page 2

I have attempted to remedy each concern that you and your clients have brought to my attention. It is my hope that we will be able to resolve our issues without court intervention. However, I will, if necessary, file a motion to compel to obtain the documents that we are entitled to pursuant to the Pennsylvania Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



S. Elaine Diedrich

For SCHNADER HARRISON SEGAL & LEWIS LLP

SED/tjg
Enclosure

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jwest@west-long.com

February 1, 2005

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Re: Selvage and Retorick v. Clearfield Hospital, et al.

Dear Ms. Diedrich:

I wanted to bring you up-to-date where we stand. I have written to all of the doctors to get records for the 1999 period up to the present. I will write to them asking if they have any records dealing with any "emotional problems" prior to 1999 and would hope to receive an answer shortly. If there are any such records, I will make them available. We are also working on the tax records and should have something for you shortly.

I have some alternate dates for depositions that I will be calling you to discuss. Those dates are as follows: February 7-9; March 21 and 22; April 4-6; April 18-20; May 2-4; and May 16-18. The only date that is really questionable is the March date, as I commence a jury trial on March 23. I would suggest we use that date only as a last-resort.

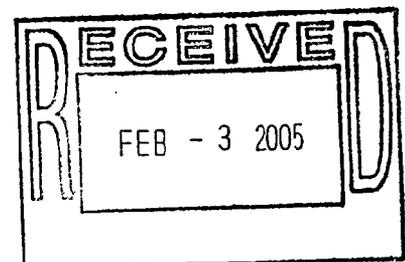
I will be giving you a call shortly so that we can finalize where we're at insofar as discovery is concerned.

Sincerely,

WESTLONG LLC

James J. West

JJW:dlg



February 11, 2005

S. Elaine Diedrich
Direct Dial 412-577-5222
E-mail: sediedrich@schnader.com

James J. West, Esq.
West Long, LLC
105 North Front Street, Suite 205
Harrisburg, PA 17101

Re: *Frances L. Selvage and Dawn L. Retorick vs. Clearfield Hospital, et al.*

Dear Mr. West:

Please allow this letter to confirm our discussion yesterday wherein I advised you that I am unavailable for depositions on April 4-6 and May 2-4; I am also unavailable May 17. I will advise you as to my clients' availability for the dates March 21 and 22, April 18-20, and May 16 and 18. In addition, you advised me that you would request all of plaintiffs' medical records from their physicians going back to 1980 and would not limit the request to only records dealing with "emotional problems", but rather, you would request all records from plaintiffs' physicians.

Please contact me after you have obtained the records so that we can discuss how to proceed.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

Elaine Diedrich
S. Elaine Diedrich 

SED/mfh

February 11, 2005
Page 2

bcc: Jon R. Steen, Esq.
John K. Gisleson, Esq.

West Long LLC
Attorneys At Law
105 North Front Street
Suite 205
Harrisburg, Pennsylvania 17101
(717) 233-5051

James J. West
Robert R. Long, Jr.

Facsimile (717) 234-7517
jwest@west-long.com

June 6, 2005

S. Elaine Diedrich, Esquire
Schnader, Harrison, Segal & Lewis, LLP
Suite 2700, Fifth Avenue Place
120 Fifth Avenue
Pittsburgh, PA 15222

Re: Selvage and Retorick v. Clearfield Hospital, et al.

Dear Ms. Diedrich:

Attached to this letter are:

- Exhibit 1** - Medical records received from Dr. Johnson regarding Dawn Retorick;
- Exhibit 2** - Medical records received from Dr. Cardamone regarding Frances Selvage;
- Exhibit 3** - Medical records received from Dr. Conrad regarding Frances Selvage;
- Exhibit 4** - IRS tax information for 1999-2003 regarding John and Dawn Retorick; and
- Exhibit 5** - IRS tax information for 1999-2003 regarding Theodore and Frances Selvage.

Thank you for your attention to these matters.

Sincerely,

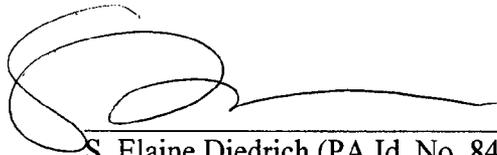
WEST LONG LLC

James J. West

JJW:dlg

CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2007, a true and correct copy of the foregoing Supplement to Motion to Compel Mental Examinations of Plaintiffs and Motion for Status Conference was provided via hand delivery to plaintiffs' counsel, James West.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

S. Elaine Diedrich (PA Id. No. 84077)

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

4/24/2003

[View Previous Reports](#)

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of a Medicare Validation Survey at the request of the Centers for Medicare and Medicaid (CMS). The request by CMS was the result of the Facility's voluntary withdrawal from the Joint Commission of Accreditation of Healthcare Organizations (JCAHO). The Validation Survey was conducted on April 23-24, 2003. It was determined that Clearfield Hospital was not in compliance with the requirements of 42 CFR 482 Conditions of Participation for Hospitals.

Plan of Correction:

No plan of correction is required

482.11(c) STANDARD

LICENSURE OF PERSONNEL

42 CFR 482.11(c) Licensure of personnel ----- The hospital must assure that personnel are licensed or meet other applicable standards that are required by State or local laws.

Observations:

Based on a review of Medical Staff By-Laws, Human Resource files, Emergency Department Policy Manual, medical record review and Administrative staff interview, it was determined that the Facility failed to ensure that the licensure requirements of personnel met the applicable State laws.

Findings include:

- 1) During the review of Medical Staff By-Laws, it was noted that there were no provisions to address how the Medical Staff would delineate the duties and responsibilities of Allied Health Professionals as members of the staff at the facility.
- 2) During the review of the Human Resource files for Physician Assistant #1 and #2 revealed that the collaborative agreement failed to describe the manner in which the physician assistant will be assisting the physician. It also failed to identify the supervising and substitute physician(s) for the physician assistants. The collaborative agreement was not dated nor did it reveal evidence that it had been approved by the State Board of Medicine.

3) The review of the "collaborative agreement" provided by Human resources that is signed by the physician assistant and the CEO is a business contract outlining salary and benefits but does not include any delineation of duties and responsibilities and physician supervision.

Review of the "Scope of Practice" for the Physician Assistant revealed that under

"Section 1 - Functions and Tasks

II. Treatment plan for all patients to be reviewed by the emergency physician in an appropriately timely manner in order to allow appropriate symptomatic treatment concurrent with evaluation, imaging, etc..

III. Medication Standing Orders: Td, TT, Acetaminophen and Ibuprofen, Local Anesthetic by infiltration (Lidocaine with Epinephrine, Bupivacaine)

Restrictions: The following orders require prior approval of the responsible Emergency Physician:

1. Parenteral Medication
2. IV fluids
3. CT scanning, Ultrasound, Nuclear Medicine testing
4. Consultation/Referral/Admission/Transfer

Section 2 - Time/Place and Manner of Supervision

2. The physician assistant will provide services between the hours of 2 PM - 10 PM.
5. The emergency physician will review the physician assistant's evaluation of all patients seen and will personally examine each patient to the degree he/she deems appropriate/necessary. Patients seen for wound rechecks and suture removal may be discharged without physician evaluation at the discretion of the physician assistant.
6. All medical records completed by the physician assistant will have a notation (written or transcribed) and be signed by the responsible emergency physician attesting to his/her agreement with the evaluation and management of the patient.

1) During the review of the "Scope of Practice" for the Physician Assistant located in Emergency Department revealed that it was not signed and/or dated by the respective physicians' s assistant and supervising physician.

2) Review of medical record # 2 revealed that "Toradol 60mg/2ml vial IM now" was ordered solely by a physician assistant. This record lacked any documentation or signature from the supervising physician.

3) Review of medical record # 1 revealed that the physician assistant was treating patients

at 10:16 AM, outside of the 2 PM - 10 PM time frame. Review of medical record # 2 of a patient treated for a contusion of the hand revealed lack of any documentation or signature from the supervising physician.

4) Interview with the Administrative Staff revealed documentation to show that the "Scope of Practice" had been approved by the Medical Executive Committee 09/16/97 and has not been reviewed or revised since that time.

5) Interview also revealed that the current Director of the Emergency Department was not in this position in 1997, nor were the current physician assistants employed when this "Scope of Practice" was originally approved.

Plan of Correction:

Immediate education of the physician assistant's working in our Emergency Department that they must function under their current "scope of practice" until revisions are made/approved. April 24, 2003

Review of current PA Code, Title 49. Professional and Vocational Standards for physician assistants, particularly relating to written agreements, responsibility of supervisor and physician assistant scope of practice, including medication prescribing and dispensing. May, 2003

Revision of our physician assistant's scope of practice to reflect necessary job duties for their position in the Emergency Department, with elimination of specific hours that they are allowed to work. September, 2003

Obtain approval from the State for the revised written agreement and physician assistant scope of practice. October, 2003

Obtain State approval for change in primary supervising physician to a MD with privileges in our Emergency Department, so that our Emergency Department physician assistant's can utilize their medication prescribing privileges for ordering medications as permitted. October, 2003

Develop a credentialing tool for physician assistant's to include appropriate sign-offs with dates for approvals through the chain of command (i.e. Chief of Service recommendation, Credentials Committee recommendation, Medical Executive Committee recommendation, and Board of Directors approval). November, 2003

Maintain physician assistant's credentials files in the Medical Staff Office. November, 2003

Revision to the Medical Staff Bylaws to add Allied Health Professionals (i.e. physician assistants) to the Medical Staff credentialing process to include initial approval of a physician assistant's scope of practice and to include a periodic reappraisal process. April, 2004

Ongoing monitoring (chart audits) of documentation for appropriate physician supervision

sign-offs for validation of the Emergency Department physician assistant's plan of care.

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

11/15/2002 ▾

[View Previous Reports](#)

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

Based on an unannounced complaint investigation (PIT02C451F) conducted November 15, 2002 at Clearfield Hospital, it was determined the facility was in compliance with the requirements for 42 CFR 482 Conditions of Participation for Hospitals.

Plan of Correction:

No plan of correction is required

Initial Comments:

Based on an unannounced complaint investigation (PIT02C451F) conducted on November 15, 2002, it was determined that Clearfield Hospital was in compliance with the requirements of 28 PA Code, Part IV, Subpart A Rules and Regulations for Hospitals, November 1987, as amended 1998.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION (POC)		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 390052	(X2) MULTIPLE CONSTRUCTION: A. BLDG: B. WING:		(X3) DATE SURVEY COMPLETED: 12/03/2001
NAME OF PROVIDER OR SUPPLIER: CLEARFIELD HOSPITAL STATE LICENSE NUMBER: 291301			STREET ADDRESS, CITY, STATE, ZIP CODE: 809 TURNPIKE AVE, P.O. BOX 992 CLEARFIELD, PA 16830		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
P 0000	INITIAL COMMENTS Based on an Occupancy survey of the Ground floor renovations for Magnetic Resonance Imaging Suite, Ultrasound Suite, Outpatient Cardiology and Chemotherapy suite, conducted on December 3, 2001, it was determined Clearfield Hospital was in compliance with Rules and Regulations as governed by the Pennsylvania Department of Health's Rules and Regulations for Hospitals.	P 0000	No plan of correction is required		

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE:

(X6) DATE:

Any deficiency statement ending with an asterisk (*) denotes a deficiency which may be excused from correction providing it is determined that other safeguards provide sufficient protection to the patients. The findings stated above are disclosable whether or not a plan of correction is provided. The findings are disclosable within 14 days after such information is made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

This form is a printed electronic version of the CMS 2567L. It contains all the information found on the standard document in much the same form. This electronic form once printed and signed by the facility administrator and appropriately posted will satisfy the CMS requirement to post survey information found on the CMS 2567L.

Pennsylvania Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION (POC)		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 390052	(X2) MULTIPLE CONSTRUCTION: A. BLDG: B. WING:		(X3) DATE SURVEY COMPLETED: 03/04/2002
NAME OF PROVIDER OR SUPPLIER: CLEARFIELD HOSPITAL STATE LICENSE NUMBER: 291301			STREET ADDRESS, CITY, STATE, ZIP CODE: 809 TURNPIKE AVE, P.O. BOX 992 CLEARFIELD, PA 16830		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
P 0000	<p>INITIAL COMMENTS</p> <p>Based on an Occupancy Survey conducted on March 4, 2002 for approval of Partial Phase I of Blood Draw and Outpatient Waiting Area, it was determined that Clearfield Hospital was in compliance with Rules and Regulations as governed by the Pennsylvania Department of Health's Rules and Regulations for Hospitals.</p>	P 0000	No plan of correction is required		

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE:

(X6) DATE:

Any deficiency statement ending with an asterisk (*) denotes a deficiency which may be excused from correction providing it is determined that other safeguards provide sufficient protection to the patients. The findings stated above are disclosable whether or not a plan of correction is provided. The findings are disclosable within 14 days after such information is made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

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Pennsylvania Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION (POC)		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 390052	(X2) MULTIPLE CONSTRUCTION: A. BLDG: B. WING:		(X3) DATE SURVEY COMPLETED: 08/28/2002
NAME OF PROVIDER OR SUPPLIER: CLEARFIELD HOSPITAL STATE LICENSE NUMBER: 291301			STREET ADDRESS, CITY, STATE, ZIP CODE: 809 TURNPIKE AVE, P.O. BOX 992 CLEARFIELD, PA 16830		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
P 0000	<p>INITIAL COMMENTS</p> <p>An occupancy survey was conducted on August 28, 2002, at a satellite clinic of Clearfield Hospital. The area surveyed included the Clearfield Center for Childrens Care. The project was found to be in compliance with the requirements of the 28 PA Code, Part IV, Subpart A, Rules and Regulations for Hospitals.</p>	P 0000	No plan of correction is required		

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE:

(X6) DATE:

Any deficiency statement ending with an asterisk (*) denotes a deficiency which may be excused from correction providing it is determined that other safeguards provide sufficient protection to the patients. The findings stated above are disclosable whether or not a plan of correction is provided. The findings are disclosable within 14 days after such information is made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

This form is a printed electronic version of the CMS 2567L. It contains all the information found on the standard document in much the same form. This electronic form once printed and signed by the facility administrator and appropriately posted will satisfy the CMS requirement to post survey information found on the CMS 2567L.

Pennsylvania Department of Health

STATEMENT OF DEFICIENCIES AND PLAN OF CORRECTION (POC)		(X1) PROVIDER/SUPPLIER/CLIA IDENTIFICATION NUMBER: 390052	(X2) MULTIPLE CONSTRUCTION: A. BLDG: B. WING:		(X3) DATE SURVEY COMPLETED: 09/11/2002
NAME OF PROVIDER OR SUPPLIER: CLEARFIELD HOSPITAL STATE LICENSE NUMBER: 291301			STREET ADDRESS, CITY, STATE, ZIP CODE: 809 TURNPIKE AVE, P.O. BOX 992 CLEARFIELD, PA 16830		
(X4) ID PREFIX TAG	SUMMARY STATEMENT OF DEFICIENCIES (EACH DEFICIENCY MUST BE PRECEDED BY FULL REGULATORY OR LSC IDENTIFYING INFORMATION)	ID PREFIX TAG	PROVIDER'S PLAN OF CORRECTION (EACH CORRECTIVE ACTION SHOULD BE CROSS-REFERENCED TO THE APPROPRIATE DEFICIENCY)	(X5) COMPLETE DATE	
P 0000	<p>INITIAL COMMENTS</p> <p>This report is the result of an occupancy survey conducted at Clearfield Hospital on August 28, 2002 for approval of occupancy of Physical Therapy, Occupational Therapy, Speech Therapy, Cardiac Rehabilitation Services and Outpatient Pulmonary Services located on the 2nd floor. This survey was conducted to verify compliance with the Pennsylvania Department of Health's Rules and Regulations for Hospitals. Deficiencies were not identified during this survey.</p>	P 0000	No plan of correction is required		

LABORATORY DIRECTOR'S OR PROVIDER/SUPPLIER REPRESENTATIVE'S SIGNATURE

TITLE:

(X6) DATE:

Any deficiency statement ending with an asterisk (*) denotes a deficiency which may be excused from correction providing it is determined that other safeguards provide sufficient protection to the patients. The findings stated above are disclosable whether or not a plan of correction is provided. The findings are disclosable within 14 days after such information is made available to the facility. If deficiencies are cited, an approved plan of correction is requisite to continued program participation.

This form is a printed electronic version of the CMS 2567L. It contains all the information found on the standard document in much the same form. This electronic form once printed and signed by the facility administrator and appropriately posted will satisfy the CMS requirement to post survey information found on the CMS 2567L.

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

10/4/2002

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There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

Based on an Occupancy Survey on October 3, 2002 to inspect a reception and waiting area located on the 2nd floor of central wing of the main hospital, it was determined that Clearfield Hospital was in compliance with Rules and Regulations as governed by the Pennsylvania Department of Health's Rules and Regulations for Hospitals.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

10/4/2002

[View Previous Reports](#)

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of a Full State Licensure Survey that was conducted on October 1-4, 2002 at Clearfield Hospital, as governed by the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 1987 amended 1998. The Facility was found to be non-complaint. The following State deficiencies were cited.

Plan of Correction:

No plan of correction is required

103.22 (b)(8) LICENSURE

IMPLEMENTATION

(8) The patient has the right to full information in laymen's terms, concerning his diagnosis, treatment, and prognosis, including information about alternative treatments and possible complications. When it is not medically advisable to give such information to the patient, the information shall be given on his behalf to the patient's next of kin or other appropriate person.

Observations:

Based on review of the the Hospital's Medical Staff Rules and Regulations, Administrative policy and procedure manual, Medical Executive & Quality Management Committee meeting minutes, and review of closed medical records of patients who received blood transfusions, it was determined that the medical staff failed to provide documented evidence that the patient or significant other was informed of the possible complications associated with a blood transfusion.

Findings include:

1) Review of the Medical Staff Rules and Regulations of Clearfield Hospital (reviewed and amended October 01, 2001), Under Article X entitled "Informed Consents", Section 1: "Responsibility for Obtaining Informed Consent", (a) After admission, it shall be the responsibility of the physicians to obtain consents from patients in the following circumstances. (4) informed consents for blood transfusions. (b) The hospital consent form must be signed by the patient or his/her representative and the responsible physician. Except in emergencies, a failure to include a completed consent form in the patient's chart prior to performance of the the procedure shall automatically cancel the procedure.

2) Review of Administrative Policy Manual revealed hospital policy # 01.06.13 (revised 09-02) entitled "Informed Consent Policy" section IV. Obtaining Consents: B. The medical staff physician is responsible for discussing with the patient the contemplated procedure, for obtaining the patient's informed consent for the procedure, and for placing appropriate documentation of these discussions and of the patients informed consent in the medical record.

3) Review of the blood consent form revealed the physician's signature with date and time is located at the bottom of the blood consent form, directly above the physicians signature is the following statement "I have personally explained the above information to the patient or the patient's representative. Review of 10 closed medical records revealed that the physician failed to sign, date and time 6 out of the 10 blood consent forms.

4) Review of the Medical Executive Committee meeting minutes dated January 15, 2002 it was noted that there has been concern with decreased compliance with blood consents in the Department of Medicine and a sticker system has been implemented. Meeting minutes dated February 2002, revealed that blood consents had a completion rate of 69% for physician signatures.

5) Review of the Quality Management Meeting Committee meeting minutes of April 11, 2002 it was noted that there was a compliance issue with obtaining blood consents for the department of medicine. There has also been education of the unit clerks and a recent implementation of the consent stickers as reminders. Minutes from the August 8, 2002 revealed that compliance for physician signatures on blood consents was 57%.

Plan of Correction:

Clearfield Hospital will institute the following:

- Separate Blood Consent Form - The forms were ordered October 23, 2002 and plan to have the separate consent form available November 4, 2002.
- Add a distinctive color to the Blood Consent Form for visibility - The color request was made on October 23, 2002 and plan to have form available by November 4, 2002.
- Department of Medicine education on the informed consent process as it related to blood consents. This occurred on October 10, 2002 and included the elements of an informed consent and the necessary documentation requirements (i.e. blood consent form or narrative in the physician progress notes).
- The nurses who round with the physicians and the case managers involved in the care management of the patient will assist the physician in the signing of the blood consents. This staff education for the blood consent process occurred at the Nursing Quality Management Committee level on October 16, 2002.
- 100% chart review of blood utilization for 4-months to assess the effectiveness of our educational efforts and to assess compliance with informed consent for blood utilization. There will however be an ongoing review of blood utilization.

- Overall medical staff education on informed consents as they relate to Patient Safety – Act 13. This occurred on October 15, 2002 at the Medical Executive Committee, and we will continue with medical staff education at the clinical department level during the months of October, November, December, 2002.

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

11/15/2002

[View Previous Reports](#)

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

Based on an unannounced complaint investigation (PIT02C451F) conducted November 15, 2002 at Clearfield Hospital, it was determined the facility was in compliance with the requirements for 42 CFR 482 Conditions of Participation for Hospitals.

Plan of Correction:

No plan of correction is required

Initial Comments:

Based on an unannounced complaint investigation (PIT02C451F) conducted on November 15, 2002, it was determined that Clearfield Hospital was in compliance with the requirements of 28 PA Code, Part IV, Subpart A Rules and Regulations for Hospitals, November 1987, as amended 1998.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

6/13/2003



View Previous Reports

There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of an unannounced complaint investigation (CHL03C722F) conducted at Clearfield Hospital on June 13, 2003. It was determined that the facility was in compliance with the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, Rules and Regulations for Hospitals, November 1987, as amended June 1998.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

10/14/2003

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There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of an occupancy survey which was conducted on October 14, 2003 at Clearfield Hospital. It was determined the facility was in compliance with all applicable requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, November 1987, as amended June 1998 and the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

12/10/2003

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There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of a occupancy survey of five satellite clinic's which was conducted on November 24 and concluded on December 4, 2003 at Clearfield Hospital. It was determined the facility was not in compliance with all applicable requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, November 1987, as amended June 1998 and the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities.

Plan of Correction:

No plan of correction is required

101.64 LICENSURE

HOSPITAL RESPONSIBILITIES

101.64 Hospital responsibilities A hospital shall comply with all applicable environmental, health, sanitation, and life-safety standards which are not under the direct jurisdiction of the Department. This shall include but not be limited to radiologic health, sanitation, food services, pharmacy, electric wiring, and life-safety code compliance. When the hospital has been inspected by another regulatory agency, it shall have on the record during the survey by the Department written confirmation of compliance as provided by the rules and regulations of appropriate agencies.

Observations:

Based on on-site visits of the satellite clinics (SC) owned and operated by the Clearfield Hospital and interview with the facility's Project Manager, it was determined that the facility failed to have documented evidence that each clinic had obtained the required inspection permit by another regulatory agency, Labor and Industry.

Findings include

1) During the on-site visits on of five satellite clinics owned and operated by Clearfield Hospital, it was revealed that 5 of 5 clinics, Therapy Works (SC1), Houtzdale Family Medical Services (SC2), Clearfield Internal Medicine (SC3), Philipsburg Family Medical Services (SC4), Curwensville Family Medical Services (SC5), failed to have an occupancy permit provided by the Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Occupational and Industrial Safety posted.

- 2) During the on-site occupancy survey on November 24, 2003, SC5 and SC3 were visited. The clerical staff at SC5 was able to produce the Labor and Industry Occupancy Permit for this clinic.
- 3) Interview with the Project Manager on December 4, 2003, revealed that SC1, SC2, SC3 had no documented evidence that Labor and Industry had ever completed an occupancy inspection.
- 4) During the onsite visit on December 4, 2003 of SC1, the facilities Project Manager was present and stated that they "would be able to provide the Department with the required Labor and Industry Occupancy Permit's for all the satellite clinics by December 5, 2003."
- 5) On December 5, 2003 at 1:30pm a telephone conversation with the Project Manager revealed that the facility was unable to provide the Department with the occupancy permits for SC1, SC2, SC3.

Plan of Correction:

The Labor and Industry Occupancy Permit was located for SC3 (Clearfield Internal Medicine) on December 30, 2003.

Numerous contacts were made to the Department of Labor and Industry and this entity was able to provide Clearfield Hospital with the Labor and Industry Occupancy permit for SC1 (Therapy Works) on December 31, 2003.

The Department of Labor and Industry was contacted and this entity was able to provide verbal confirmation (#79702) of a Labor and Industry Occupancy permit for SC2 (Houtzdale Family Services) on December 30, 2003. Due to a change in ownership for this clinic, Clearfield Hospital had to provide the Department of Labor and Industry with proof of ownership and then this entity will provide Clearfield Hospital with the Labor and Industry Occupancy permit for SC2.

Labor and Industry Occupancy permits have been posted for SC1 (Therapy Works), SC3 (Clearfield Internal Medicine), SC4 (Philipsburg Family Medical Services), and SC5 (Curwensville Family Medical Services) on December 31, 2003. The occupancy permit for SC2 (Houtzdale Family Medical Services) will be posted as soon as it arrives from the Department of Labor and Industry.

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

2/4/2004

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There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of an unannounced complaint survey (JOH04C006J) which was conducted on February 4, 2004 at Clearfield Hospital. It was determined the Facility was in compliance with the requirements of the 42 CFR, Title 42, Part 482 - Conditions of Participation For Hospitals.

Plan of Correction:

No plan of correction is required

Initial Comments:

This report is the result of an unannounced complaint investigation (JOH04C006J) conducted at Clearfield Hospital on February 4, 2004. It was determined that the Hospital was in compliance with the requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, November 1987, as amended June 1998.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

4/28/2004

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There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of an occupancy survey conducted on April 28, 2004 at Clearfield Hospital. It was determined the facility was in compliance with all applicable requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, November 1987, as amended June 1998 and the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities.

Plan of Correction:

No plan of correction is required

Pennsylvania Department of Health
CLEARFIELD HOSPITAL
Health Inspection Results

Information about Acute and Ambulatory Care Inspections

CLEARFIELD HOSPITAL
Health Inspection Results For:

6/29/2004

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There are 11 surveys for this facility. Please select a date to view the survey results

Initial Comments:

This report is the result of an occupancy survey conducted on June 29, 2004 at a satellite clinic of Clearfield Hospital located at 1049 Front Street, Philipsburg, PA. It was determined the facility was in compliance with all applicable requirements of the Pennsylvania Department of Health's Rules and Regulations for Hospitals, 28 Pa Code, Part IV, Subparts A and B, November 1987, as amended June 1998 and the current edition of the Guidelines for Design and Construction of Hospital and Health Care Facilities.

Plan of Correction:

No plan of correction is required