

60 days

## Civil Other

Date		Judge
06/13/2003	✓ Filing: Civil Complaint Paid by: Joseph W. Cavrich, Esq. Receipt number: 1861614 Dated: 06/13/2003 Amount: \$85.00 (Check) 2 cc to Shff.	No Judge
07/17/2003	✓ Praecipe for Entry of appearance for Defendants filed by Peter F. Smith, Esq. No cc.	No Judge
	✓ Certificate of Service of Praecipe to enter Appearance filed by Atty. Smith No CC.	No Judge
07/30/2003	✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
08/05/2003	✓ Preliminary Objections. filed by s/Peter F. Smith, Esquire 2 cc Atty Smith	No Judge
	✓ Certificate of Service, Preliminary Objections upon: JOSEPH W. CAVRICH, ESQ. filed by, s/Peter F. Smith, Esquire no cc	No Judge
08/08/2003	✓ Praecipe For Withdrawal/Entry of Appearance. Withdrawal As Counsel For Plaintiff, Eric Plotnick, M.D. --CAVRICH LAW OFFICES, L.L.C. Entrance of Appearance On Behalf of Plaintiff, Eric Plotnick, M.D. --- URBAN 7 CAVRICH, P.C. NO CC	No Judge
08/21/2003	✓ Amended Complaint. filed by s/Joseph W. Cavrich, Esquire	No Judge
09/04/2003	✓ Preliminary Objections to the Amended Complaint. filed by s/Peter F. Smith, Esq. no cc	John K. Reilly Jr.
	✓ Certificate of Service, Preliminary Objections To Amended Complaint upon: JOSEPH W. CAVRICH, ESQ. filed by s/Peter F. Smith, esq. no cc	John K. Reilly Jr.
09/11/2003	✓ Notice Of Intent to Serve Subpoena To Produce Documents and things For Discovery Pursuant To Rule 4009.21 Upon Evelyn Witters, Healthcare Billing Consultants. filed by s/Joseph W. Cavrich, Esq. no cc	John K. Reilly Jr.
10/07/2003	✓ Certificate Prerequisite to Service of Subpoena filed by Atty. Cavrich. No cc.	John K. Reilly Jr.
11/07/2003	✓ Motion for Leave to File Amended Complaint, filed by s/Joseph W. Cavrich, Esq. No CC	John K. Reilly Jr.
11/12/2003	✓ RULE RETURNABLE, AND NOW, this 12th day of November, 2003, a Rule is hereby granted to show cause why the Motion for Leave to File Amended Complaint, filed on behalf of Plaintiffs, should not be granted. This Rule is returnable on the 17th day of November, 2003, at 2:00 p.m. by the Court, s/JKR,JR.,P.J. 1 cc Atty Cavrich	John K. Reilly Jr.
11/18/2003	✓ ORDER, NOW, this 17th day of November, 2003, re: Argument on Preliminary Objections hereby continued for a period of 60 days to permit Plaintiff to complete discovery on the issue of piercing the corporate veil. by the Court, s/JKR,JR., P.J. 1 cc Atty Smith, Cavrich	John K. Reilly Jr.
	✓ ORDER, NOW, this 17th day of November, 2003, re: Plaintiff's Motion for Leave to File Amended Complaint, re: Motion be and is hereby GRANTED. Said Amended Complaint to be filed within 20 days from date hereof. by the Court, s/JKR,JR.,P.J. 1 cc Atty Smith, Cavrich	John K. Reilly Jr.
12/03/2003	✓ Second Amended Complaint. filed by, s/Joseph W. Cavrich, Esquire Verification s/Eric Plotnick, M.D. no cc	John K. Reilly Jr.

## Civil Other

Date		Judge
12/11/2003	✓ Notice of Service of Discovery, Request for Production of Documents Directed to Defendants upon: Peter F. Smith, Esq. filed by, s/Joseph W. Cavrigh, Esquire no cc	John K. Reilly Jr.
01/06/2004	✓ Notice of Deposition of YI HOW KAO, M.D. filed by, s/Joseph W. Cavrigh, Esquire no cc	John K. Reilly Jr.
	✓ Notice of Deposition of MARYANN KAO. filed by, s/Joseph W. Cavrigh, Esquire no cc	John K. Reilly Jr.
01/15/2004	✓ Certificate of Service, Defendants' Answers to Plaintiff's Interrogatories and Defendants' Answer To Plaintiff's Request For Production Of Documents, with documents numbered 1 through 330 sequentially upon: JOSEPH W. CAVRICH, ESQ. filed by, s/Peter F. Smith, Esquire no cc	John K. Reilly Jr.
01/28/2004	✓ Motion to Extend Discovery Deadline, with Request for Expedited Consideration, filed by s/Joseph W. Cavrigh, Esq. No CC	John K. Reilly Jr.
	✓ Motion to Compel Discovery Responses, With Request for Expedited Consideration, filed by s/Joseph W. Cavrigh, Esq. No CC	John K. Reilly Jr.
02/05/2004	✓ ORDER, AND NOW, this 5th day of February, 2004, re: Plaintiff's Motion to Extend Discovery Deadline with Request for Expedited Consideration scheduled for Wednesday, February 25, 2004, at 10:00 a.m. before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, in Courtroom No. 2. by the Court, s/FJA,P.J. 2 cc Atty Cavrigh w/ memo re: Service of Order	John K. Reilly Jr.
	RULE RETURNABLE, AND NOW, this 5th day of February, 2004, granted to show cause why Motion to Compel Discovery, filed on behalf of Plaintiff, should not be granted. Rule returnable on the 25th day of February, 2004, at 10:00 a.m. in Courtroom No. 2. by the Court, s/FJA,P.J. 2 cc Atty Cavrigh w/memo re: Service of Rule	John K. Reilly Jr.
02/10/2004	✓ Affidavit of Service, Motion to Compel Discovery and signed Rule Returnable upon Defendants at the office of their attorney, Peter F. Smith, Esq. filed by, s/Joseph W. Cavrigh, Esq. no cc	John K. Reilly Jr.
02/25/2004	✓ ORDER, NOW, this 25th day of February, 2004, re: Plaintiff's Motion to Compel Discovery and Argument thereon. by the Court, s/JKR,JR.,S.J., Specially Presiding 2 cc Atty Cavrigh, P. Smith	John K. Reilly Jr.
	✓ ORDER, NOW, this 25th day of February, 2004, re: Motion to Extend Discovery Deadline filed on behalf of Plaintiff. by the Court, s/JKR,JR., S.J., Specially Presiding 1 cc Atty Cavrigh, P. Smith	John K. Reilly Jr.
05/07/2004	✓ Motion For Sanctions. filed by, s/Joseph W. Cavrigh, Esquire no cc	John K. Reilly Jr.
	✓ Affidavit of Service, Motion for Sanctions upon Peter F. Smith, Esq. no cc	John K. Reilly Jr.
05/17/2004	✓ Certificate of Service, Defendants' Supplement To Earlier Answers To Discovery upon: Joseph W. Cavrigh, Esq. filed by, s/Peter F. Smith, Esquire no cc	John K. Reilly Jr.
05/28/2004	✓ Notice of Intent To Serve Subpoena To Produce Documents And Things For Discovery Pursuant to Rule 4009.21. filed by, s/Joseph W. Cavrigh, Esquire	John K. Reilly Jr.
06/08/2004	✓ Notice of Deposition of Yi How Kan, M.D. filed by, s/Joseph Cavrigh, Esquire no cc	John K. Reilly Jr.
	✓ Notice of Deposition of Maryann Kao. filed by, s/Joseph Cavrigh, Esquire no cc	John K. Reilly Jr.

## Civil Other

Date		Judge
06/16/2004	✓ Order, AND NOW, this 16 day of June, 2004, upon consideration of Plaintiff's Motion for Sanctions in the above matter, Order that argument on said Motion has been scheduled for the 13 day of July, 2004, at 10:30 a.m. before Honorable John K. Reilly, Jr., Sr. Judge, Specially Presiding in Courtroom No. 2. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC with service memo to Attorney Cavrich	John K. Reilly Jr.
06/28/2004	✓ Affidavit of Service, Plaintiff's Motion for Sanctions upon Defendants at the office of their attorney Peter F. Smith, Esq., filed by s/Joseph W. Cavrich, Esq. No CC	John K. Reilly Jr.
07/02/2004	✓ Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/Joseph W. Cavrich, Esq. No CC	John K. Reilly Jr.
08/09/2004	✓ Order, AND NOW, this 6 day of August, 2004, it is the ORDER of the court that argument regarding Plaintiff's Bill of Costs in the above matter had been scheduled for the 13 day of August 2004, at 11:00 A.M. in the Clearfield County Courthouse, 1 cc Attys: Cavrich, P. Smith (C/A envelopes)	John K. Reilly Jr.
08/26/2004	✓ Notice of Deposition of Evelyn Witters, on the 30th day of Septmeber, 2004, at 10:00 a.m., Filed by s/Joseph W. Cavrich, Esq., No cc	John K. Reilly Jr.
08/27/2004	✓ Order, filed Cert. to Atty Cavrich and P. Smith NOW, this 25th day of August, 2004, RE: Motion for Sanctions Granted. Defendant to Pay \$250.00 to Flaintiff.	John K. Reilly Jr.
11/01/2004	✓ Certificate of Service of Defendant's First Request for Production of Documents Directed to Plff. by Mail filed by Atty. P. Smith. No cc.	John K. Reilly Jr.
01/21/2005	✓ Notice of Service of Discovery Responses, served Responses to Defendants' Request for Productions of Documents, on the 20th of Jan., 2005, upon Peter F. Smith, Esquire. filed by s/ Joseph W. Cavrich, Esquire. No CC	John K. Reilly Jr.
02/18/2005	✓ Notice of Deposition of Yi How Kao, M.D. filed by s/ Joseph W. Cavrich, Esquire. No CC	John K. Reilly Jr.
02/22/2005	✓ Stipulation, Plaintiff and Defendants stipulate that Paragraphs 5,6, and 67 through 89 of Plaintiff's Second Amended Complaint are stricken, without prejudice. filed by s/ Joseph W. Cavrich, Esquire and Peter F. Smith, Esquire. No CC	John K. Reilly Jr.
	✓ Certificate of Service, Notice to Take Oral Deposition, to attorney for Plaintiff, Feb. 21, 2005, filed by s/ Peter F. Smith, Esquire. No CC	John K. Reilly Jr.
03/09/2005	✓ Second Supplemental Production of Documents, filed by atty. Smith no cert. Copies.	John K. Reilly Jr.
	✓ Praeipce, filed by Atty. Smith no cert. copies. copy to C/A	John K. Reilly Jr.
	✓ Withdraw the Preliminary Objections filed on behalf of Defendants. s/ Peter F. Smith	John K. Reilly Jr.
	✓ Certificate of Service, filed by Atty. Smith no cert.	John K. Reilly Jr.
	Served copies of Second Supplemental Production of Documents and Withdrawal of Preliminary Objections on Atty. Cavrich	
03/11/2005	✓ Praeipce to Withdraw Preliminary Objections, filed by s/Peter F. Smith No Fredric Joseph Ammerman CC	No Fredric Joseph Ammerman

Civil Other

Date		Judge
03/21/2005	✓ Certificate of Service, copy of Defendant's Answer, New Matter & Counterclaims Directed to the Second Amended Complaint to Joseph W. Cavrigh, Esquire. No CC	John K. Reilly Jr.
✓	Defendant's Answer, New Matter & Counterclaims Directed to the Second Amended Complaint, filed. By s/ Peter F. Smith, Esquire. 2cc Atty Smith	John K. Reilly Jr.
04/11/2005	✓ Preliminary Objections to Counterclaim, filed by Atty. Cavrigh no cert. copies.	John K. Reilly Jr.
04/20/2005	✓ Notice of Service of Discovery Response, upon Peter F. Smith, Esquire, on April 19, 2005. filed by s/ Joseph W. Cavrigh, Esquire. No CC	John K. Reilly Jr.
04/21/2005	✓ Notice of Service of Discovery Response, upon Peter F. Smith, Esquire, on April 21, 2005. Filed by s/ Joseph W. Cavrigh, Esquire. no CC	John K. Reilly Jr.
04/28/2005	✓ Notice of Deposition of Yi How Kao, M.D., filed by s/ Joseph W. Cavrigh, Esquire. No CC	John K. Reilly Jr.
05/13/2005	✓ Certificate of Merit, filed by s/ Peter F. Smith, Esquire. No CC	John K. Reilly Jr.
✓	Certificate of Service, copy of Certificate of Merit along with the underlying professional statement to Joseph W. Cavrigh, Esquire, on may 13, 2005. Filed by s/ Peter F. Smith, Esquire. No CC	John K. Reilly Jr.
06/02/2005	✓ Rule Returnable, AND NOW, this 1st day of June, 2005, a Rule is granted to show cause why the Preliminary Objections filed on behalf of Plaintiff/Counterclaim-Defendant should not be granted. This Rule is returnable on the 23rd day of June, 2005 at 11:00 a.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty. Cavrigh	Fredric Joseph Ammerman
06/08/2005	✓ Certificate of Service, Third Supplemental Production of Documents Numbers 1,552 thru 1,556 served upon Joseph W. Cavrigh, Atty. Filed By Peter F. Smith, Esq.	Fredric Joseph Ammerman
06/24/2005	✓ Order, this 23rd day of June, 2005, relative Plaintiff's Preliminary Objections to Counterclaim, it is the ORDER of this Court that Peter F. Smith, Esquire, atty. for the Defs., submit a brief to the Court in no more than 20 days from this date. Oral argument is rescheduled for the 22nd day of July, 2005 at 10:30 a.m. By The Court, /s/ Fredric J. Ammerman, President Judge. 2CC Attys: Cavrigh, P. Smith	Fredric Joseph Ammerman
06/28/2005	✓ Affidavit of Service of a copy of a Rule Returnable for Plaintiff's Preliminary Objection to Third counterclaim upon Defendants on June 27, 2005 filed by s/ Joseph W Cavrigh Esquire. No CC	Fredric Joseph Ammerman
07/14/2005	✓ Certificate of Service, Copies of the Fourth Supplemental Production of Documents Numbers 1,552 thru 1,554 served upon Joseph W. Cavrigh, Esq. Filed By Peter F. Smith, Esq. No CC.	Fredric Joseph Ammerman
08/02/2005	✓ Praecept For Withdrawal/Entry of Appearance. On behalf of Eric Plotnick, M.D., Withdraw Urban & Cavrigh, P.C., and enter appearance Cavrigh Law Offices, LLC. Filed by s/ Joseph W. Cavrigh, Esquire. No CC	Fredric Joseph Ammerman

not in file of 06/08/05

not in file of 07/14/05

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868-CD

**COMPLAINT**

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

CAVRICH LAW OFFICES, L.L.C.  
P.O. Box 464  
Hollidaysburg, PA 16648  
(814) 696-0600

**FILED**

JUN 13 2003

William A. Shaw  
Prothonotary





5. Based upon knowledge, information, and belief, Plaintiff avers that the Defendant Corporation, Otolaryngology Group of Central Pennsylvania, Inc., existed as a shell corporation, created by Defendant, Dr. Kao, for the sole purpose of shielding Dr. Kao's personal assets from any judgments that may be entered against him in relation to the employment contract executed by Plaintiff, undertaking illegal activities, or abusing his availment of the corporate fiction and immunity protection that it carries. Specifically, Plaintiff avers that Dr. Kao failed to adhere to proper corporate formalities, as required under Pennsylvania law, in the organization and operation of the alleged corporate entity known as the Otolaryngology Group of Central Pennsylvania, Inc., in the following particulars:

- a) There has been no stock issued for Otolaryngology Group of Central Pennsylvania, Inc.;
- b) Otolaryngology Group of Central, Pennsylvania, Inc., has no fixed assets;
- c) Otolaryngology Group of Central, Pennsylvania, Inc. is undercapitalized;
- d) Otolaryngology Group of Central, Pennsylvania, Inc.'s corporate expenses give the appearance of being unrelated to the business of the corporation;
- e) Otolaryngology Group of Central, Pennsylvania, Inc. has no regular corporate meetings and has neither ordered a corporate minute book nor kept corporate meeting minutes;
- f) Otolaryngology Group of Central, Pennsylvania, Inc. has failed to file appropriate articles of incorporation or a docketing statement;
- g) Otolaryngology Group of Central, Pennsylvania, Inc. has failed to order a corporate seal;
- h) Otolaryngology Group of Central, Pennsylvania, Inc. has failed to enact by-laws or abide by its by-laws, if enacted;

- i) Otolaryngology Group of Central, Pennsylvania, Inc. has failed to advertise its incorporation in required publications;
  - j) Otolaryngology Group of Central, Pennsylvania, Inc. has failed to apply for an employer identification number;
  - k) There has been and continues to be a substantial intermingling of the affairs of Dr. Kao and the Otolaryngology Group of Central, Pennsylvania, Inc.; and
  - l) Dr. Kao has used his control of the Otolaryngology Group of Central, Pennsylvania, Inc., and the assets of the Otolaryngology Group of Central, Pennsylvania, Inc. to further his personal interests.
6. Based upon the allegations set forth in the preceding Paragraph, Plaintiff believes and therefore avers that Dr. Kao may be held liable individually for any activities related to the Plaintiff's employment with the Defendant corporation.
  7. Based upon the discussions between Plaintiff and Dr. Kao, Plaintiff and Defendants arrived at mutually acceptable "principles of agreement" with respect to the terms and conditions of Plaintiff's employment.
  8. Dr. Kao subsequently documented Plaintiff's and Defendants' "principles of agreement" in a letter to Plaintiff, a copy of which has been attached hereto as Exhibit "A", and is incorporate herein by reference as if same were set forth at length.
  9. Specifically, Plaintiff's and Defendants' "principles of agreement" included, but was not limited to, the following:
    - a) Plaintiff was to be paid a base compensation of \$150,000.00 per year during the initial contract term and during the renewed term for the second year;
    - b) Plaintiff was to be paid a "production bonus" of 50% of collections over \$300,000.00, to be paid at the end of the year;

- c) Defendants would pay for Plaintiff's malpractice insurance, reasonable health and disability insurance, fees to maintain licensure and hospital memberships and professional society memberships, reasonable continuing medical education expenses, pager, auto mileage reimbursement for Plaintiff's travel to Defendants' secondary office in Clearfield or a reasonable lease payment and expenses, and moving expenses;
  - d) Defendants could terminate Plaintiff's employment only for cause, defined as: 1) Plaintiff's loss of professional license; 2) Plaintiff's loss of ability to render medical service due to physical impairment; and 3) Plaintiff's acts of moral turpitude or fraudulent conduct;
  - e) Defendants were required to give Plaintiff four months notice prior to the end of the contract year for termination of services.
10. On or about February 1, 2000, Plaintiff and Defendants executed an "Employment Contract for Medical Services" (hereinafter "the contract"), a copy of which is attached hereto as Exhibit "B", and incorporated herein by reference as if same were set forth at length.
  11. Under the terms of the contract, Plaintiff's initial term of employment was one year, commencing on February 1, 2000, with the contract automatically renewing for additional one year terms unless either party gave the other three months prior written notice of their intention not to renew the contract. Plaintiff actually began his employment with Defendants in mid-January, 2000.
  12. The contract further included, but was not limited to, the following provisions:
    - a) Plaintiff was to receive a base salary of \$150,000.00 per year;
    - b) Plaintiff was to be paid a "production bonus" of 50% of Plaintiff's *gross billings* (emphasis added) over \$300,000.00, to be paid within 30 days of the end of the year;
    - c) Defendants would pay for Plaintiff to maintain appropriate cell, paging, or telephone equipment;

- d) Defendants would pay for Plaintiff's malpractice insurance (***including pre-funded tail coverage***) (emphasis added), reasonable health and disability insurance, fees to maintain licensure and hospital memberships and professional society memberships, and reasonable continuing medical education expenses;
  - e) Defendants could terminate Plaintiff's employment ***only for cause*** (emphasis added), defined as: 1) Plaintiff's loss of professional license; 2) suspension or termination of Plaintiff's Federal Drug Enforcement Administration Number; 3) Plaintiff's ceasing to qualify for professional liability insurance at regular rates from Defendants' insurance carrier; 4) Plaintiff becoming a "sanctioned individual", as that term is used in 42 U.S.C. 1320a-7, regarding individuals penalized for Medicare or Medicaid fraud or abuse; 5) the execution of a written agreement between Plaintiff and Defendants to terminate the contract; 6) Plaintiff's death; 7) Plaintiff's failure or refusal to perform the duties of his employment faithfully and diligently and to comply with the provisions of the contract; 8) Plaintiff's failure or refusal to comply with reasonable policies, standards, and regulations that Defendants may establish from time to time; 9) Plaintiff's failure to become board-certified; 10) Plaintiff's failure to maintain medical staff membership and clinical privileges at Clearfield Hospital and Centre Community Hospital, or the suspension, reduction, or termination of any such medical staff membership or clinical privileges; or 11) Plaintiff's inability to fully and competently perform his duties for a period of 30 continuous days due to physical, mental, or psychology illness, injury, or condition.
13. According to Section XII of the contract, entitled "Employee Status", Plaintiff was to be considered an employee of the Defendants ***so long as he abided by the terms and conditions of the contract, and maintained at all times the proper licensing with the Commonwealth of Pennsylvania, and board certification*** (emphasis added).
14. The contract executed by Plaintiff and Defendants did not contain a specific provision regarding auto mileage reimbursement for Plaintiff's travel to Defendants' office in Clearfield or a reasonable lease payment and expenses, as stated in the "principles of agreement" between Plaintiff and Defendant (Exhibit "A"). However, Dr. Kao verbally assured Plaintiff that Defendants would pay Plaintiff's lease payments and related expenses (including gas mileage) as a condition precedent of Plaintiff and Defendants

execution of the contract.

15. Dr. Kao's verbal assurance to Plaintiff that Defendants would pay Plaintiff's lease payments and related expenses induced Plaintiff to execute the contract with Defendants, and Plaintiff relied to his detriment by entering into an employment agreement with Defendants based, in part, upon Dr. Kao's assurance.
16. Beginning on February 15, 2000, and continuing on a monthly basis through January 21, 2003, Defendants leased (*in Defendants' name*) a 2000 Toyota RAV4 for Plaintiff's benefit from Toyota Financial Services, making monthly lease payments of \$443.24 directly to Toyota Financial Services. Defendants also made all automobile insurance payments for Plaintiff's vehicle, and reimbursed Plaintiff for all of his gas mileage. At no point in time from February 15, 2000, through January 21, 2003, did Defendants advise Plaintiff that Defendants expected to be reimbursed by Plaintiff for the lease payments, automobile insurance payments, or reimbursement of gas mileage, paid by Defendants on Plaintiff's behalf.
17. The contract executed by Plaintiff and Defendants did not contain a specific provision regarding Defendants' reimbursement of Plaintiff's moving expenses, as stated in the "principles of agreement" between Plaintiff and Defendants (Exhibit "A"). However, Defendants, in fact, reimbursed Plaintiff for his moving expenses, further evidence of Defendants' intention to incorporate certain provisions of the "principles of agreement" (Exhibit "A") into the contract between Plaintiff and Defendants.
18. The original one-year contract term expired on January 31, 2001. By its terms, the contract automatically renewed for a period of one year. Plaintiff and Defendants did not

execute any written modifications to the contract during the second year of Plaintiff's employment.

19. On February 1, 2002, Plaintiff and Defendants executed a written two-year extension of the original contract (through January 31, 2004). The only modification to the original contract was that the Plaintiff's base salary was increased to \$210,000.00 per year, to be paid in bi-monthly installments. A copy of the contract extension is attached hereto as Exhibit "C", and is incorporate herein by reference as if same were set forth at length.
20. The "production bonus" to be paid to Plaintiff, as specified in the original contract, was not altered by the written extension executed on February 1, 2002. Thus, Plaintiff was to continue to be paid a "production bonus" of 50% of Plaintiff's *gross billings* (emphasis added) over \$300,000.00, to be paid within 30 days of the end of the year.
21. Beginning in October of 2001, Plaintiff began to notify Dr. Kao of serious internal billing problems within Defendants' billing department. Specifically, Plaintiff expressed concern that Defendants' billing system lacked the capability to report and track accounts that were 30, 60, 90, and 120 days old, and causing Plaintiff concern as to the status of his accounts receivable.
22. Plaintiff further advised Dr. Kao that a substantial amount of Plaintiff's gross billings were being lost as a result of: a) the negligent and/or substandard billing practices of Defendant; b) Defendants' failure and/or refusal to follow generally accepted accounting principles; and c) Defendants' failure and/or refusal to follow IRS reporting guidelines.
23. Specifically, Plaintiff advised Dr. Kao that Defendants had delinquent billings for Plaintiff's patients in excess of \$1,000,000.00, as a result of Plaintiff's accounts never

being billed by Defendants, Plaintiff's bills being rejected by third party payors and never re-submitted by Defendants, or bills being sent out (and in some cases, collected) in Dr. Kao's name instead of Plaintiff's name.

24. Plaintiff regularly and continuously expressed his concern and frustration regarding Defendants' billing practices (which has continued to have a tremendous negative impact on the production bonuses owed by Defendants to Plaintiff under the terms of the contract), through the present date.
25. Defendants have conceded that they have not been able to pay Plaintiff the entire amount of the production bonuses owed him as a result of the Defendants' negligent billing practices and/or substandard billing system, and Defendants have, in fact, hired an independent third-party billing company, Healthcare Billing Consultants, Inc. (hereinafter "HBC"), to attempt to collect as much of Plaintiff's past due gross billings as possible.
26. Despite the best efforts of HBC, however, Defendants have conceded that they will not be able to collect all of the Plaintiff's past due gross billings, causing Plaintiff to suffer immediate and irreparable financial hardship, and making Defendants non-compliant with "production bonus" provision of Plaintiff's employment contract.
27. However, in order to partially compensate Plaintiff for the past due production bonuses owed, Defendants agreed in October of 2002 to pay past due production bonuses to Plaintiff for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002, based upon (but not limited to) revenue for office visits, surgeries, consultations (inpatient and outpatient) and allergy diagnosis and treatment.
28. The past due production bonuses to be paid to Plaintiff included, but was not limited to,

reimbursement collected and posted under Plaintiff's name, reimbursement already paid but never posted under Plaintiff's name, and reimbursement billed under Plaintiff's name but collected and posted under Defendants' name.

29. The past due production bonuses to be paid to Plaintiff also included, but was not limited to, timely adjustments, based upon Defendants' admission that certain of Plaintiff's billings can never be collected, because the time period during which billing claims must have been submitted has expired (due to Defendants' negligent billing practices and substandard billing system).
30. On January 21, 2003, Defendants altogether stopped making lease payments and automobile insurance payments on Plaintiff's behalf, stopped reimbursing Plaintiff for his gas mileage, and cell phone, and stopped paying Plaintiff his "production bonus".
31. On or about January 29, 2003, Dr. Kao delivered a letter to Plaintiff, advising Plaintiff that Defendants were terminating Plaintiff's employment contract effective May 29, 2003. A copy of Dr. Kao's letter is attached hereto as Exhibit "D", and is incorporated herein by reference as if same were set forth at length.
32. In his letter, Dr. Kao stated that Defendants were terminating Plaintiff's employment "purely for patient safety reasons", related to three "events" involving Plaintiff's patients that allegedly brought the issue of patient care and safety to the forefront.
33. According to Dr. Kao's letter, he had to be consulted by two emergency room physicians and an internist with respect to three of Plaintiff's "problem" patients who Plaintiff allegedly failed to sign out to Dr. Kao.
34. On January 31, 2003, Plaintiff responded in writing to Dr. Kao's termination letter. A

copy of Plaintiff's correspondence is attached hereto as Exhibit "E" and is incorporate herein by reference as if same were set forth at length.

35. In his letter, Plaintiff advised Dr. Kao that Defendants had no cause for terminating the Plaintiff's contract. Specifically, Plaintiff advised that he was not aware of any existing or pending patient safety or quality of care issues. Plaintiff further stated that he did not see any provision in the Plaintiff's employment contract that provided for termination based upon the reasons outlined in Dr. Kao's letter of January 29, 2003.
36. In his letter of January 31, 2003, Plaintiff asked Dr. Kao to cite the specific policy language that allowed for termination of the contract.
37. On or about February 15, 2003, Plaintiff received his regularly scheduled salary payment. However, Plaintiff did not receive a "production bonus" check, as had been the case since October of 2002.
38. In response to a question posed by Plaintiff as to why Plaintiff did not receive a bonus check, Dr. Kao responded with a handwritten note dated March 17, 2003. Plaintiff believes, and therefore avers, that the actual date of Dr. Kao's note was February 17, 2003. A copy of Dr. Kao's note is attached hereto as Exhibit "F", and is incorporated herein by reference as if same were set forth at length herein.
39. In his handwritten note, Dr. Kao stated that he was deducting the following "expenses" against Plaintiff's production bonus check(s) that were due:
  - a) Lease payments - \$16,399.88;
  - b) Mileage excess - \$2,551.20;
  - c) Deductible for two accidents - \$1,000.00;

- d) Insurance - \$3,156.00 (1/2 of \$1,052.00 semi-annual premium).
  - e) Gas expense, and other expenses exceeding “reasonable” cell phone and pager expenses – to be determined.
40. According to Dr. Kao’s handwritten note, “there is no mention of auto expenses in the contract.”
41. Solely as a result of Defendants’ breach of contract, and in an effort to mitigate his damages resulting from said breach of contract, Plaintiff accepted employment on or about February 8, 2003, with Ear, Nose and Throat Associates, P.C., located in Snellville, Georgia. Plaintiff’s last date of employment for Defendants was May 26, 2003.
42. On April 14, 2003, Defendant Kao telephoned Plaintiff and admitted that he had no basis to terminate Plaintiff’s employment contract on January 29, 2003.
43. On May 19, 2003, Defendant Kao telephoned Plaintiff and stated that Defendants would pay Plaintiff the following: a) past due “production bonus” for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 (\$14,460.57 gross); b) past due reimbursable expenses (gas, car payment, car insurance, cell phone) from November, 2002 through April, 2003 (\$2,303.39); c) past due “production bonus” for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 from April 2 to May 1; d) past due reimbursable expenses for April, 2003 (gas only) and May, 2003 (gas, car payment, car insurance, and cell phone); e) PMSLIC malpractice tail coverage (\$27,168); and f) regular payroll compensation through a half-day on May 28, 2003.
44. Subsequent to the telephone conversation between Plaintiff and Defendant Kao on May 19, 2003, Defendants, in fact, paid Plaintiff the following: a) past due “production bonus” for contract years January, 2000 to January, 2001, and February, 2001 to January,

2002 (\$14,460.57 gross); b) past due reimbursable expenses (gas, car payment, car insurance, cell phone) from November, 2002 through April, 2003 (\$2,303.39); c) past due "production bonus" for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 from April 2 to May 1; d) past due reimbursable expenses for April, 2003 (gas only) and May, 2003 (gas, car payment, car insurance, and cell phone; and f) regular payroll compensation through May 26, 2003 (as agreed to by the parties).

45. Defendants have not, to date, paid the PMSLIC malpractice tail coverage on Plaintiff's behalf, as promised by Defendant Kao on May 19, 2003.
46. Under the terms of Plaintiff's employment agreement, Plaintiff's "production bonus" for contract year February, 2002 to January, 2003, was due to be paid on February 28, 2003. Defendants have not, to date, made any bonus payments to Plaintiff for this contract year.

**ERIC PLOTNICK, M.D., V.**  
**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**  
**COUNT I - BREACH OF CONTRACT**

47. Plaintiff incorporates by reference herein Paragraphs 1 through 46 of this Complaint, as if same were set forth at length.
48. From February 1, 2000, through present, Plaintiff has faithfully and in good faith complied with all of the provisions of the original contract executed by the parties in February of 2000, and the extension of the contract executed in February of 2002. Specifically, he has complied with Section XII of the contract, in that he has, in all material respects, abided by the terms and conditions of the contract, and has, at all times material hereto, maintained the proper licensing with the Commonwealth of Pennsylvania and board certification.

49. The reasons specified in Dr. Kao's letter of January 29, 2003, for Defendant's unilateral termination of Plaintiff's employment contract, are not grounds upon which termination "for cause" may be based, under Section XVI of the contract.
50. At no time prior to January 29, 2003, did Dr. Kao or any representative of Defendant notify or otherwise advise Plaintiff that Defendant had concerns regarding the quality of Plaintiff's care of his patients, or for the safety of Plaintiff's patients.
51. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his letter of January 29, 2003, were pretext for Defendant's wrongful termination of Plaintiff's employment agreement, based in part upon Defendant's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.
52. At no time prior to December of 2002 did Dr. Kao or any representative of Defendant advise Plaintiff that it would not pay for Plaintiff's automobile lease and automobile insurance, as it had done on a regular and continuous basis since February of 2000.
53. At no time prior to December of 2002 did Dr. Kao or any representative of Defendant question the reasonableness or necessity of the reimbursement requests submitted by Plaintiff for Plaintiff's gas expenses or cell phone expenses. In fact, Defendant reimbursed Plaintiff for these expenses on a regular and continuous basis since February of 2000.
54. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his note of March 17, 2003 (which Plaintiff believes to actually have been authored on February 17, 2003), for deducting certain expenses from Plaintiff's past due production bonuses, was a

pretext for Defendant's wrongful termination of Plaintiff's employment agreement, based in part upon Defendant's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.

55. Plaintiff justifiably relied to his detriment upon Defendant's payment of an automobile lease, and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.

56. Defendant's action to unilaterally terminating the Plaintiff's employment contract constitutes a material breach of the employment contact that was executed by the parties.

57. Plaintiff has been irreparably damaged as a result of the Defendant's breach of contract.

As a result of the Defendant's breach of contract, Plaintiff is entitled to the following damages:

- a) Payment of past due "production bonus" for contract year 2/01/02 through 1/31/03 (in excess of \$155,000.00 gross – final amount to be determined);
- b) Payment of future "production bonus" that would have otherwise been earned by Plaintiff from 5/23/03 through 1/31/04 (final amount to be determined);
- c) Payment of delinquent "production bonuses" owed, based upon billings and collections from 2/01/00 through 1/31/02, that are currently being billed, collected, or adjusted off by HBC as lost revenue (in excess of \$10,000.00 gross – final amount to be determined);
- d) Payment of future lost wages owed from 5/27/03 through 1/31/04 (in excess of \$140,000.00 – final amount to be determined);
- e) A reasonable lease or car payment from 6/01/03 through 1/31/04, (in excess of \$3,500.00 - final amount to be determined);
- f) Reimbursement of Plaintiff's cell phone expenses from 6/01/03 through 1/31/04, (in excess of \$390.00 - final amount to be determined);
- g) Gas reimbursement from 6/01/03 through 1/31/04, (in excess of \$900.00 - final amount to be determined);

- h) Reimbursement for payment of life insurance policy premium, paid by Plaintiff in June of 2003 (coverage from 7/01/03 through January 31, 2004), or \$419.00;
- i) Payment of health insurance policy, payable at \$545.37 per month from 6/01/03 through 1/31/04; or, in the alternative, reimbursement for said health insurance premium payment, if Plaintiff is required to pay said premium because of Defendants' failure and/or refusal to do so;
- j) Payment of premium for medical malpractice tail coverage, and M-Care coverage for the policy period of 1/01/03 through 5/23/03; or, in the alternative, reimbursement for said medical malpractice premium payment, if Plaintiff is required to pay said premium because of Defendant's failure and/or refusal to do so (\$27,168.00 for tail coverage, and \$3,725.00 for pro-rated M-Care coverage);
- k) Reimbursement of car insurance paid by Plaintiff from 6/01/03 through 1/31/04 (in excess of \$700.00 – final amount to be determined);
- l) Statutory interest on all amounts owed; and
- m) Record court costs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant, in an amount in excess of the Arbitration limits of this Court.

**ERIC PLOTNICK, M.D., V.**  
**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**  
**COUNT II – ESTOPPEL**

- 58. Plaintiff incorporates by reference herein Paragraphs 1 through 57 of this Complaint, as if same were set forth at length.
- 59. During the course of Plaintiff's dealings with Dr. Kao and/or Defendant, as more fully set forth above, Dr. Kao and/or Defendant continually represented to Plaintiff that Defendant would pay for Plaintiff's automobile lease, and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.
- 60. From 2/01/00 through 5/31/03, Defendant did, in fact, pay for Plaintiff's automobile lease

and automobile insurance, and did reimburse Plaintiff for all of his gas expenses and cell phone expenses.

61. Such representations and actions by Dr. Kao, on behalf of Defendant, if false, constituted a concealment of material facts by Dr. Kao, on behalf of Defendant, and were made by Dr. Kao, on behalf of Defendant: a) with the intention of deceiving Plaintiff; b) with the intention that Plaintiff would rely and act upon such representations; and c) with knowledge that such representations were false.
62. Plaintiff did rely upon and act upon the representations of Dr. Kao, on behalf of Defendant, as a result of such representations and actions.
63. At such time, Plaintiff had no knowledge of the falsity of the representations and actions of Dr. Kao, on behalf of Defendant, and no means of ascertaining that fact.
64. Except for Dr. Kao's representations, on behalf of Defendant, that Defendant would pay for Plaintiff's automobile lease and automobile insurance, and reimburse Plaintiff for his gas expenses and cell phone expenses, and Defendant's actions, since 2/01/00, in actually paying for Plaintiff's automobile lease and automobile insurance, and reimbursing Plaintiff for all of his gas expenses and cell phone expenses, Plaintiff would not have entered into an employment contract with Defendant, and would not have renewed his employment contract on 2/01/01 and 2/01/02.
65. Dr. Kao, on behalf of Defendant, committed actual fraud, in attempting to deceive Plaintiff by representing that Defendant would pay for Plaintiff's automobile lease and automobile insurance, and would reimburse Plaintiff for his gas expenses and cell phone expenses, when Dr. Kao, on behalf of Defendant, knew this not to be true.

66. In the alternative, Dr. Kao, on behalf of Defendant, committed constructive fraud, resulting from Dr. Kao's gross negligence, on behalf of Defendant, or from the admissions, declarations, or conduct of Dr. Kao, on Defendant's behalf, intended to influence the conduct of Plaintiff, and which has misled Plaintiff to act to his prejudice.

67. Based upon the foregoing, Defendant is estopped to deny that it is obligated to pay for Plaintiff's automobile lease and automobile insurance, and to reimburse Plaintiff for his gas expenses and cell phone expenses, from June 1, 2003, through January 31, 2004, in an amount to be determined by the Court.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant in an amount in excess of the Arbitration limits of this Court.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**  
**COUNT III - BREACH OF CONTRACT**

68. Plaintiff incorporates by reference herein Paragraphs 1 through 67 of this Complaint, as if same were set forth at length.

69. From February 1, 2000, through present, Plaintiff has faithfully and in good faith complied with all of the provisions of the original contract executed by the parties in February of 2000, and the extension of the contract executed in February of 2002. Specifically, he has complied with Section XII of the contract, in that he has, in all material respects, abided by the terms and conditions of the contract, and has, at all times material hereto, maintained the proper licensing with the Commonwealth of Pennsylvania and board certification.

70. The reasons specified in Dr. Kao's letter of January 29, 2003, for Defendants' unilateral termination of Plaintiff's employment contract, are not grounds upon which termination "for cause" may be based, under Section XVI of the contract.
71. At no time prior to January 29, 2003, did Dr. Kao notify or otherwise advise Plaintiff that Dr. Kao had concerns regarding the quality of Plaintiff's care of his patients, or for the safety of Plaintiff's patients.
72. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his letter of January 29, 2003, were pretext for Dr. Kao's wrongful termination of Plaintiff's employment agreement, based in part upon Dr. Kao's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.
73. At no time prior to December of 2002 did Dr. Kao advise Plaintiff that he would not pay for Plaintiff's automobile lease and automobile insurance, as he had done on a regular and continuous basis since February of 2000.
74. At no time prior to December of 2002 did Dr. Kao question the reasonableness or necessity of the reimbursement requests submitted by Plaintiff for Plaintiff's gas expenses and cell phone expenses. In fact, Dr. Kao reimbursed Plaintiff for these expenses on a regular and continuous basis since February of 2000.
75. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his note of March 17, 2003 (which Plaintiff believes to actually have been authored on February 17, 2003), for deducting certain expenses from Plaintiff's past due production bonuses, was a pretext for Dr. Kao's wrongful termination of Plaintiff's employment agreement, based in

part upon Dr. Kao's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.

76. Plaintiff justifiably relied to his detriment upon Dr. Kao's payment of an automobile lease and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.
77. Dr. Kao's action to unilaterally terminating the Plaintiff's employment contract constitutes a material breach of the employment contact that was executed by the parties.
78. For the reasons more fully set forth above in Paragraph 5, which is incorporated herein by reference as if same were set forth at length, Dr. Kao may be held liable individually for any activities related to the Plaintiff's employment with the Defendant corporation.
79. Plaintiff has been irreparably damaged as a result of the Defendant's breach of contract.

As a result of the Defendant's breach of contract, Plaintiff is entitled to the following damages:

- a) Payment of past due "production bonus" for contract year 2/01/02 through 1/31/03 (in excess of \$155,000.00 gross – final amount to be determined);
- b) Payment of future "production bonus" that would have otherwise been earned by Plaintiff from 5/23/03 through 1/31/04 (final amount to be determined);
- c) Payment of delinquent "production bonuses" owed, based upon billings and collections from 2/01/00 through 1/31/02, that are currently being billed, collected, or adjusted off by HBC as lost revenue (in excess of \$10,000.00 gross – final amount to be determined);
- d) Payment of future lost wages owed from 5/27/03 through 1/31/04 (in excess of \$140,000.00 – final amount to be determined);
- e) A reasonable lease or car payment from 6/01/03 through 1/31/04, (in excess of \$3,500.00 - final amount to be determined);
- f) Reimbursement of Plaintiff's cell phone expenses from 6/01/03 through 1/31/04,

(in excess of \$390.00 - final amount to be determined);

- g) Gas reimbursement from 6/01/03 through 1/31/04, (in excess of \$900.00 - final amount to be determined);
- h) Reimbursement for payment of life insurance policy premium, paid by Plaintiff in June of 2003 (coverage from 7/01/03 through January 31, 2004), or \$419.00;
- i) Payment of health insurance policy, payable at \$545.37 per month from 6/01/03 through 1/31/04; or, in the alternative, reimbursement for said health insurance premium payment, if Plaintiff is required to pay said premium because of Defendants' failure and/or refusal to do so;
- j) Payment of premium for medical malpractice tail coverage, and M-Care coverage for the policy period of 1/01/03 through 5/23/03; or, in the alternative, reimbursement for said medical malpractice premium payment, if Plaintiff is required to pay said premium because of Defendant's failure and/or refusal to do so (\$27,168.00 for tail coverage, and \$3,725.00 for pro-rated M-Care coverage);
- k) Reimbursement of car insurance paid by Plaintiff from 6/01/03 through 1/31/04 (in excess of \$700.00 – final amount to be determined);
- l) Statutory interest on all amounts owed; and
- m) Record court costs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant, in an amount in excess of the Arbitration limits of this Court.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**  
**COUNT IV – ESTOPPEL**

- 80. Plaintiff incorporates by reference herein Paragraphs 1 through 79 of this Complaint, as if same were set forth at length.
- 81. During the course of Plaintiff's dealings with Dr. Kao, as more fully set forth above, Dr. Kao continually represented to Plaintiff that he would pay for Plaintiff's automobile lease and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone

expenses.

82. From 2/01/00 through 5/31//03, Dr. Kao did, in fact, pay for Plaintiff's automobile lease and automobile insurance, and did reimburse Plaintiff for all of his gas expenses and cell phone expenses.
83. Such representations and actions by Dr. Kao, if false, constituted a concealment of material facts by Dr. Kao, and were made by him: a) with the intention of deceiving Plaintiff; b) with the intention that Plaintiff would rely and act upon such representations; and c) with knowledge that such representations were false.
84. Plaintiff did rely upon and act upon the representations of Dr. Kao as a result of such representations and actions.
85. At such time, Plaintiff had no knowledge of the falsity of the representations and actions of Dr. Kao, and no means of ascertaining that fact.
86. Except for Dr. Kao's representations that he would pay for Plaintiff's automobile lease and automobile insurance, and reimburse Plaintiff for his gas expenses and cell phone expenses, and Dr. Kao's actions, since 2/01/00, in actually paying for Plaintiff's automobile lease and automobile insurance, and reimbursing Plaintiff for all of his gas expenses and cell phone expenses, Plaintiff would not have entered into an employment contract with Dr. Kao, and would not have renewed his employment contract on 2/01/01 and 2/01/02.
87. Dr. Kao committed actual fraud, in attempting to deceive Plaintiff by representing that he would pay for Plaintiff's automobile lease and automobile insurance, and would reimburse Plaintiff for his gas expenses and cell phone expenses, when Dr. Kao knew this

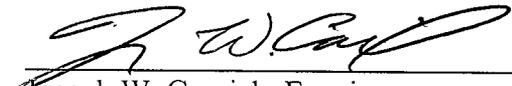
not to be true.

88. In the alternative, Dr. Kao committed constructive fraud, resulting from his gross negligence, or from his admissions, declarations, or conduct, intended to influence the conduct of Plaintiff, and which has misled Plaintiff to act to his prejudice.
89. For the reasons more fully set forth above in Paragraph 5, which is incorporated herein by reference as if same were set forth at length, Dr. Kao may be held liable individually for any activities related to the Plaintiff's employment with the Defendant corporation.
90. Based upon the foregoing, Dr. Kao is estopped to deny that he is obligated to pay for Plaintiff's automobile lease and automobile insurance, and to reimburse Plaintiff for his gas expenses and cell phone expenses, from June 1, 2003, through January 31, 2004, in an amount to be determined by the Court.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant in an amount in excess of the Arbitration limits of this Court.

Respectfully submitted,

**CAVRICH LAW OFFICES, L.L.C.**

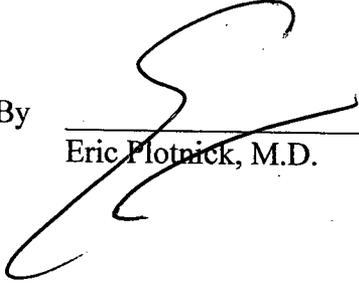
  
\_\_\_\_\_  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

PA ID# 52693  
P.O. Box 464  
Hollidaysburg, PA 16648  
(814) 696-0600

**VERIFICATION**

I, Eric Plotnick, M.D., verify that the statements in this COMPLAINT are true and correct to the best of my knowledge and belief. I understand that false statements made herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

By

  
Eric Plotnick, M.D.

6/12/03

OTOLARYNGOLOGY GROUP  
OF CENTRAL PA477 E. BEAVER AVENUE  
SUITE 150  
STATE COLLEGE, PA. 16801  
814 231-7750Y. H. KAO, M.D., F.A.C.S.  
EWING TIBBELS, M.D.MEDICAL ARTS BUILDING  
807 TURNPIKE AVENUE  
SUITE 230  
CLEARFIELD, PA. 16830  
814 788-5110  
Fax 814 788-5113

LEWIS NEWBERG, M.D.

Eric,

My attorney was also outed town.  
Enclosed please find principles of our  
agreement outlined. I will have Mr. Smith  
put these into a formal contract. If  
you have any concerns or questions please  
call.

J. Hoer

EXHIBIT

"A"

**OTOLARYNGOLOGY GROUP  
OF CENTRAL PA**

477 E. BEAVER AVENUE  
SUITE 180  
STATE COLLEGE, PA. 16801  
814 231-7750

Y. H. KAO, M.D., F.A.C.S.  
EWING TIBBELS, M.D.

MEDICAL ARTS BUILDING  
807 TURNPIKE AVENUE  
SUITE 230  
CLEARFIELD, PA. 16830  
814 768-5110  
Fax 814 768-5113

LEWIS NEWBERG, M.D.

- 1.) Base compensation of \$150,000 per measurement year during the initial term and during the renewed term for the 2<sup>nd</sup> year.
- 2.) Production bonus will be 50% of collections over \$300,000. Production bonus will be paid at the end of the year.
- 3.) ~~Malpractice insurance, reasonable health and disability insurance, fees to maintain licensure and hospital memberships and professional society membership, reasonable CME expenses, pager, auto mileage reimbursement to secondary office or reasonable lease payment and expenses, and moving expenses will be provided.~~
- 4.) Participation in retirement plan is available after first year of employment and will be deducted from production bonus.
- 5.) Dr. Plotnick may choose to have no buy-in for partnership. In return Dr. Kao will be entitled to receive the entire compensation from one subsequent associate who choose to buy into the practice. Partnership is at discretion of Dr. Kao after a 2-year period of service.
- 6.) There will be a restrictive covenant of 25 miles from both offices for a length of 2 years after termination.
- 7.) Dr. Kao may terminate this agreement at any time for cause only. An event for termination for cause shall be:
  - a.) Loss of professional license.
  - b.) Loss of ability to render medical service due to physical impairment.
  - c.) Acts of moral turpitude or fraudulent conduct.
- 8.) Dr. Kao will give Dr. Plotnick 4 months notice prior to end of the year for termination of services. Dr. Plotnick will give 3 months notice before termination of services.
- 9.) Up to 2 weeks of paid vacation and one week of sick time will be provided.
- 10.) Up to 2 weeks of CME time will be provided.
- 11.) Patents titled "Compositions for the Treatment of Sleep Apnea and Methods Related Thereto" File No. 19566-0001 are property of Drs. Kao and Newberg solely.

## EMPLOYMENT CONTRACT FOR MEDICAL SERVICES

MADE this 1st day of February 2000, by and between OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC., Pennsylvania professional corporation with principal office at 807 Turnpike Avenue, Suite 230, Clearfield, Pennsylvania, 16830, (hereinafter "CORPORATION"),

A

N

D

ERIC NEIL PLOTNICK, M.D., residing at 750 Toffrees Ave #221  
State College, PA 16803, (hereinafter "PHYSICIAN").

WHEREAS, the CORPORATION has been organized to provide Otolaryngology services in central Pennsylvania and has offices in Clearfield and in State College; and,

WHEREAS, PHYSICIAN is qualified to practice Otolaryngology; licensed to practice medicine in the State of Pennsylvania, and has applied for privileges at Clearfield Hospital and Centre Community Hospital allowing him to provide services to the general public at those hospitals; and,

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the performance of services during the term of this contract.

NOW THEREFORE, in consideration of the mutual covenants and promises of this contract, the parties, intending to be legally bound, agree:

EXHIBIT

1

"B"

I. APPOINTMENT OF THE MEDICAL STAFF:

A. Prior to rendering services, the PHYSICIAN must be properly evaluated and appointed as a member of the Medical Staff in accordance with the By-Laws of Clearfield Hospital and Centre Community Hospital, and subject to such appointment, shall be entitled to and subject to all rights and duties of an Active Staff member.

B. If the appointment of the PHYSICIAN is suspended or revoked for any reason, the PHYSICIAN shall no longer be permitted to practice and this contract shall terminate. He shall, however, be entitled to exercise the pertinent appeal provision of the By-Laws of Clearfield Hospital and Centre Community Hospital relative to the suspension or revocation of appointment, and if his appeal is successful, be reinstated under this Agreement.

II. SERVICES TO BE PROVIDED:

The PHYSICIAN shall provide medical services in his specialty as directed by the CORPORATION. The CORPORATION may also require the PHYSICIAN to perform such other administrative, hospital or public service functions as may reasonably required.

The CORPORATION shall establish the hours and schedule during which the PHYSICIAN shall provide services. The CORPORATION shall specify the office in which PHYSICIAN shall work as part of his schedule. The CORPORATION shall also establish a rotating call schedule among the physicians employed by it.

PHYSICIAN shall devote his full time and best efforts to the performance of his duties under this Agreement. During the term of this Agreement, the PHYSICIAN shall not at any time or place, either directly or indirectly engage in the practice of medicine or

surgery except pursuant to this Agreement, and all fees or other income attributable to his professional services during the term of this Agreement shall belong to the CORPORATION.

In the event the CORPORATION is dissolved or liquidated while this Agreement is in effect, all files, documents, records whether in written, recorded or other electronic form, relating to each patient shall be delivered to any physician designated in writing by the patient or in the absence of the patient's designation, to the physician employee who had responsibility for the care of the patient.

PHYSICIAN shall participate as a provider in the Medicare, Medicaid and Medical Assistance Programs extended by the United States Government and the State of Pennsylvania, and in such other third party payment programs as made from time to time be requested by the CORPORATION.

PHYSICIAN shall participate in such quality assurance and utilization review programs as may from time to time be requested by the CORPORATION or by third party payors.

### III. FACILITIES AND EXPENSES:

The CORPORATION shall provide at its expense office and clinical facilities, equipment and supplies as it deems necessary for PHYSICIAN to provide services and his other professional duties under this Agreement.

The PHYSICIAN shall have and maintain appropriate cell, paging or telephone equipment and agree to use the same as may be required by the CORPORATION. This equipment and all fees reasonably and actually related to corporate affairs shall be paid by the CORPORATION.

IV. TERM:

This Agreement shall have an initial term of one year commencing on February 1, 2000. This Agreement shall automatically renew for additional one year terms unless either party gives to the other three months prior written notice of their intention not to renew the Agreement.

V. COMPENSATION:

A. Salary.

PHYSICIAN shall receive a base salary of \$150,000.00 per year. PHYSICIAN's salary shall be paid in bi-weekly installments on the first and fifteenth day of each month.

B. Bonus.

In addition to his base salary, PHYSICIAN shall also receive a production bonus for each full year actually completed under this Agreement equal to 50% of the amount by which the PHYSICIAN's gross billings exceed \$300,000.00 in each year of this contract. The CORPORATION or its accountant shall calculate and pay this bonus within 30 days after the end of each year of this Agreement.

VI. RETIREMENT BENEFITS:

The PHYSICIAN shall have the option to participate in such retirement plans as the CORPORATION may from time to time adopt. However, PHYSICIAN shall not be eligible to participate in the retirement plan until he has completed his first year of employment. PHYSICIAN agrees that if he elects to participate in the CORPORATION's Retirement Plan all contributions made by the CORPORATION on behalf of the PHYSICIAN to the Retirement Plan shall be deducted from the PHYSICIAN's annual bonus for that particular year as calculated under paragraph IV.B. above.

VII. VACATION:

After completion of his initial 12 months of employment, the PHYSICIAN shall be entitled to two weeks of paid vacation. The vacation shall be taken at such times as may be approved by the CORPORATION and must be scheduled at least two weeks in advance.

The PHYSICIAN shall also be entitled to all paid holidays as approved by the CORPORATION.

PHYSICIAN shall also have up to five days of paid sick-leave per year.

Unused days of vacation and sick-leave may not be carried over from one year to another.

VIII. OTHER BENEFITS:

The CORPORATION shall provide to PHYSICIAN and his dependents health and disability insurance as the CORPORATION may from time to time, at its exclusive option and in its sole discretion, provide to its other employees.

The CORPORATION shall also pay or reimburse PHYSICIAN for all fees to maintain his professional license, hospital memberships and other professional society memberships.

VII. RECORDS:

The PHYSICIAN agrees to maintain current, complete and accurate records as required by applicable regulations of federal, state and local agencies, third party payors or as shall be required by the Hospitals or CORPORATION from time to time.

IX. ETHICS AND STANDARDS:

PHYSICIAN agrees to abide by all applicable canons of professional ethics, regulations governing the administration of the Hospitals where he has staff privileges, rules and regulations

promulgated by the United States Government and the Commonwealth of Pennsylvania for the administration of Medicare and Medicaid, Medical Assistance or similar government programs, all rules and regulations promulgated by other third party payors and all rules, regulations and policies as may from time to time be adopted by the CORPORATION.

X. COVENANT NOT TO COMPETE:

For a period of two years after this Agreement terminates, the PHYSICIAN shall not, without the prior written consent of the CORPORATION, for himself or on behalf of any other person, partnership, association, corporation or organization, directly or indirectly, engage in the practice of Otolaryngology within a 25-mile radius of Clearfield Hospital and Centre Community Hospital. During the term of this Agreement and for a period of two years after termination of this Agreement, the PHYSICIAN shall not, directly or indirectly, solicit for employment or employ any employee of the CORPORATION for any reason whether the employee is employed on the date of this Agreement or thereafter. The PHYSICIAN acknowledges that each restriction set forth in this section is a material condition of an inducement to the CORPORATION to employ the PHYSICIAN and is reasonable in its duration and scope. The PHYSICIAN agrees that upon breach or violation by him of the foregoing provisions, the CORPORATION, in addition to all other remedies, shall be entitled as a matter of right to injunctive relief in any court of competent jurisdiction to enjoin and restrain the PHYSICIAN and each and every other person, partnership, association, corporation, or organization concerned therein, from the continuance of any action constituting a breach

thereof. If the period of time or area herein specified shall be adjudged unreasonable in any court proceeding, then the period of time shall be reduced by the number of months or the area reduced as is deemed reasonable so that his covenant may be enforced during such period of time as adjudged to be reasonable.

XI. CONFIDENTIALITY:

PHYSICIAN agrees to maintain the patient's records, billing, finances, business affairs, administrative practices and all other matters regarding the CORPORATION in complete confidence. PHYSICIAN promises that he shall not discuss or reveal either verbally, in writing or in other recorded form any such information without the prior written authorization of the CORPORATION's President. PHYSICIAN further agrees that all records, reports, policy materials or other documents containing such information or shall be and remain the exclusive property of the CORPORATION, and PHYSICIAN shall not be entitled to retain copies for himself without the prior written authorization from the CORPORATION's President. Upon termination of this Agreement, the PHYSICIAN agrees to immediately return all such materials to the CORPORATION. PHYSICIAN agrees that the covenant contained in this paragraph is a material condition of and inducement to the CORPORATION for entering this Agreement with him. PHYSICIAN agrees that the CORPORATION may institute an action in equity and/or at law in order to prevent or remedy a breach of this covenant.

XII. EMPLOYEE STATUS:

The PHYSICIAN shall be considered an employee of the CORPORATION so long as he abides by the terms and conditions of this Agreement and maintains at all times the proper licensing with

the Commonwealth of Pennsylvania and Board Certification if he is or becomes Board Certified during the terms of this Agreement.

**XIII. CONTINUING MEDICAL EDUCATION:**

PHYSICIAN will also receive his regular salary for participation in a maximum of 10 days Continuing Medical Education per year. The CORPORATION shall pay or reimburse the PHYSICIAN for all registration fees, travel and lodging and other expenses which he reasonably and actually incurs to participate in Continuing Medical Education programs.

PHYSICIAN must obtain the CORPORATION's prior approval of specific Continuing Medical Education programs to be entitled under this paragraph.

PHYSICIAN's Continuing Medical Education shall be taken at times approved by the CORPORATION.

Unused days of Continuing Medical Education may not be carried over from one year to another.

**XIV. PROFESSIONAL LIABILITY INSURANCE:**

The CORPORATION shall at its expense, obtain and maintain in force during the time of this Agreement, Professional Liability Insurance covering the professional services rendered by the PHYSICIAN hereunder. Limits of this insurance shall not be less than those required by the Pennsylvania Health Care Services Malpractice Act or any successor statute and shall also provide pre-funded "tail" coverage.

**XV. PATENTS:**

PHYSICIAN acknowledges that he shall acquire no interest in a patent identified as "Compositions for the Treatment of Sleep Apnea and Methods Related Thereto," File No. 19566-0001 which PHYSICIAN

acknowledges to be the exclusive property of Dr. Kao and Dr. Newberg.

XVI. TERMINATION:

This Agreement shall be terminated on the occurrence of any of the following events:

1. PHYSICIAN's loss of license to render the professional services,
2. Suspension or termination of PHYSICIAN's Federal Drug Enforcement Administration Number,
3. PHYSICIAN's ceasing to qualify for professional liability insurance at regular rates from CORPORATION's regular insurance carrier,
4. PHYSICIAN's becoming a "sanctioned individual," as that term is used in 42 U.S.C. 1320a-7, regarding individuals penalized for Medicare or Medicaid fraud or abuse,
5. The execution of a written agreement between CORPORATION and PHYSICIAN to terminate this Agreement,
6. PHYSICIAN's death,
7. PHYSICIAN's failure or refusal to perform the duties of his employment faithfully and diligently and to comply with the provisions of this Agreement,
8. PHYSICIAN's failure or refusal to comply with reasonable policies, standards, and regulations that CORPORATION may establish from time to time,
9. PHYSICIAN's failure to become Board-certified in Otolaryngology no later than 2 years, or to maintain such certification,
10. PHYSICIAN's failure to maintain medical staff membership and clinical privileges at Clearfield Hospital and Centre Community Hospital by 6 mo or the suspension, reduction or termination of any such medical staff membership or clinical privileges,
11. PHYSICIAN's inability to fully and competently perform his duties hereunder, for a period of 30 continuous days due to physical, mental or psychology illness, injury or condition.

On termination of this Agreement as set forth in the above paragraphs, PHYSICIAN shall be entitled to receive only salary accrued but unpaid as of the date of termination and shall not be entitled to additional for unused vacation, sick or Continuing Medical Education days.

**XVII. NOTICES:**

All notices or communications required by or bearing upon this Agreement or between the parties shall be in writing and sent by First Class Mail to the parties as follows unless otherwise specified above:

**CORPORATION:**  
OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.  
807 Turnpike Avenue  
Suite 230  
Clearfield, PA 16830

**PHYSICIAN:**  
Eric Neil Plotnick, M.D.  
750 Telford Ave #221  
State College, PA 16803

**XVIII. GENERAL PROVISIONS:**

- a) This Agreement shall be governed by the laws of Pennsylvania;
- b) The parties acknowledge that this is a personal service contract, and therefore, PHYSICIAN cannot assign or delegate his rights and duties hereunder, nor shall PHYSICIAN's rights or duties hereunder extend to his heirs, executors, administrators, guardians or representatives; Any attempt to assign or delegate rights and duties hereunder by PHYSICIAN shall immediately terminate this Agreement;
- c) In construing or interpreting this Agreement, "Hospital," "CORPORATION" and "PHYSICIAN" shall mean, wherever applicable, the singular or plural, the masculine or the feminine, individual, individuals, partnership or corporation, as the case may be;
- d) This Agreement represents the sole agreement of the parties and supersedes all prior communications, representations and negotiations, whether oral or written;
- e) This Agreement can only be modified or amended by the prior written consent of both parties hereto;

f) Jurisdiction and venue shall rest in the Court of Common Pleas of Clearfield County, Pennsylvania, for all suits, claims and causes of action whatsoever.

IN WITNESS WHEREOF, said Corporation has caused its corporate seal to be hereto affixed and these presents signed by its President the first day written above.

ATTEST:

CORPORATION:

\_\_\_\_\_

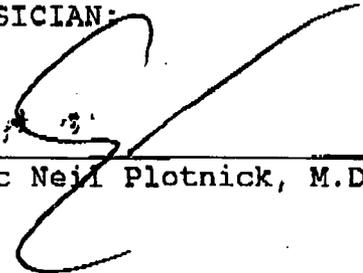
  
\_\_\_\_\_  
President

Corporate Seal:

ATTEST:

PHYSICIAN:

\_\_\_\_\_

  
\_\_\_\_\_  
Eric Neil Plotnick, M.D.

**EXTENSION OF EMPLOYMENT CONTRACT  
FOR MEDICAL SERVICES**

MADE this 1st day of February, 2002, between OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC., Pennsylvania professional corporation with principal office at 807 Turnpike Avenue, Suite 230, Clearfield, Pennsylvania, 16830 (hereinafter "CORPORATION"),

A

N

D

ERIC NEIL PLOTNICK, M.D., residing at ~~2886 Mary Ellen Lane~~, State College, Pennsylvania, 16803, (hereinafter "PHYSICIAN").

WHEREAS, the parties entered an Employment Contract For Medical Services dated February 1, 2000, which is referred to and incorporated herein by reference; and,

WHEREAS, the parties desire to renew and extend that Contract for an additional term of two years.

**NOW WITNESSETH**

In consideration of the mutual covenants and promises of this contract, the parties, intending to be legally bound, agree:

1. **EXTENSION:** The parties agree that their Employment Contract For Medical Services dated February 1, 2000, shall be extended for an additional term of two years commencing on February 1, 2002 and ending on January 31, 2004.

2. Compensation: Physician shall receive a base salary of \$210,000.00 per year. Physician salary shall be paid in bi monthly installments on the first & fifteenth day of each month. The production bonus formula shall remain the same using the same a month of \$300,000.00.

EXHIBIT

"C"

*[Handwritten signature]*

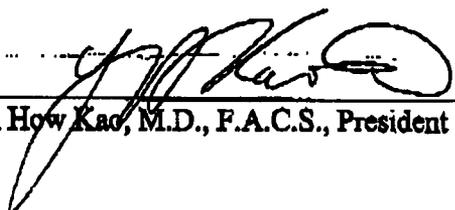
2. **REAFFIRMATION OF OTHER TERMS AND PROVISIONS:** The parties otherwise ratify and reaffirm all other terms and conditions of their original contract dated February 1, 2000.

In witness whereof, we have hereto set our hands.

ATTEST:

OTOLARYNGOLOGY GROUP OF  
CENTRAL PA, INC.

\_\_\_\_\_

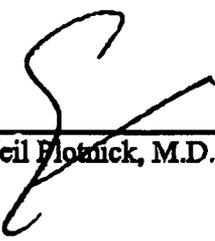
  
\_\_\_\_\_  
Yi How Kao, M.D., F.A.C.S., President

Corporate Seal

ATTEST:

PHYSICIAN:

\_\_\_\_\_

  
\_\_\_\_\_  
Eric Neil Flotnick, M.D.

Otolaryngology Group Of Central Pa  
Y.H.Kao, M.D., F.A.C.S.  
Eric Plotnick, M.D.  
Ewing Tibbels, M.D.

Dear Dr. Plotnick,

Recently three different events have brought the issue of patient care and safety to the forefront. All the patients could have developed complications and suffered significant morbidity, if not mortality, unless they were properly treated. Unfortunately I had to be consulted by emergency room physicians in two cases and an internist in another. The point is that these patients could have been kept under closer observation by the Otolaryngology Group and the emergent intervention obviated.

I have previously requested that you sign out any problem patients on at least three occasions. Unfortunately this request has been disregarded.

Because of these events, and purely for patient safety reasons, I am compelled to terminate your position in the Otolaryngology Group four months from the receipt of this letter as according to contract.

Sincerely,

*Y. H. Kao*  
Yi H. Kao M.D.

*Jan 29. 2003*

EXHIBIT

"0"

Yi How Kao, MD  
Otolaryngology Group  
of Central Pennsylvania, Inc.  
807 Turnpike Ave.  
Suite 230  
Clearfield, PA 16830

Eric Plotnick, MD  
2086 Mary Ellen Lane  
State College, PA 16803

January 31, 2003

Dear Dr. Kao,

I received your letter of January 29, 2003 proposing termination of my employment with great surprise. Your assertions are unequivocally without merit. To date, I am not aware of any existing or pending patient safety or quality of care issues within the practice that fit the criteria you describe. No cases have been presented or are pending before any hospital quality care committees for review. None of my patients have been at risk for impending harm; none have suffered harm.

I see no provision in the contract that provides for termination based on reasons you outline. Please cite for me the contract language that does so.

I am most willing to discuss with you any specific cases you have in mind, which appropriately should have been discussed in a timely fashion with proper supporting documentation.

You have no cause for termination of the contract.

Sincerely,

Eric Plotnick, MD

EXHIBIT

"E"

March 17. 03

Dr Plotnick,

I am deducting on expenses against your bonus as follows:

Lease Payments	16399.88	
Mileage, excess	2551.20	
Deductible, 2 accidents	1000.00	
Insurance	<u>3156.00</u>	( $\frac{1}{2}$ of \$1052 semi annual premium)
	24,107.08	

Gsa expense and other expenses exceeding "reasonable" cell phone & pager expenses are being calculated.

There is no mention of auto expenses in the contract.

*Y. H. Kao*  
Y. H. Kao MD

EXHIBIT

"F"

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

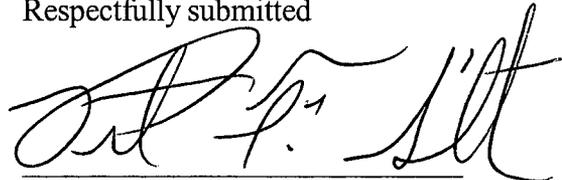
**P R A E C I P E**

To: William A. Shaw, Prothonotary of Clearfield County

Dear Sir :

Please enter my appearance as counsel for the Defendants in the above captioned matter.

Respectfully submitted



Peter F. Smith, Esquire

Dated: July 17, 2003

**FILED**

JUL 17 2003

William A. Shaw  
Prothonotary

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

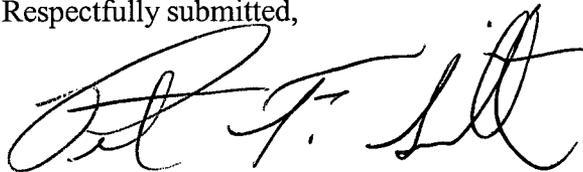
ERIC PLOTNICK, M.D., :  
Plaintiff :  
 :  
vs. : No. 03-868-CD  
 :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D., :  
Defendants :

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Defendants in the above-captioned matter, certify that I have filed an original **PRAECIPE TO ENTER APPEARANCE** with the Clearfield County Prothonotary. I also certify that I sent by U. S. First Class Mail a copy of the above-referenced document to the Attorney for the Plaintiff at the following address:

Joseph W. Cavrich, Esquire  
Cavrich Law Offices, L.L.C.  
P. O. Box 464  
Hollidaysburg, PA 16648

Respectfully submitted,



Peter F. Smith  
Attorney for Defendants

Date: July 17, 2003

**FILED**

JUL 17 2003

William A. Shaw  
Prothonotary

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

PLOTNICK, ERIC, M.D.

Sheriff Docket # 14196

VS.

03-868-CD

OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA INC. & YI HO

COMPLAINT

**SHERIFF RETURNS**

NOW JUNE 26, 2003 AT 10:25 AM SERVED THE WITHIN COMPLAINT ON OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA INC., DEFENDANT AT EMPLOYMENT, 807 TURNPIKE AVE, SUITE 230, CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO PAM ROWLES, LPN IN CHARGE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: NEVLING/MCCLEARY

NOW JUNE 23, 2003, DENNY NAU, SHERIFF OF CENTRE COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON YI HOW KAO, M.D, DEFENDANT.

NOW JUNE 30, 2003 SERVED THE WITHIN COMPLAINT ON YI HOW KAO, M.D., DEFENDANT BY DEPUTIZING THE SHERIFF OF CENTRE COUNTY. THE RETURN OF SHERIFF NAU IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

**Return Costs**

Cost	Description
38.50	SHERIFF HAWKINS PAID BY: ATTY CK# 209
20.00	SURCHARGE PAID BY: ATTY CK# 210
32.50	CENTRE CO. SHFF. PAID BY: ATTY

Sworn to Before Me This

30<sup>th</sup> Day Of July 2003

*William A. Shaw*

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

So Answers,

*Chester A. Hawkins*  
*by Marilyn Hamr*

Chester A. Hawkins  
Sheriff

**FILED**

01/3:00 PM  
JUL 30 2003

William A. Shaw  
Prothonotary/Clerk of Courts

*Wes*

# SHERIFF'S OFFICE CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

**SHERIFF SERVICE**  
**PROCESS RECEIPT, AND AFFIDAVIT OF RETURN**

INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. please type or print legibly. Do Not detach any copies.

1. Plaintiff(s) Eric Plotnick MD 2. Case Number 03-868-CD

3. Defendant(s) Yi How Kao, M.D 4. Type of Writ or Complaint: Complaint

SERVE AT Yi How Kao, MD  
5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold.  
6. Address (Street or RFD, Apartment No., City, Borg, Twp., State and Zip Code)  
325 Carogin Dr State College PA 16801

7. Indicate unusual service:  Reg Mail  Certified Mail  Deputize  Post  Other

Now,          20  . I SHERIFF OF CENTRE COUNTY, PA., do hereby deputize the Sheriff of          County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff.          Sheriff of Centre County

8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE

**NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN** - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.

9. Print/Type Name and Address of Attorney/Originator  
10. Telephone Number  
11. Date  
12. Signature

**SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE**

13. I acknowledge receipt of the writ or complaint as indicated above. } SIGNATURE of Authorized CCSD Deputy of Clerk and Title  
14. Date Filed  
15. Expiration/Hearing Date

**TO BE COMPLETED BY SHERIFF**

16. Served and made known to Dr Kao, on the 30 day of June, 2003, at 3:37 o'clock, 7 m., at 477 E Beaver Ave. State College PA 16801, County of Centre Commonwealth of Pennsylvania, in the manner described below:

- Defendant(s) personally served.
- Adult family member with whom said Defendant(s) resides(s). Relationship is \_\_\_\_\_
- Adult in charge of Defendant's residence.
- Manager/Clerk of place of lodging in which Defendant(s) resides(s).
- Agent or person in charge of Defendant's office or usual place of business.
- \_\_\_\_\_ and officer of said Defendant company.
- Other \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

Defendant not found because:  
 Moved  Unknown  No Answer  Vacant  Other \_\_\_\_\_

Remarks:

Advance Costs	Docket	Service	Sur Charge	Affidavit	Mileage	Postage	Misc.	Total Costs	Costs Due or Refund
75.00	9.00	9.00	1.00	2.50	10.00	2.00	1.00	32.50	42.50

17. AFFIRMED and subscribed to before me this 10 So Answer.

20. day of July 2003  
21. Signature of Dep. Sheriff          19. Date 6/30/03

23. Corinne Peters  
21. Signature of Sheriff          22. Date         

Notarial Seal  
Corinne Peters, Notary Public  
Bellefonte Boro, Centre County  
My Commission Expires Sept. 5, 2005  
SHERIFF OF CENTRE COUNTY  
Amount Pd. \_\_\_\_\_ Page \_\_\_\_\_

24. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE  
25. Date Received



# 1043  
OFFICE (814) 765-2641 EXT. 5986  
AFTER 4:00 P.M. (814) 765-1533  
FAX (814) 765-5915

# Sheriff's Office Clearfield County

CHESTER A. HAWKINS  
SHERIFF

COURTHOUSE  
1 NORTH SECOND STREET, SUITE 116  
CLEARFIELD, PENNSYLVANIA 16830

ROBERT SNYDER  
CHIEF DEPUTY

CYNTHIA AUGHENBAUGH  
OFFICE MANAGER

MARILYN HAMM  
DEPT. CLERK

PETER F. SMITH  
SOLICITOR

## DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

Pg. 14196

ERIC PLOTNICK M.D.

VS

OTOLARYNGOLOGY GROUP al

TERM & NO. 03-868-CD

DOCUMENT TO BE SERVED:

COMPLAINT

SERVE BY: 07/13/2003

**MAKE REFUND PAYABLE TO:** CAVRICH LAW OFFICES

**SERVE:** YI HOW KAO, M.D.

**ADDRESS:** 325 CAROGIN DRIVE, STATE COLLEGE, PA.

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF OF CENTRE COUNTY, Pennsylvania to execute this writ. This Deputation being made at the request and risk of the Plaintiff this 23rd Day of JUNE 2003

Respectfully,

CHESTER A. HAWKINS,  
SHERIFF OF CLEARFIELD COUNTY

Pg 2394-AA  
Pd 7/1/03

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

TYPE OF CASE: **ASSUMPSIT**

TYPE OF PLEADING:  
**Preliminary Objections**

Filed on Behalf of:  
**Defendants**

Counsel of Record for this Party:  
**Peter F. Smith**  
Supreme Court ID #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel of Record for Plaintiff:  
**Joseph W. Cavrich, Esquire**  
PA I.D. #52693  
CAVRICH LAW OFFICES, L.L.C.  
P.O. Box 464  
Hollidaysburg, PA 16648  
(814) 696-0600

**FILED**

**AUG 05 2003**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,  
Plaintiff

No. 03-868-CD

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

**PRELIMINARY OBJECTIONS**

COMES NOW, The Defendants, by their attorney, Peter F. Smith, who submits the following Preliminary Objections to the complaint:

1. Paragraph five of the complaint is an apparent attempt to pierce the corporate veil and assert liability against Dr. Yi How Kao personally.
2. Paragraph five is legally insufficient to accomplish this purpose and should be stricken for the following reasons:
  - a. The incorporation of a professional practice is authorized by Pennsylvania's Corporate Code. 15 PA.C.S.A. §§2901 et seq.
  - b. Contrary to the implications of Plaintiff's averments, the incorporation of a business to limit the incorporator's personal liability and shield personal assets from that liability is a completely legitimate and lawful purpose.
  - c. Paragraph five alleges that Plaintiff also incorporated for the purposes of "Under taking illegal activities, or abusing his availment of the corporate fiction..." but fails to state specific facts in support of those allegations.
3. Paragraph five should also be stricken because it contains impertinent and scandalous matter to the extent it attributes an unlawful purpose or functions to Dr. Kao and his professional corporation without alleging the specific facts and support thereof.

4. Counts III and IV of the complaint are against Dr. Kao personally. These counts are contingent upon Plaintiff's ability to pierce the corporate veil. Since Plaintiff's allegations in paragraph five are insufficient, Counts III and IV of the complaint must also be stricken.

5. Count II of the complaint is entitled "Estoppel."

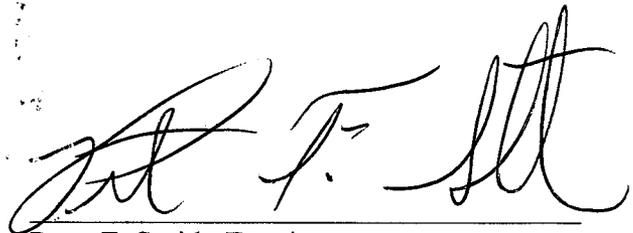
6. Estoppel is a theory of recovery not an independent cause of action. Therefore Count II is legally insufficient and should be stricken.

7. Paragraph 65 of Count II alleges that Dr. Kao "Committed actual fraud." The alternative paragraph 66 alleges that Dr. Kao "Committed constructive fraud, resulting from Dr. Kao's gross negligence..."

8. These allegations should be stricken because they are scandalous and impertinent. Plaintiff alleges a breach of contract. The complaint fails to set forth specific facts which would support a cause of action under fraud or "Gross negligence."

WHEREFORE Defendant prays that paragraph five, Count II, Count III and Count IV of the complaint be stricken.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter F. Smith", written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Defendant

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

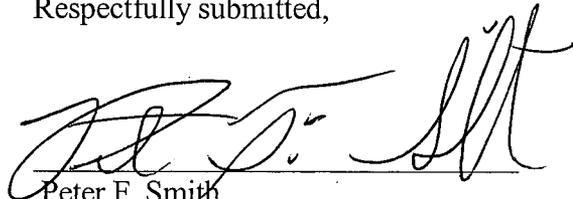
No. 03-868-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendant in the above-captioned matter, certify that I sent a true and correct copy of a **PRELIMINARY OBJECTIONS** by U.S. First Class Mail, Postage Prepaid on August 5, 2003 to the following:

Joseph W. Cavrich, Esquire  
Cavrich Law Offices, L.L.C.  
P. O. Box 464  
Hollidaysburg, PA 16648

Respectfully submitted,



Peter F. Smith  
Attorney for Defendants

Date: August 5, 2003

**FILED**

AUG 05 2003

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**PRAECIPE FOR  
WITHDRAWAL/ENTRY OF  
APPEARANCE**

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrigh, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

**FILED**

**AUG 08 2003**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

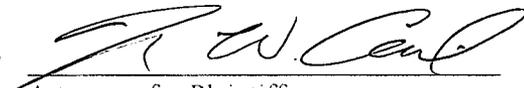
PRAECIPE FOR WITHDRAWAL/ENTRY OF APPEARANCE

TO: PROTHONOTARY

Kindly enter our Withdrawal as counsel of record for Plaintiff, Eric Plotnick, M.D., in the above-captioned action.

CAVRICH LAW OFFICES, L.L.C.

By



Attorneys for Plaintiffs

P.O. Box 464

Hollidaysburg, PA 16648

(814) 696-0600

Kindly enter my appearance as counsel of record for Plaintiff, Eric Plotnick, M.D., in the above-captioned action.

URBAN & CAVRICH, P.C.

By



Attorneys for Plaintiffs

Joseph W. Cavrich, Esquire

PA I.D. #52693

P.O. Box 508

503 Allegheny Street

Hollidaysburg, PA 16648

(814) 695-7898

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**AMENDED COMPLAINT**

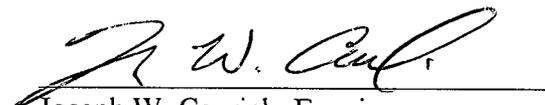
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN AMENDED COMPLAINT  
WAS SERVED UPON ALL COUNSEL  
OF RECORD THIS 20<sup>th</sup> DAY OF  
AUGUST, 2003.

  
\_\_\_\_\_  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

AUG 21 2003  
m/10:30/noc  
William A. Shaw  
Prothonotary/Clerk of Courts

*EJL*

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE TO DEFEND**

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 AMENDED 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 AMENDED COMPLAINT or for any other claim or relief requested by the Plaintiffs. You may lose 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.**

Clearfield County Court Administrator  
228 Courthouse  
230 E. Market Street  
Clearfield, PA 16830  
(814) 765-2641

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**AMENDED COMPLAINT**

NOW COMES Plaintiff, Eric Plotnick, M.D., by his undersigned counsel, and files the following Amended Complaint in the above case, in support thereof averring as follows:

1. Plaintiff, Eric Plotnick, M.D., is an adult individual, currently residing at 1141 Manning Farms Court, Dunwoody, Georgia 30338.
2. Defendant, Otolaryngology Group of Central Pennsylvania, Inc., is a Pennsylvania Corporation having corporate offices located at 807 Turnpike Avenue, Suite 230, Clearfield, Clearfield County, Pennsylvania 16830.
3. Defendant, Yi How Kao, M.D. (hereinafter "Dr. Kao"), is an adult individual, currently residing at 325 Carogin Drive, State College, Centre County, Pennsylvania 16803.
4. In or about January of 2000, Plaintiff and Dr. Kao, who at the time Plaintiff believes was the Chief Executive Officer of the Otolaryngology Group of Central Pennsylvania, Inc., had discussions regarding Defendants' interest in employing Plaintiff on a full-time basis to provide medical services to the Defendants' patients.

5. Based upon knowledge, information, and belief, Plaintiff avers that the Defendant Corporation, Otolaryngology Group of Central Pennsylvania, Inc., existed as a shell corporation, created by Defendant, Dr. Kao, for the sole purpose of shielding Dr. Kao's personal assets from any judgments that may be entered against him in relation to the employment contract executed by Plaintiff, undertaking illegal activities, or abusing his availment of the corporate fiction and immunity protection that it carries. Specifically, Plaintiff avers that Dr. Kao failed to adhere to proper corporate formalities, as required under Pennsylvania law, in the operation of the corporate entity known as the Otolaryngology Group of Central Pennsylvania, Inc., in the following particulars:
- a) Otolaryngology Group of Central, Pennsylvania, Inc.'s corporate expenses give the appearance of being unrelated to the business of the corporation;
  - b) Otolaryngology Group of Central, Pennsylvania, Inc. has no regular corporate meetings nor kept corporate meeting minutes;
  - c) Otolaryngology Group of Central, Pennsylvania, Inc. has failed to abide by its by-laws, if enacted;
  - d) There has been and continues to be a substantial intermingling of the affairs of Dr. Kao and the Otolaryngology Group of Central, Pennsylvania, Inc.; and
  - e) Dr. Kao has used his control of the Otolaryngology Group of Central, Pennsylvania, Inc., and the assets of the Otolaryngology Group of Central, Pennsylvania, Inc. to further his personal interests.
6. Based upon the allegations set forth in the preceding Paragraph, Plaintiff believes and therefore avers that Dr. Kao may be held liable individually for any activities related to the Plaintiff's employment with the Defendant corporation.
7. Based upon the discussions between Plaintiff and Dr. Kao, Plaintiff and Defendants arrived at mutually acceptable "principles of agreement" with respect to the terms and

conditions of Plaintiff's employment.

8. Dr. Kao subsequently documented Plaintiff's and Defendants' "principles of agreement" in a letter to Plaintiff, a copy of which has been attached hereto as Exhibit "A", and is incorporate herein by reference as if same were set forth at length.
9. Specifically, Plaintiff's and Defendants' "principles of agreement" included, but was not limited to, the following:
  - a) Plaintiff was to be paid a base compensation of \$150,000.00 per year during the initial contract term and during the renewed term for the second year;
  - b) Plaintiff was to be paid a "production bonus" of 50% of collections over \$300,000.00, to be paid at the end of the year;
  - c) Defendants would pay for Plaintiff's malpractice insurance, reasonable health and disability insurance, fees to maintain licensure and hospital memberships and professional society memberships, reasonable continuing medical education expenses, pager, auto mileage reimbursement for Plaintiff's travel to Defendants' secondary office in Clearfield or a reasonable lease payment and expenses, and moving expenses;
  - d) Defendants could terminate Plaintiff's employment only for cause, defined as: 1) Plaintiff's loss of professional license; 2) Plaintiff's loss of ability to render medical service due to physical impairment; and 3) Plaintiff's acts of moral turpitude or fraudulent conduct;
  - e) Defendants were required to give Plaintiff four months notice prior to the end of the contract year for termination of services.
10. On or about February 1, 2000, Plaintiff and Defendants executed an "Employment Contract for Medical Services" (hereinafter "the contract"), a copy of which is attached hereto as Exhibit "B", and incorporated herein by reference as if same were set forth at length.
11. Under the terms of the contract, Plaintiff's initial term of employment was one year, commencing on February 1, 2000, with the contract automatically renewing for additional

one year terms unless either party gave the other three months prior written notice of their intention not to renew the contract. Plaintiff actually began his employment with Defendants in mid-January, 2000.

12. The contract further included, but was not limited to, the following provisions:
  - a) Plaintiff was to receive a base salary of \$150,000.00 per year;
  - b) Plaintiff was to be paid a "production bonus" of 50% of Plaintiff's *gross billings* (emphasis added) over \$300,000.00, to be paid within 30 days of the end of the year;
  - c) Defendants would pay for Plaintiff to maintain appropriate cell, paging, or telephone equipment;
  - d) Defendants would pay for Plaintiff's malpractice insurance (including pre-funded tail coverage), reasonable health and disability insurance, fees to maintain licensure and hospital memberships and professional society memberships, and reasonable continuing medical education expenses;
  - e) Defendants could terminate Plaintiff's employment *only for cause* (emphasis added), defined as: 1) Plaintiff's loss of professional license; 2) suspension or termination of Plaintiff's Federal Drug Enforcement Administration Number; 3) Plaintiff's ceasing to qualify for professional liability insurance at regular rates from Defendants' insurance carrier; 4) Plaintiff becoming a "sanctioned individual", as that term is used in 42 U.S.C. 1320a-7, regarding individuals penalized for Medicare or Medicaid fraud or abuse; 5) the execution of a written agreement between Plaintiff and Defendants to terminate the contract; 6) Plaintiff's death; 7) Plaintiff's failure or refusal to perform the duties of his employment faithfully and diligently and to comply with the provisions of the contract; 8) Plaintiff's failure or refusal to comply with reasonable policies, standards, and regulations that Defendants may establish from time to time; 9) Plaintiff's failure to become board-certified; 10) Plaintiff's failure to maintain medical staff membership and clinical privileges at Clearfield Hospital and Centre Community Hospital, or the suspension, reduction, or termination of any such medical staff membership or clinical privileges; or 11) Plaintiff's inability to fully and competently perform his duties for a period of 30 continuous days due to physical, mental, or psychology illness, injury, or condition.
  
13. According to Section XII of the contract, entitled "Employee Status", Plaintiff was to be considered an employee of the Defendants *so long as he abided by the terms and*

*conditions of the contract, and maintained at all times the proper licensing with the Commonwealth of Pennsylvania, and board certification* (emphasis added).

14. The contract executed by Plaintiff and Defendants did not contain a specific provision regarding auto mileage reimbursement for Plaintiff's travel to Defendants' office in Clearfield or a reasonable lease payment and expenses, as stated in the "principles of agreement" between Plaintiff and Defendant (Exhibit "A"). However, Dr. Kao verbally assured Plaintiff that Defendants would pay Plaintiff's lease payments and related expenses (including gas mileage) as a condition precedent of Plaintiff and Defendants execution of the contract.
15. Dr. Kao's verbal assurance to Plaintiff that Defendants would pay Plaintiff's lease payments and related expenses induced Plaintiff to execute the contract with Defendants, and Plaintiff relied to his detriment by entering into an employment agreement with Defendants based, in part, upon Dr. Kao's assurance.
16. Beginning on February 15, 2000, and continuing on a monthly basis through January 21, 2003, Defendants leased (*in Defendants' name*) a 2000 Toyota RAV4 for Plaintiff's benefit from Toyota Financial Services, making monthly lease payments of \$443.24 directly to Toyota Financial Services. Defendants also made all automobile insurance payments for Plaintiff's vehicle, and reimbursed Plaintiff for all of his gas mileage. At no point in time from February 15, 2000, through January 21, 2003, did Defendants advise Plaintiff that Defendants expected to be reimbursed by Plaintiff for the lease payments, automobile insurance payments, or reimbursement of gas mileage, paid by Defendants on Plaintiff's behalf.

17. The contract executed by Plaintiff and Defendants did not contain a specific provision regarding Defendants' reimbursement of Plaintiff's moving expenses, as stated in the "principles of agreement" between Plaintiff and Defendants (Exhibit "A"). However, Defendants, in fact, reimbursed Plaintiff for his moving expenses, further evidence of Defendants' intention to incorporate certain provisions of the "principles of agreement" (Exhibit "A") into the contract between Plaintiff and Defendants.
18. The original one-year contract term expired on January 31, 2001. By its terms, the contract automatically renewed for a period of one year. Plaintiff and Defendants did not execute any written modifications to the contract during the second year of Plaintiff's employment.
19. On February 1, 2002, Plaintiff and Defendants executed a written two-year extension of the original contract (through January 31, 2004). The only modification to the original contract was that the Plaintiff's base salary was increased to \$210,000.00 per year, to be paid in bi-monthly installments. A copy of the contract extension is attached hereto as Exhibit "C", and is incorporate herein by reference as if same were set forth at length.
20. The "production bonus" to be paid to Plaintiff, as specified in the original contract, was not altered by the written extension executed on February 1, 2002. Thus, Plaintiff was to continue to be paid a "production bonus" of 50% of Plaintiff's *gross billings* (emphasis added) over \$300,000.00, to be paid within 30 days of the end of the year.
21. Beginning in October of 2001, Plaintiff began to notify Dr. Kao of serious internal billing problems within Defendants' billing department. Specifically, Plaintiff expressed concern that Defendants' billing system lacked the capability to report and track accounts that

were 30, 60, 90, and 120 days old, and causing Plaintiff concern as to the status of his accounts receivable.

22. Plaintiff further advised Dr. Kao that a substantial amount of Plaintiff's gross billings were being lost as a result of: a) the negligent and/or substandard billing practices of Defendant; b) Defendants' failure and/or refusal to follow generally accepted accounting principles; and c) Defendants' failure and/or refusal to follow IRS reporting guidelines.
23. Specifically, Plaintiff advised Dr. Kao that Defendants had delinquent billings for Plaintiff's patients in excess of \$1,000,000.00, as a result of Plaintiff's accounts never being billed by Defendants, Plaintiff's bills being rejected by third party payors and never re-submitted by Defendants, or bills being sent out (and in some cases, collected) in Dr. Kao's name instead of Plaintiff's name.
24. Plaintiff regularly and continuously expressed his concern and frustration regarding Defendants' billing practices (which has continued to have a tremendous negative impact on the production bonuses owed by Defendants to Plaintiff under the terms of the contract), through the present date.
25. Defendants have conceded that they have not been able to pay Plaintiff the entire amount of the production bonuses owed him as a result of the Defendants' negligent billing practices and/or substandard billing system, and Defendants have, in fact, hired an independent third-party billing company, Healthcare Billing Consultants, Inc. (hereinafter "HBC"), to attempt to collect as much of Plaintiff's past due gross billings as possible.
26. Despite the best efforts of HBC, however, Defendants have conceded that they will not be able to collect all of the Plaintiff's past due gross billings, causing Plaintiff to suffer

immediate and irreparable financial hardship, and making Defendants non-compliant with “production bonus” provision of Plaintiff’s employment contract.

27. However, in order to partially compensate Plaintiff for the past due production bonuses owed, Defendants agreed in October of 2002 to pay past due production bonuses to Plaintiff for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002, based upon (but not limited to) revenue for office visits, surgeries, consultations (inpatient and outpatient) and allergy diagnosis and treatment.
28. The past due production bonuses to be paid to Plaintiff included, but was not limited to, reimbursement collected and posted under Plaintiff’s name, reimbursement already paid but never posted under Plaintiff’s name, and reimbursement billed under Plaintiff’s name but collected and posted under Defendants’ name.
29. The past due production bonuses to be paid to Plaintiff also included, but was not limited to, timely adjustments, based upon Defendants’ admission that certain of Plaintiff’s billings can never be collected, because the time period during which billing claims must have been submitted has expired (due to Defendants’ negligent billing practices and substandard billing system).
30. On January 21, 2003, Defendants altogether stopped making lease payments and automobile insurance payments on Plaintiff’s behalf, stopped reimbursing Plaintiff for his gas mileage, and cell phone, and stopped paying Plaintiff his “production bonus”.
31. On or about January 29, 2003, Dr. Kao delivered a letter to Plaintiff, advising Plaintiff that Defendants were terminating Plaintiff’s employment contract effective May 29, 2003. A copy of Dr. Kao’s letter is attached hereto as Exhibit “D”, and is incorporated herein by

reference as if same were set forth at length.

32. In his letter, Dr. Kao stated that Defendants were terminating Plaintiff's employment "purely for patient safety reasons", related to three "events" involving Plaintiff's patients that allegedly brought the issue of patient care and safety to the forefront.
33. According to Dr. Kao's letter, he had to be consulted by two emergency room physicians and an internist with respect to three of Plaintiff's "problem" patients who Plaintiff allegedly failed to sign out to Dr. Kao.
34. On January 31, 2003, Plaintiff responded in writing to Dr. Kao's termination letter. A copy of Plaintiff's correspondence is attached hereto as Exhibit "E" and is incorporate herein by reference as if same were set forth at length.
35. In his letter, Plaintiff advised Dr. Kao that Defendants had no cause for terminating the Plaintiff's contract. Specifically, Plaintiff advised that he was not aware of any existing or pending patient safety or quality of care issues. Plaintiff further stated that he did not see any provision in the Plaintiff's employment contract that provided for termination based upon the reasons outlined in Dr. Kao's letter of January 29, 2003.
36. In his letter of January 31, 2003, Plaintiff asked Dr. Kao to cite the specific policy language that allowed for termination of the contract.
37. On or about February 15, 2003, Plaintiff received his regularly scheduled salary payment. However, Plaintiff did not receive a "production bonus" check, as had been the case since October of 2002.
38. In response to a question posed by Plaintiff as to why Plaintiff did not receive a bonus check, Dr. Kao responded with a handwritten note dated March 17, 2003. Plaintiff

believes, and therefore avers, that the actual date of Dr. Kao's note was February 17, 2003. A copy of Dr. Kao's note is attached hereto as Exhibit "F", and is incorporated herein by reference as if same were set forth at length herein.

39. In his handwritten note, Dr. Kao stated that he was deducting the following "expenses" against Plaintiff's production bonus check(s) that were due:

- a) Lease payments - \$16,399.88;
- b) Mileage excess - \$2,551.20;
- c) Deductible for two accidents - \$1,000.00;
- d) Insurance - \$3,156.00 (1/2 of \$1,052.00 semi-annual premium).
- e) Gas expense, and other expenses exceeding "reasonable" cell phone and pager expenses – to be determined.

40. According to Dr. Kao's handwritten note, "there is no mention of auto expenses in the contract."

41. Solely as a result of Defendants' breach of contract, and in an effort to mitigate his damages resulting from said breach of contract, Plaintiff accepted employment on or about February 8, 2003, with Ear, Nose and Throat Associates, P.C., located in Snellville, Georgia. Plaintiff's last date of employment for Defendants was May 26, 2003.

42. On April 14, 2003, Defendant Kao telephoned Plaintiff and admitted that he had no basis to terminate Plaintiff's employment contract on January 29, 2003.

43. On May 19, 2003, Defendant Kao telephoned Plaintiff and stated that Defendants would pay Plaintiff the following: a) past due "production bonus" for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 (\$14,460.57 gross); b) past due reimbursable expenses (gas, car payment, car insurance, cell phone) from November,

2002 through April, 2003 (\$2,303.39); c) past due "production bonus" for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 from April 2 to May 1; d) past due reimbursable expenses for April, 2003 (gas only) and May, 2003 (gas, car payment, car insurance, and cell phone); e) PMSLIC malpractice tail coverage (\$27,168.00); and f) regular payroll compensation through a half-day on May 28, 2003.

44. Subsequent to the telephone conversation between Plaintiff and Defendant Kao on May 19, 2003, Defendants, in fact, paid Plaintiff the following: a) past due "production bonus" for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 (\$14,460.57 gross); b) past due reimbursable expenses (gas, car payment, car insurance, cell phone) from November, 2002 through April, 2003 (\$2,303.39); c) past due "production bonus" for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 from April 2 to May 1; d) past due reimbursable expenses for April, 2003 (gas only) and May, 2003 (gas, car payment, car insurance, and cell phone); e) PMSLIC malpractice tail coverage (\$27,168.00); and f) regular payroll compensation through May 26, 2003 (as agreed to by the parties).

45. Under the terms of Plaintiff's employment agreement, Plaintiff's "production bonus" for contract year February, 2002 to January, 2003, was due to be paid on February 28, 2003. Defendants have not, to date, made any bonus payments to Plaintiff for this contract year.

**ERIC PLOTNICK, M.D., V.**  
**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**  
**COUNT I - BREACH OF CONTRACT**

46. Plaintiff incorporates by reference herein Paragraphs 1 through 45 of this Complaint, as if same were set forth at length.

47. From February 1, 2000, through present, Plaintiff has faithfully and in good faith complied with all of the provisions of the original contract executed by the parties in February of 2000, and the extension of the contract executed in February of 2002. Specifically, he has complied with Section XII of the contract, in that he has, in all material respects, abided by the terms and conditions of the contract, and has, at all times material hereto, maintained the proper licensing with the Commonwealth of Pennsylvania and board certification.
48. The reasons specified in Dr. Kao's letter of January 29, 2003, for Defendant's unilateral termination of Plaintiff's employment contract, are not grounds upon which termination "for cause" may be based, under Section XVI of the contract.
49. At no time prior to January 29, 2003, did Dr. Kao or any representative of Defendant notify or otherwise advise Plaintiff that Defendant had concerns regarding the quality of Plaintiff's care of his patients, or for the safety of Plaintiff's patients.
50. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his letter of January 29, 2003, were pretext for Defendant's wrongful termination of Plaintiff's employment agreement, based in part upon Defendant's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.
51. At no time prior to December of 2002 did Dr. Kao or any representative of Defendant advise Plaintiff that it would not pay for Plaintiff's automobile lease and automobile insurance, as it had done on a regular and continuous basis since February of 2000.
52. At no time prior to December of 2002 did Dr. Kao or any representative of Defendant

question the reasonableness or necessity of the reimbursement requests submitted by Plaintiff for Plaintiff's gas expenses or cell phone expenses. In fact, Defendant reimbursed Plaintiff for these expenses on a regular and continuous basis since February of 2000.

53. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his note of March 17, 2003 (which Plaintiff believes to actually have been authored on February 17, 2003), for deducting certain expenses from Plaintiff's past due production bonuses, was a pretext for Defendant's wrongful termination of Plaintiff's employment agreement, based in part upon Defendant's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.
54. Plaintiff justifiably relied to his detriment upon Defendant's payment of an automobile lease, and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.
55. Defendant's action to unilaterally terminating the Plaintiff's employment contract constitutes a material breach of the employment contract that was executed by the parties.
56. Plaintiff has been irreparably damaged as a result of the Defendant's breach of contract. As a result of the Defendant's breach of contract, Plaintiff is entitled to the following damages:
  - a) Payment of past due "production bonus" for contract year 2/01/02 through 1/31/03 (in excess of \$155,000.00 gross – final amount to be determined);
  - b) Payment of future "production bonus" that would have otherwise been earned by Plaintiff from 5/23/03 through 1/31/04 (final amount to be determined);
  - c) Payment of delinquent "production bonuses" owed, based upon billings and collections from 2/01/00 through 1/31/02, that are currently being billed, collected, or adjusted off by HBC as lost revenue (in excess of \$10,000.00 gross – final amount to be determined);

- d) Payment of future lost wages owed from 5/27/03 through 1/31/04 (in excess of \$140,000.00 – final amount to be determined);
- e) A reasonable lease or car payment from 6/01/03 through 1/31/04, (in excess of \$3,500.00 - final amount to be determined);
- f) Reimbursement of Plaintiff's cell phone expenses from 6/01/03 through 1/31/04, (in excess of \$390.00 - final amount to be determined);
- g) Gas reimbursement from 6/01/03 through 1/31/04, (in excess of \$900.00 - final amount to be determined);
- h) Reimbursement for payment of life insurance policy premium, paid by Plaintiff in June of 2003 (coverage from 7/01/03 through January 31, 2004), or \$419.00;
- i) Payment of health insurance policy, payable at \$545.37 per month from 6/01/03 through 1/31/04; or, in the alternative, reimbursement for said health insurance premium payment, if Plaintiff is required to pay said premium because of Defendants' failure and/or refusal to do so;
- j) Payment of premium for M-Care coverage for the policy period of 1/01/03 through 5/23/03; or, in the alternative, reimbursement for said M-Care coverage payment, if Plaintiff is required to pay said premium because of Defendant's failure and/or refusal to do so (\$3,725.00 for pro-rated M-Care coverage);
- k) Reimbursement of car insurance paid by Plaintiff from 6/01/03 through 1/31/04 (in excess of \$700.00 – final amount to be determined);
- l) Statutory interest on all amounts owed; and
- f) Record court costs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant, in an amount in excess of the Arbitration limits of this Court.

**ERIC PLOTNICK, M.D., V.**  
**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**  
**COUNT II – PROMISSORY ESTOPPEL**

57. Plaintiff incorporates by reference herein Paragraphs 1 through 56 of this Complaint, as if same were set forth at length.

58. During the course of Plaintiff's dealings with Dr. Kao and/or Defendant, as more fully set forth above, Dr. Kao and/or Defendant continually represented to Plaintiff that Defendant would pay for Plaintiff's automobile lease, and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.
59. From 2/01/00 through 5/31/03, Defendant did, in fact, pay for Plaintiff's automobile lease and automobile insurance, and did reimburse Plaintiff for all of his gas expenses and cell phone expenses.
60. Such representations and actions by Dr. Kao, on behalf of Defendant, if false, constituted a concealment of material facts by Dr. Kao, on behalf of Defendant, and were made by Dr. Kao, on behalf of Defendant: a) with the intention of deceiving Plaintiff; b) with the intention that Plaintiff would rely and act upon such representations; and c) with knowledge that such representations were false.
61. Plaintiff did rely upon and act upon the representations of Dr. Kao, on behalf of Defendant, as a result of such representations and actions.
62. At such time, Plaintiff had no knowledge of the falsity of the representations and actions of Dr. Kao, on behalf of Defendant, and no means of ascertaining that fact.
63. Except for Dr. Kao's representations, on behalf of Defendant, that Defendant would pay for Plaintiff's automobile lease and automobile insurance, and reimburse Plaintiff for his gas expenses and cell phone expenses, and Defendant's actions, since 2/01/00, in actually paying for Plaintiff's automobile lease and automobile insurance, and reimbursing Plaintiff for all of his gas expenses and cell phone expenses, Plaintiff would not have entered into an employment contract with Defendant, and would not have renewed his employment

contract on 2/01/01 and 2/01/02.

64. Dr. Kao, on behalf of Defendant, committed actual fraud, in attempting to deceive Plaintiff by representing that Defendant would pay for Plaintiff's automobile lease and automobile insurance, and would reimburse Plaintiff for his gas expenses and cell phone expenses, when Dr. Kao, on behalf of Defendant, knew this not to be true.
65. In the alternative, Dr. Kao, on behalf of Defendant, committed constructive fraud, resulting from Dr. Kao's gross negligence, on behalf of Defendant, or from the admissions, declarations, or conduct of Dr. Kao, on Defendant's behalf, intended to influence the conduct of Plaintiff, and which has misled Plaintiff to act to his prejudice.
66. Based upon the foregoing, Defendant is estopped to deny that it is obligated to pay for Plaintiff's automobile lease and automobile insurance, and to reimburse Plaintiff for his gas expenses and cell phone expenses, from June 1, 2003, through January 31, 2004, in an amount to be determined by the Court.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant in an amount in excess of the Arbitration limits of this Court.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**  
**COUNT III - BREACH OF CONTRACT**

67. Plaintiff incorporates by reference herein Paragraphs 1 through 66 of this Complaint, as if same were set forth at length.
68. From February 1, 2000, through present, Plaintiff has faithfully and in good faith complied with all of the provisions of the original contract executed by the parties in February of 2000, and the extension of the contract executed in February of 2002. Specifically, he has

complied with Section XII of the contract, in that he has, in all material respects, abided by the terms and conditions of the contract, and has, at all times material hereto, maintained the proper licensing with the Commonwealth of Pennsylvania and board certification.

69. The reasons specified in Dr. Kao's letter of January 29, 2003, for Defendants' unilateral termination of Plaintiff's employment contract, are not grounds upon which termination "for cause" may be based, under Section XVI of the contract.
70. At no time prior to January 29, 2003, did Dr. Kao notify or otherwise advise Plaintiff that Dr. Kao had concerns regarding the quality of Plaintiff's care of his patients, or for the safety of Plaintiff's patients.
71. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his letter of January 29, 2003, were pretext for Dr. Kao's wrongful termination of Plaintiff's employment agreement, based in part upon Dr. Kao's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.
72. At no time prior to December of 2002 did Dr. Kao advise Plaintiff that he would not pay for Plaintiff's automobile lease and automobile insurance, as he had done on a regular and continuous basis since February of 2000.
73. At no time prior to December of 2002 did Dr. Kao question the reasonableness or necessity of the reimbursement requests submitted by Plaintiff for Plaintiff's gas expenses and cell phone expenses. In fact, Dr. Kao reimbursed Plaintiff for these expenses on a regular and continuous basis since February of 2000.

74. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his note of March 17, 2003 (which Plaintiff believes to actually have been authored on February 17, 2003), for deducting certain expenses from Plaintiff's past due production bonuses, was a pretext for Dr. Kao's wrongful termination of Plaintiff's employment agreement, based in part upon Dr. Kao's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.
75. Plaintiff justifiably relied to his detriment upon Dr. Kao's payment of an automobile lease and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.
76. Dr. Kao's action to unilaterally terminating the Plaintiff's employment contract constitutes a material breach of the employment contract that was executed by the parties.
77. For the reasons more fully set forth above in Paragraph 5, which is incorporated herein by reference as if same were set forth at length, Dr. Kao may be held liable individually for any activities related to the Plaintiff's employment with the Defendant corporation.
78. Plaintiff has been irreparably damaged as a result of the Defendant's breach of contract. As a result of the Defendant's breach of contract, Plaintiff is entitled to the following damages:
- a) Payment of past due "production bonus" for contract year 2/01/02 through 1/31/03 (in excess of \$155,000.00 gross – final amount to be determined);
  - b) Payment of future "production bonus" that would have otherwise been earned by Plaintiff from 5/23/03 through 1/31/04 (final amount to be determined);
  - c) Payment of delinquent "production bonuses" owed, based upon billings and collections from 2/01/00 through 1/31/02, that are currently being billed, collected, or adjusted off by HBC as lost revenue (in excess of \$10,000.00 gross – final amount to be determined);

- d) Payment of future lost wages owed from 5/27/03 through 1/31/04 (in excess of \$140,000.00 – final amount to be determined);
- e) A reasonable lease or car payment from 6/01/03 through 1/31/04, (in excess of \$3,500.00 - final amount to be determined);
- f) Reimbursement of Plaintiff's cell phone expenses from 6/01/03 through 1/31/04, (in excess of \$390.00 - final amount to be determined);
- g) Gas reimbursement from 6/01/03 through 1/31/04, (in excess of \$900.00 - final amount to be determined);
- h) Reimbursement for payment of life insurance policy premium, paid by Plaintiff in June of 2003 (coverage from 7/01/03 through January 31, 2004), or \$419.00;
- i) Payment of health insurance policy, payable at \$545.37 per month from 6/01/03 through 1/31/04; or, in the alternative, reimbursement for said health insurance premium payment, if Plaintiff is required to pay said premium because of Defendants' failure and/or refusal to do so;
- j) Payment of premium for M-Care coverage for the policy period of 1/01/03 through 5/23/03; or, in the alternative, reimbursement for said M-Care coverage premium payment, if Plaintiff is required to pay said premium because of Defendant's failure and/or refusal to do so (\$3,725.00 for pro-rated M-Care coverage);
- k) Reimbursement of car insurance paid by Plaintiff from 6/01/03 through 1/31/04 (in excess of \$700.00 – final amount to be determined);
- l) Statutory interest on all amounts owed; and
- m) Record court costs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant, in an amount in excess of the Arbitration limits of this Court.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**  
**COUNT IV – PROMISSORY ESTOPPEL**

79. Plaintiff incorporates by reference herein Paragraphs 1 through 78 of this Complaint, as if same were set forth at length.

80. During the course of Plaintiff's dealings with Dr. Kao, as more fully set forth above, Dr. Kao continually represented to Plaintiff that he would pay for Plaintiff's automobile lease and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.
81. From 2/01/00 through 5/31/03, Dr. Kao did, in fact, pay for Plaintiff's automobile lease and automobile insurance, and did reimburse Plaintiff for all of his gas expenses and cell phone expenses.
82. Such representations and actions by Dr. Kao, if false, constituted a concealment of material facts by Dr. Kao, and were made by him: a) with the intention of deceiving Plaintiff; b) with the intention that Plaintiff would rely and act upon such representations; and c) with knowledge that such representations were false.
83. Plaintiff did rely upon and act upon the representations of Dr. Kao as a result of such representations and actions.
84. At such time, Plaintiff had no knowledge of the falsity of the representations and actions of Dr. Kao, and no means of ascertaining that fact.
85. Except for Dr. Kao's representations that he would pay for Plaintiff's automobile lease and automobile insurance, and reimburse Plaintiff for his gas expenses and cell phone expenses, and Dr. Kao's actions, since 2/01/00, in actually paying for Plaintiff's automobile lease and automobile insurance, and reimbursing Plaintiff for all of his gas expenses and cell phone expenses, Plaintiff would not have entered into an employment contract with Dr. Kao, and would not have renewed his employment contract on 2/01/01 and 2/01/02.

86. Dr. Kao committed actual fraud, in attempting to deceive Plaintiff by representing that he would pay for Plaintiff's automobile lease and automobile insurance, and would reimburse Plaintiff for his gas expenses and cell phone expenses, when Dr. Kao knew this not to be true.
87. In the alternative, Dr. Kao committed constructive fraud, resulting from his gross negligence, or from his admissions, declarations, or conduct, intended to influence the conduct of Plaintiff, and which has misled Plaintiff to act to his prejudice.
88. For the reasons more fully set forth above in Paragraph 5, which is incorporated herein by reference as if same were set forth at length, Dr. Kao may be held liable individually for any activities related to the Plaintiff's employment with the Defendant corporation.
89. Based upon the foregoing, Dr. Kao is estopped to deny that he is obligated to pay for Plaintiff's automobile lease and automobile insurance, and to reimburse Plaintiff for his gas expenses and cell phone expenses, from June 1, 2003, through January 31, 2004, in an amount to be determined by the Court.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant in an amount in excess of the Arbitration limits of this Court.

Respectfully submitted,

**URBAN & CAVRICH, P.C.**

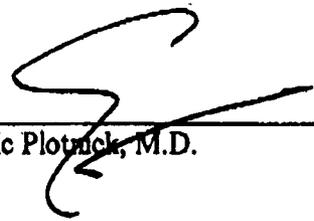


Joseph W. Cavrich, Esquire  
Attorney for Plaintiff  
PA ID# 52693  
508 Allegheny Street  
P.O. Box 503  
Hollidaysburg, PA 16648  
(814) 695-7898

**VERIFICATION**

I, Eric Plotnick, M.D., verify that the statements in this AMENDED COMPLAINT are true and correct to the best of my knowledge and belief. I understand that false statements made herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Date: 8/19/03

By  \_\_\_\_\_  
Eric Plotnick, M.D.

OTOLARYNGOLOGY GROUP  
OF CENTRAL PA477 E. BEAVER AVENUE  
SUITE 150  
STATE COLLEGE, PA. 16801  
814 231-7750Y. H. KAO, M.D., F.A.C.S.  
EWING TIBBELS, M.D.MEDICAL ARTS BUILDING  
807 TURNPIKE AVENUE  
SUITE 230  
CLEARFIELD, PA. 16830  
814 788-5110  
Fax 814 788-5113

LEWIS NEWBERG, M.D.

Eric,

My attorney was also out of town.  
Enclosed please find principles of our  
agreement outlined. I will have Mr. Smith  
put these into a formal contract. If  
you have any concerns or questions please  
call.

J. Hoer

EXHIBIT

"A"

OTOLARYNGOLOGY GROUP  
OF CENTRAL PA

477 E. BEAVER AVENUE  
SUITE 180  
STATE COLLEGE, PA. 16801  
814 231-7750

Y. H. KAO, M.D., F.A.C.S.  
EWING TIBBELS, M.D.

MEDICAL ARTS BUILDING  
807 TURNPIKE AVENUE  
SUITE 230  
CLEARFIELD, PA. 16830  
814 768-5110  
Fax 814 768-5113

LEWIS NEWBERG, M.D.

- 1.) Base compensation of \$150,000 per measurement year during the initial term and during the renewed term for the 2<sup>nd</sup> year.
- 2.) Production bonus will be 50% of collections over \$300,000. Production bonus will be paid at the end of the year.
- 3.) Malpractice insurance, reasonable health and disability insurance, fees to maintain licensure and hospital memberships and professional society membership, reasonable CME expenses, pager, auto mileage reimbursement to secondary office or reasonable lease payment and expenses, and moving expenses will be provided.
- 4.) Participation in retirement plan is available after first year of employment and will be deducted from production bonus.
- 5.) Dr. Plotnick may choose to have no buy-in for partnership. In return Dr. Kao will be entitled to receive the entire compensation from one subsequent associate who choose to buy into the practice. Partnership is at discretion of Dr. Kao after a 2-year period of service.
- 6.) There will be a restrictive covenant of 25 miles from both offices for a length of 2 years after termination.
- 7.) Dr. Kao may terminate this agreement at any time for cause only. An event for termination for cause shall be:
  - a.) Loss of professional license.
  - b.) Loss of ability to render medical service due to physical impairment.
  - c.) Acts of moral turpitude or fraudulent conduct.
- 8.) Dr. Kao will give Dr. Plotnick 4 months notice prior to end of the year for termination of services. Dr. Plotnick will give 3 months notice before termination of services.
- 9.) Up to 2 weeks of paid vacation and one week of sick time will be provided.
- 10.) Up to 2 weeks of CME time will be provided.
- 11.) Patents titled "Compositions for the Treatment of Sleep Apnea and Methods Related Thereto" File No. 19566-0001 are property of Drs. Kao and Newberg solely.

## EMPLOYMENT CONTRACT FOR MEDICAL SERVICES

MADE this 1st day of February 2000, by and between OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC., Pennsylvania professional corporation with principal office at 807 Turnpike Avenue, Suite 230, Clearfield, Pennsylvania, 16830, (hereinafter "CORPORATION"),

A

N

D

ERIC NEIL PLOTNICK, M.D., residing at 750 Toffrees Ave #211  
State College, PA 16803, (hereinafter "PHYSICIAN").

WHEREAS, the CORPORATION has been organized to provide Otolaryngology services in central Pennsylvania and has offices in Clearfield and in State College; and,

WHEREAS, PHYSICIAN is qualified to practice Otolaryngology; licensed to practice medicine in the State of Pennsylvania, and has applied for privileges at Clearfield Hospital and Centre Community Hospital allowing him to provide services to the general public at those hospitals; and,

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the performance of services during the term of this contract.

NOW THEREFORE, in consideration of the mutual covenants and promises of this contract, the parties, intending to be legally bound, agree:

EXHIBIT

I. APPOINTMENT OF THE MEDICAL STAFF:

A. Prior to rendering services, the PHYSICIAN must be properly evaluated and appointed as a member of the Medical Staff in accordance with the By-Laws of Clearfield Hospital and Centre Community Hospital, and subject to such appointment, shall be entitled to and subject to all rights and duties of an Active Staff member.

B. If the appointment of the PHYSICIAN is suspended or revoked for any reason, the PHYSICIAN shall no longer be permitted to practice and this contract shall terminate. He shall, however, be entitled to exercise the pertinent appeal provision of the By-Laws of Clearfield Hospital and Centre Community Hospital relative to the suspension or revocation of appointment, and if his appeal is successful, be reinstated under this Agreement.

II. SERVICES TO BE PROVIDED:

The PHYSICIAN shall provide medical services in his specialty as directed by the CORPORATION. The CORPORATION may also require the PHYSICIAN to perform such other administrative, hospital or public service functions as may reasonably required.

The CORPORATION shall establish the hours and schedule during which the PHYSICIAN shall provide services. The CORPORATION shall specify the office in which PHYSICIAN shall work as part of his schedule. The CORPORATION shall also establish a rotating call schedule among the physicians employed by it.

PHYSICIAN shall devote his full time and best efforts to the performance of his duties under this Agreement. During the term of this Agreement, the PHYSICIAN shall not at any time or place, either directly or indirectly engage in the practice of medicine or

surgery except pursuant to this Agreement, and all fees or other income attributable to his professional services during the term of this Agreement shall belong to the CORPORATION.

In the event the CORPORATION is dissolved or liquidated while this Agreement is in effect, all files, documents, records whether in written, recorded or other electronic form, relating to each patient shall be delivered to any physician designated in writing by the patient or in the absence of the patient's designation, to the physician employee who had responsibility for the care of the patient.

PHYSICIAN shall participate as a provider in the Medicare, Medicaid and Medical Assistance Programs extended by the United States Government and the State of Pennsylvania, and in such other third party payment programs as made from time to time be requested by the CORPORATION.

PHYSICIAN shall participate in such quality assurance and utilization review programs as may from time to time be requested by the CORPORATION or by third party payors.

### III. FACILITIES AND EXPENSES:

The CORPORATION shall provide at its expense office and clinical facilities, equipment and supplies as it deems necessary for PHYSICIAN to provide services and his other professional duties under this Agreement.

The PHYSICIAN shall have and maintain appropriate cell, paging or telephone equipment and agree to use the same as may be required by the CORPORATION. This equipment and all fees reasonably and actually related to corporate affairs shall be paid by the CORPORATION.

IV. TERM:

This Agreement shall have an initial term of one year commencing on February 1, 2000. This Agreement shall automatically renew for additional one year terms unless either party gives to the other three months prior written notice of their intention not to renew the Agreement.

V. COMPENSATION:

A. Salary.

PHYSICIAN shall receive a base salary of \$150,000.00 per year. PHYSICIAN's salary shall be paid in bi-weekly installments on the first and fifteenth day of each month.

B. Bonus.

In addition to his base salary, PHYSICIAN shall also receive a production bonus for each full year actually completed under this Agreement equal to 50% of the amount by which the PHYSICIAN's gross billings exceed \$300,000.00 in each year of this contract. The CORPORATION or its accountant shall calculate and pay this bonus within 30 days after the end of each year of this Agreement.

VI. RETIREMENT BENEFITS:

The PHYSICIAN shall have the option to participate in such retirement plans as the CORPORATION may from time to time adopt. However, PHYSICIAN shall not be eligible to participate in the retirement plan until he has completed his first year of employment. PHYSICIAN agrees that if he elects to participate in the CORPORATION's Retirement Plan all contributions made by the CORPORATION on behalf of the PHYSICIAN to the Retirement Plan shall be deducted from the PHYSICIAN's annual bonus for that particular year as calculated under paragraph IV.B. above.

VII. VACATION:

After completion of his initial 12 months of employment, the PHYSICIAN shall be entitled to two weeks of paid vacation. The vacation shall be taken at such times as may be approved by the CORPORATION and must be scheduled at least two weeks in advance.

The PHYSICIAN shall also be entitled to all paid holidays as approved by the CORPORATION.

PHYSICIAN shall also have up to five days of paid sick-leave per year.

Unused days of vacation and sick-leave may not be carried over from one year to another.

VIII. OTHER BENEFITS:

The CORPORATION shall provide to PHYSICIAN and his dependents health and disability insurance as the CORPORATION may from time to time, at its exclusive option and in its sole discretion, provide to its other employees.

The CORPORATION shall also pay or reimburse PHYSICIAN for all fees to maintain his professional license, hospital memberships and other professional society memberships.

VII. RECORDS:

The PHYSICIAN agrees to maintain current, complete and accurate records as required by applicable regulations of federal, state and local agencies, third party payors or as shall be required by the Hospitals or CORPORATION from time to time.

IX. ETHICS AND STANDARDS:

PHYSICIAN agrees to abide by all applicable canons of professional ethics, regulations governing the administration of the Hospitals where he has staff privileges, rules and regulations

promulgated by the United States Government and the Commonwealth of Pennsylvania for the administration of Medicare and Medicaid, Medical Assistance or similar government programs, all rules and regulations promulgated by other third party payors and all rules, regulations and policies as may from time to time be adopted by the CORPORATION.

X. COVENANT NOT TO COMPETE:

For a period of two years after this Agreement terminates, the PHYSICIAN shall not, without the prior written consent of the CORPORATION, for himself or on behalf of any other person, partnership, association, corporation or organization, directly or indirectly, engage in the practice of Otolaryngology within a 25-mile radius of Clearfield Hospital and Centre Community Hospital. During the term of this Agreement and for a period of two years after termination of this Agreement, the PHYSICIAN shall not, directly or indirectly, solicit for employment or employ any employee of the CORPORATION for any reason whether the employee is employed on the date of this Agreement or thereafter. The PHYSICIAN acknowledges that each restriction set forth in this section is a material condition of an inducement to the CORPORATION to employ the PHYSICIAN and is reasonable in its duration and scope. The PHYSICIAN agrees that upon breach or violation by him of the foregoing provisions, the CORPORATION, in addition to all other remedies, shall be entitled as a matter of right to injunctive relief in any court of competent jurisdiction to enjoin and restrain the PHYSICIAN and each and every other person, partnership, association, corporation, or organization concerned therein, from the continuance of any action constituting a breach

thereof. If the period of time or area herein specified shall be adjudged unreasonable in any court proceeding, then the period of time shall be reduced by the number of months or the area reduced as is deemed reasonable so that his covenant may be enforced during such period of time as adjudged to be reasonable.

XI. CONFIDENTIALITY:

PHYSICIAN agrees to maintain the patient's records, billing, finances, business affairs, administrative practices and all other matters regarding the CORPORATION in complete confidence. PHYSICIAN promises that he shall not discuss or reveal either verbally, in writing or in other recorded form any such information without the prior written authorization of the CORPORATION's President. PHYSICIAN further agrees that all records, reports, policy materials or other documents containing such information or shall be and remain the exclusive property of the CORPORATION, and PHYSICIAN shall not be entitled to retain copies for himself without the prior written authorization from the CORPORATION's President. Upon termination of this Agreement, the PHYSICIAN agrees to immediately return all such materials to the CORPORATION. PHYSICIAN agrees that the covenant contained in this paragraph is a material condition of and inducement to the CORPORATION for entering this Agreement with him. PHYSICIAN agrees that the CORPORATION may institute an action in equity and/or at law in order to prevent or remedy a breach of this covenant.

XII. EMPLOYEE STATUS:

The PHYSICIAN shall be considered an employee of the CORPORATION so long as he abides by the terms and conditions of this Agreement and maintains at all times the proper licensing with

the Commonwealth of Pennsylvania and Board Certification if he is or becomes Board Certified during the terms of this Agreement.

XIII. CONTINUING MEDICAL EDUCATION:

PHYSICIAN will also receive his regular salary for participation in a maximum of 10 days Continuing Medical Education per year. The CORPORATION shall pay or reimburse the PHYSICIAN for all registration fees, travel and lodging and other expenses which he reasonably and actually incurs to participate in Continuing Medical Education programs.

PHYSICIAN must obtain the CORPORATION's prior approval of specific Continuing Medical Education programs to be entitled under this paragraph.

PHYSICIAN's Continuing Medical Education shall be taken at times approved by the CORPORATION.

Unused days of Continuing Medical Education may not be carried over from one year to another.

XIV. PROFESSIONAL LIABILITY INSURANCE:

The CORPORATION shall at its expense, obtain and maintain in force during the time of this Agreement, Professional Liability Insurance covering the professional services rendered by the PHYSICIAN hereunder. Limits of this insurance shall not be less than those required by the Pennsylvania Health Care Services Malpractice Act or any successor statute and shall also provide pre-funded "tail" coverage.

XV. PATENTS:

PHYSICIAN acknowledges that he shall acquire no interest in a patent identified as "Compositions for the Treatment of Sleep Apnea and Methods Related Thereto," File No. 19566-0001 which PHYSICIAN

acknowledges to be the exclusive property of Dr. Kao and Dr. Newberg.

XVI. TERMINATION:

This Agreement shall be terminated on the occurrence of any of the following events:

1. PHYSICIAN's loss of license to render the professional services,
2. Suspension or termination of PHYSICIAN's Federal Drug Enforcement Administration Number,
3. PHYSICIAN's ceasing to qualify for professional liability insurance at regular rates from CORPORATION's regular insurance carrier,
4. PHYSICIAN's becoming a "sanctioned individual," as that term is used in 42 U.S.C. 1320a-7, regarding individuals penalized for Medicare or Medicaid fraud or abuse,
5. The execution of a written agreement between CORPORATION and PHYSICIAN to terminate this Agreement,
6. PHYSICIAN's death,
7. PHYSICIAN's failure or refusal to perform the duties of his employment faithfully and diligently and to comply with the provisions of this Agreement,
8. PHYSICIAN's failure or refusal to comply with reasonable policies, standards, and regulations that CORPORATION may establish from time to time,
9. PHYSICIAN's failure to become Board-certified in Otolaryngology no later than 2 years, or to maintain such certification,
10. PHYSICIAN's failure to maintain medical staff membership and clinical privileges at Clearfield Hospital and Centre Community Hospital by 6 mo or the suspension, reduction or termination of any such medical staff membership or clinical privileges,
11. PHYSICIAN's inability to fully and competently perform his duties hereunder, for a period of 30 continuous days due to physical, mental or psychology illness, injury or condition.

On termination of this Agreement as set forth in the above paragraphs, PHYSICIAN shall be entitled to receive only salary accrued but unpaid as of the date of termination and shall not be entitled to additional for unused vacation, sick or Continuing Medical Education days.

**XVII. NOTICES:**

All notices or communications required by or bearing upon this Agreement or between the parties shall be in writing and sent by First Class Mail to the parties as follows unless otherwise specified above:

**CORPORATION:**  
OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.  
807 Turnpike Avenue  
Suite 230  
Clearfield, PA 16830

**PHYSICIAN:**  
Eric Neil Plotnick, M.D.  
750 Telford Ave #221  
State College, PA 16803

**XVIII. GENERAL PROVISIONS:**

- a) This Agreement shall be governed by the laws of Pennsylvania;
- b) The parties acknowledge that this is a personal service contract, and therefore, PHYSICIAN cannot assign or delegate his rights and duties hereunder, nor shall PHYSICIAN's rights or duties hereunder extend to his heirs, executors, administrators, guardians or representatives; Any attempt to assign or delegate rights and duties hereunder by PHYSICIAN shall immediately terminate this Agreement;
- c) In construing or interpreting this Agreement, "Hospital," "CORPORATION" and "PHYSICIAN" shall mean, wherever applicable, the singular or plural, the masculine or the feminine, individual, individuals, partnership or corporation, as the case may be;
- d) This Agreement represents the sole agreement of the parties and supersedes all prior communications, representations and negotiations, whether oral or written;
- e) This Agreement can only be modified or amended by the prior written consent of both parties hereto;

f) Jurisdiction and venue shall rest in the Court of Common Pleas of Clearfield County, Pennsylvania, for all suits, claims and causes of action whatsoever.

IN WITNESS WHEREOF, said Corporation has caused its corporate seal to be hereto affixed and these presents signed by its President the first day written above.

ATTEST:

CORPORATION:

\_\_\_\_\_

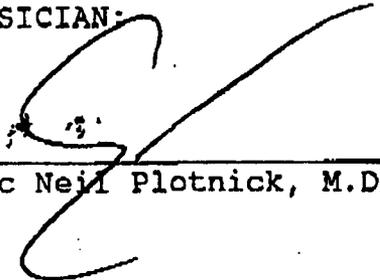
  
\_\_\_\_\_  
President

Corporate Seal:

ATTEST:

PHYSICIAN:

\_\_\_\_\_

  
\_\_\_\_\_  
Eric Neil Plotnick, M.D.

COMMONwealth State @015

**EXTENSION OF EMPLOYMENT CONTRACT  
FOR MEDICAL SERVICES**

MADE this 1st day of February, 2002, between OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC., Pennsylvania professional corporation with principal office at 807 Turnpike Avenue, Suite 230, Clearfield, Pennsylvania, 16830 (hereinafter "CORPORATION"),

A

N

D

ERIC NEIL PLOTNICK, M.D., residing at ~~2086 Mary Ellen Lane~~, State College, Pennsylvania, 16803, (hereinafter "PHYSICIAN").

WHEREAS, the parties entered an Employment Contract For Medical Services dated February 1, 2000, which is referred to and incorporated herein by reference; and,

WHEREAS, the parties desire to renew and extend that Contract for an additional term of two years.

NOW WITNESSETH

In consideration of the mutual covenants and promises of this contract, the parties, intending to be legally bound, agree:

1. **EXTENSION:** The parties agree that their Employment Contract For Medical Services dated February 1, 2000, shall be extended for an additional term of two years commencing on February 1, 2002 and ending on January 31, 2004.

2. **Compensation:** Physician shall receive a base salary of \$210,000.00 per year. Physician salary shall be paid in bi-monthly installments on the first & fifteenth day of each month. The production bonus formula shall remain the same using the same a market of \$300,000.00.

EXHIBIT

" 0 "

*JNR*

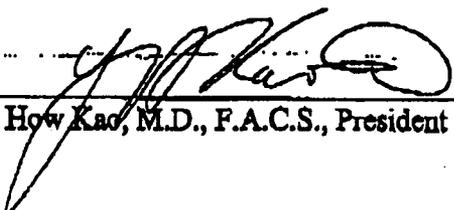
2. REAFFIRMATION OF OTHER TERMS AND PROVISIONS: The parties otherwise ratify and reaffirm all other terms and conditions of their original contract dated February 1, 2000.

In witness whereof, we have hereto set our hands.

ATTEST:

OTOLARYNGOLOGY GROUP OF  
CENTRAL PA, INC.

\_\_\_\_\_

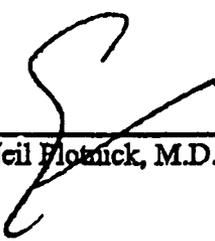
  
\_\_\_\_\_  
Yi How Kao, M.D., F.A.C.S., President

Corporate Seal

ATTEST:

PHYSICIAN:

\_\_\_\_\_

  
\_\_\_\_\_  
Eric Neil Flotnick, M.D.

Otolaryngology Group Of Central Pa  
Y.H.Kao, M.D., F.A.C.S.  
Eric Plotnick, M.D.  
Ewing Tibbels, M.D.

Dear Dr. Plotnick,

Recently three different events have brought the issue of patient care and safety to the forefront. All the patients could have developed complications and suffered significant morbidity, if not mortality, unless they were properly treated. Unfortunately I had to be consulted by emergency room physicians in two cases and an internist in another. The point is that these patients could have been kept under closer observation by the Otolaryngology Group and the emergent intervention obviated.

I have previously requested that you sign out any problem patients on at least three occasions. Unfortunately this request has been disregarded.

Because of these events, and purely for patient safety reasons, I am compelled to terminate your position in the Otolaryngology Group four months from the receipt of this letter as according to contract.

Sincerely,

*Y. H. Kao*  
Yi H. Kao M.D.

*Jan 29. 2003*

EXHIBIT

"D"

Yi How Kao, MD  
Otolaryngology Group  
of Central Pennsylvania, Inc.  
807 Turnpike Ave.  
Suite 230  
Clearfield, PA 16830

Eric Plotnick, MD  
2086 Mary Ellen Lane  
State College, PA 16803

January 31, 2003

Dear Dr. Kao,

I received your letter of January 29, 2003 proposing termination of my employment with great surprise. Your assertions are unequivocally without merit. To date, I am not aware of any existing or pending patient safety or quality of care issues within the practice that fit the criteria you describe. No cases have been presented or are pending before any hospital quality care committees for review. None of my patients have been at risk for impending harm; none have suffered harm.

I see no provision in the contract that provides for termination based on reasons you outline. Please cite for me the contract language that does so.

I am most willing to discuss with you any specific cases you have in mind, which appropriately should have been discussed in a timely fashion with proper supporting documentation.

You have no cause for termination of the contract.

Sincerely,

Eric Plotnick, MD

EXHIBIT  
"E"

March 17. 03

Dr Plotnick,

I am deducting on expenses against your house  
as follows:

Lease Payments	16399.88	
Mileage, excess	2551.20	
Deductible, 2 accidents	1000.00	
Insurance	<u>3156.00</u>	( $\frac{1}{2}$ of \$1052 semi annual premium)
	21,107.08	

Gas expense and other expenses exceeding "reasonable" cell  
phone & pager expenses are being calculated.

There is no mention of auto expenses in the  
contract.

*Y. H. Kao*  
Y. H. Kao MD

EXHIBIT

"F"

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

TYPE OF CASE: **ASSUMPSIT**

TYPE OF PLEADING:  
**Preliminary Objections to the  
Amended Complaint**

Filed on Behalf of:  
**Defendants**

Counsel of Record for this Party:  
**Peter F. Smith**  
Supreme Court ID #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel of Record for Plaintiff:  
**Joseph W. Cavrich, Esquire**  
PA I.D. #52693  
URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

**FILED**

SEP 04 2003

William A. S...  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D., :  
Plaintiff :  
 :  
vs. : No. 03-868-CD  
 :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D., :  
Defendants :  
 :  
 :

**PRELIMINARY OBJECTIONS**

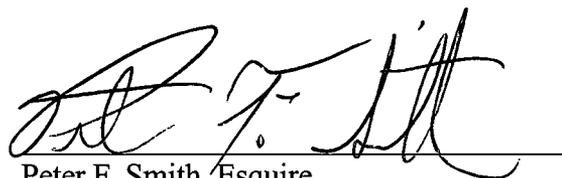
COMES NOW, The Defendants, by their attorney, Peter F. Smith, who submits the following Preliminary Objections to the amended complaint:

1. Paragraph five of the complaint is an apparent attempt to pierce the corporate veil and assert liability against Dr. Yi How Kao personally.
2. Paragraph five is legally insufficient to accomplish this purpose and should be stricken for the following reasons:
  - a. The incorporation of a professional practice is authorized by Pennsylvania's Corporate Code. 15 PA.C.S.A. §§2901 et seq.
  - b. Contrary to the implications of Plaintiff's averments, the incorporation of a business to limit the incorporator's personal liability and shield personal assets from that liability is a completely legitimate and lawful purpose.
  - c. Paragraph five alleges that Plaintiff also incorporated for the purposes of "Under taking illegal activities, or abusing his availment of the corporate fiction..." but fails to state specific facts in support of those allegations.
3. Paragraph five should also be stricken because it contains impertinent and scandalous matter to the extent it attributes an unlawful purpose or functions to Dr. Kao and his professional corporation without alleging the specific facts and support thereof.

4. Counts III and IV of the complaint are against Dr. Kao personally. These counts are contingent upon Plaintiff's ability to pierce the corporate veil. Since Plaintiff's allegations in paragraph five are insufficient, Counts III and IV of the complaint must also be stricken.

WHEREFORE Defendants pray that paragraph five, Count III and Count IV of the complaint be stricken.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter F. Smith', written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Defendants

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

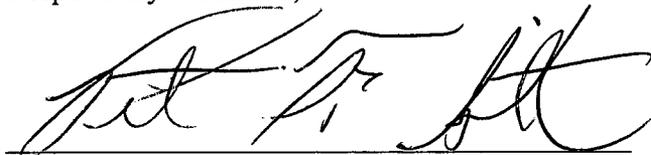
No. 03-868-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants in the above-captioned matter, certify that I sent a true and correct copy of **PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT** by U.S. First Class Mail, Postage Prepaid on September 3, 2003 to the Attorney for the Plaintiff at the following address:

Joseph W. Cavrigh, Esquire  
Urban & Cavrigh, P.C.  
503 Allegheny Street  
P. O. Box 508  
Hollidaysburg, PA 16648

Respectfully submitted,



Peter F. Smith  
Attorney for Defendants

Date: September 3, 2003

**FILED**

**SEP 04 2003**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF INTENT  
TO SERVE SUBPOENA**

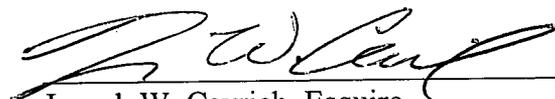
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrigh, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 10<sup>th</sup> DAY OF  
SEPTEMBER, 2003.



Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

**FILED**

**SEP 11 2003**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF INTENT TO SERVE A SUBPOENA  
TO PRODUCE DOCUMENTS AND THINGS  
FOR DISCOVERY PURSUANT TO RULE 4009.21**

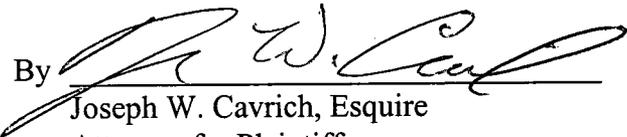
Plaintiff intends to serve a subpoena identical to the one that is attached to this notice.

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.

Date: September 10, 2003

**URBAN & CAVRICH, P.C.**

By

  
Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

PA ID# 52693  
508 Allegheny Street  
P.O. Box 503  
Hollidaysburg, PA 16648  
(814) 695-7898

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Eric Plotnick MD  
Plaintiff(s)

\*

Vs.

\*

No. 2003-00868-CD

Otolaryngology Group of Central  
Pennsylvania, Inc., and  
Yi How Kao MD  
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO  
RULE 4009.22

TO: Evelyn Witters, Healthcare Billing Consultants, Inc., 721 Lingle St., P.O. Box 68,  
(Name of Person or Entity) Esceola Mills, PA 16666

Within twenty (20) days after service of this subpoena, you are ordered by the Court to  
produce the following documents or things: SEE ATTACHED

(Address) Urban & Carrich, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648

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.

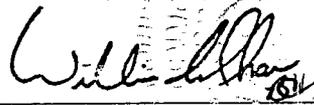
If you fail to produce the documents or things required by this subpoena within twenty  
(20) days after its service, the party serving this subpoena may seek a court order compelling you  
to comply with it.

THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Joseph W. Carrich, Esq.  
ADDRESS: Urban & Carrich, P.C.  
P.O. Box 508, 503 Allegheny St., Hollidaysburg, PA 16648  
TELEPHONE: 814-695-7898  
SUPREME COURT ID # 52693  
ATTORNEY FOR: Plaintiff

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy

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

DATE: Tuesday, September 09, 2003  
Seal of the Court

## LIST OF DOCUMENTS

All monthly financial reports prepared by Healthcare Billing Consultants, Inc., on behalf of Otolaryngology Group of Central Pennsylvania, Inc., from 4/2/03 (covering the period of 3/5/03 - 4/2/03) through present, including, but not limited to the following:

1. Business summaries for each month, including charges, receipts, and adjustments for each day of the month;
2. Group Analysis;
3. Provider Analysis (including Provider Nos. 1, 2, 3, 6, 7, 9);
4. Location Analysis;
5. Procedure Analysis;
6. Department Analysis;
7. Transaction Analysis;
8. ATB Category Analysis; and
9. Special Reports, including:
  - a. Already Paid (AP) for Provider 2 for contract years 00-01, 01-02, 02-03;
  - b. Receipts for Provider 2 for contract years 00-01, 01-02, 02-03;
  - c. Time adjustments for 00-01, 01-02, 02-03;
  - d. Already Paid (AP) for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003;
  - e. Payments for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003;
  - f. Time adjustments for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003.

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**CERTIFICATE PREREQUISITE  
TO SERVICE OF SUBPOENA**

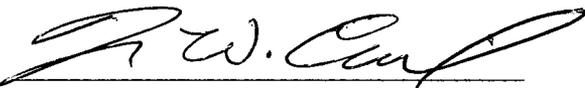
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN CERTIFICATE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 2<sup>nd</sup> DAY OF  
OCTOBER, 2003.



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**  
OCT 07 2003  
m/10:30/uy  
William A. Shaw  
Prothonotary/Clerk of Courts  
No cert comm

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

:  
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:  
: No. 03-868 C.D.  
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**CERTIFICATE PREREQUISITE  
TO SERVICE OF SUBPOENA**

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Plaintiff certifies that

- 1) a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served,
- 2) a copy of the notice of intent, including the proposed subpoena, is attached to this certificate,
- 3) no objection to the subpoena has been received, and
- 4) the subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: October 2, 2003

**URBAN & CAVRICH, P.C.**

By



Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff  
PA ID #52693

508 Allegheny Street  
P.O. Box 503  
Hollidaysburg, PA 16648  
(814) 695-7898

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF INTENT  
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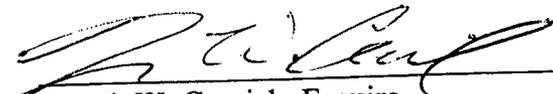
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

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THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 10<sup>th</sup> DAY OF  
SEPTEMBER, 2003.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff



COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Eric Plotnick MD  
Plaintiff(s)

\*

Vs.

\*

No. 2003-00868-CD

Otolaryngology Group of Central  
Pennsylvania, Inc., and  
Yi How Kao MD  
Defendant(s)

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO  
RULE 4009.22

TO: Evelyn Witters, Healthcare Billing Consultants, Inc., 721 Lingle St., P.O. Box 68,  
(Name of Person or Entity) Escola Mills, PA 16666

Within twenty (20) days after service of this subpoena, you are ordered by the Court to  
produce the following documents or things: SEE ATTACHED

(Address) Urban & Carrich, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648

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: Joseph W. Carrich, Esq.  
ADDRESS: Urban & Carrich, P.C.  
P.O. Box 508, 503 Allegheny St., Hollidaysburg, PA 16648  
TELEPHONE: 814-695-7898  
SUPREME COURT ID # 52693  
ATTORNEY FOR: Blair, J. R.

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

William A. Shaw

Deputy

DATE: Tuesday, September 09, 2003  
Seal of the Court

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

## LIST OF DOCUMENTS

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1. Business summaries for each month, including charges, receipts, and adjustments for each day of the month;
2. Group Analysis;
3. Provider Analysis (including Provider Nos. 1, 2, 3, 6, 7, 9);
4. Location Analysis;
5. Procedure Analysis;
6. Department Analysis;
7. Transaction Analysis;
8. ATB Category Analysis; and
9. Special Reports, including:
  - a. Already Paid (AP) for Provider 2 for contract years 00-01, 01-02, 02-03;
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  - d. Already Paid (AP) for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003;
  - e. Payments for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003;
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IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA - CIVIL DIVISION

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

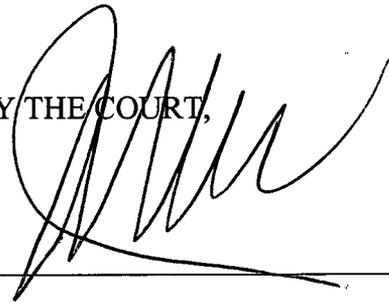
No. 03-868 C.D.

**RULE RETURNABLE**

AND NOW, this 17<sup>th</sup> day of November, 2003, a Rule is hereby  
granted to show cause why the Motion for Leave to File Amended Complaint, filed on behalf of  
Plaintiffs, should not be granted.

This Rule is returnable on the 17 day of November, 2003, at  
2:00 ~~am~~ p.m. in Courtroom No. 1.

BY THE COURT,



J.

**FILED**

**NOV 12 2003**

William A. Shaw  
Prothonotary/Clerk of Courts





Objections rendered the original Preliminary Objections moot.

6. On or about September 4, 2003, Defendants filed Preliminary Objections to Plaintiff's Amended Complaint.

7. In the Preliminary Objections, Defendants have asked this Honorable Court to strike Paragraph 5 and Counts III and IV of the Amended Complaint, based upon Defendants' belief that Plaintiff have pled insufficient facts to support an attempt to pierce the Defendant Medical Practice's corporate veil.

8. The Preliminary Objections, if granted, will not result in a dismissal of the entire case. Rather, the granting of Preliminary Objections will only result in the dismissal of Dr. Kao as an individual Defendant.

9. Regardless of the outcome of the Preliminary Objections to Plaintiff's Amended Complaint, Plaintiff is now seeking leave of Court to file a Second Amend Complaint to assert a claim against both the Medical Practice and Dr. Kao under the Pennsylvania Wage Payment and Collection Law (hereinafter the "WPCL"), 43 P.S. § 260.1 et seq.

10. The WPCL allows a terminated employee to pursue recovery against his employer, and the officers and directors of the employer who were considered to be decision and policymakers of the employer, for the employer's refusal to pay the employee the wages and compensation that are due under an employment contract.

11. Under Section 260.9a of the WPCL, a legal action for damages may be brought within three years after the day on which such wages were due and payable.

12. The wages and compensation that Plaintiff alleges were not paid relate to delinquent production bonuses that were due to be paid by Defendants no later than January 30, 2001 (for

contract year one), January 30, 2002 (for contract year two), and January 30, 2003 (for contract year three).

13. As such, a legal action by Plaintiff for recovery of delinquent production bonuses under the WPCL would be considered timely so long as the action was brought no later than January 29, 2004 (for contract year one), January 29, 2005 (for contract year two), and January 29, 2006 (for contract year three).

14. Under Rule 1033 of the Pennsylvania Rules of Civil Procedure, 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.

15. Prior to filing the within Motion, the undersigned counsel contacted counsel for Defendants in an effort to obtain counsel's consent to the filing of a Second Amended Complaint for purposes of adding a WPCL claim.

16. Defense counsel has advised that Defendants will not consent to the filing of a Second Amended Complaint by Plaintiff.

17. The courts in Pennsylvania have consistently held that amendments to a Complaint that change or add a cause of action, if made before the expiration of the statute of limitations, are freely authorized and allowed with great liberality under Rule 1033 in order to permit a party to plead their best case, provided that Defendants are not unfairly prejudiced by such an amendment.

18. An amendment which introduces a new cause of action is not unfairly prejudicial to

Defendants where the amendment is made sufficiently before a case is called to trial to allow Defendants sufficient time to prepare a defense to the new cause of action.

19. The proposed amendment of the Complaint in this case will introduce no new facts. Rather, the Defendants will only be required to defend against an additional cause of action, based upon the same set of facts as has been previously pled.

20. The within lawsuit was filed less than six months ago and the case is still in the pleadings stage. The only discovery that has been conducted has been the Plaintiff's subpoena of documents from a third party. Defendants certainly have sufficient time to defend the additional claim under the WPCL, if permitted by the Court.

21. Based upon the foregoing, Plaintiff respectfully requests that this Honorable Court enter an Order granting Plaintiff leave to file a Second Amended Complaint, adding a cause of action under the Pennsylvania Wage Payment and Collection Law.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant the within Motion.

Respectfully submitted,

**URBAN & CAVRICH, P.C.**



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff  
PA ID# 52693  
508 Allegheny Street  
P.O. Box 503  
Hollidaysburg, PA 16648  
(814) 695-7898



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

ERIC PLOTNICK, M.D.

-vs-

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.  
and YI HOW KAO, M.D.

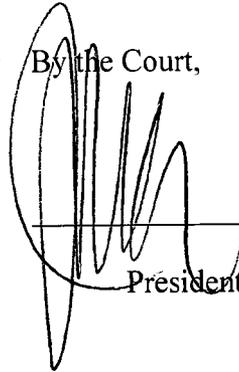
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No. 03 – 868 – CD

**ORDER**

NOW, this 17<sup>th</sup> day of November, 2003, this being the day and date set for argument into Preliminary Objections filed on behalf of Defendant above-named, upon agreement of the parties, it is the ORDER of this Court that argument be and is hereby continued for a period of sixty (60) days to permit plaintiff to complete discovery on the issue of piercing the corporate veil.

By the Court,



---

President Judge

**FILED**

NOV 18 2003

William A. Shaw  
Prothonotary

Current / SAUe

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

ERIC PLOTNICK, M.D.

-vs-

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.  
and YI HOW KAO, M.D.

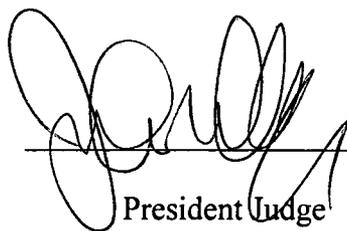
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No. 03 - 868 - CD

**ORDER**

NOW, this 17<sup>th</sup> day of November, 2003, this being the day and date set for argument into Preliminary Objections filed on behalf of Defendant above-named, upon agreement of the parties, it is the ORDER of this Court that argument be and is hereby continued for a period of sixty (60) days to permit plaintiff to complete discovery on the issue of piercing the corporate veil.

By the Court,



\_\_\_\_\_  
President Judge

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

ERIC PLOTNICK, M.D.

-vs-

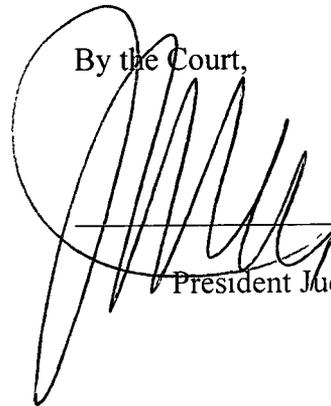
OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.  
and YI HOW KAO, M.D.

No. 03 - 868 - CD

**ORDER**

NOW, this 17<sup>th</sup> day of November, 2003, upon consideration of Plaintiff's Motion for Leave to File Amended Complaint to include a claim under the Pennsylvania Wage Payment and Collection Law (43 P.S. §260 et seq.), the Court being satisfied that he is within the applicable statute of limitations, it is the ORDER of this Court that said Motion be and is hereby granted. Said Amended Complaint to be filed within twenty (20) days from date hereof.

By the Court,



---

President Judge

**FILED**

NOV 18 2003

William A. Shaw  
Prothonotary

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**SECOND AMENDED  
COMPLAINT**

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN SECOND AMENDED  
COMPLAINT WAS SERVED UPON  
ALL COUNSEL OF RECORD THIS  
2<sup>ND</sup> DAY OF DECEMBER, 2003.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

**DEC 03 2003**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE TO DEFEND**

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 SECOND AMENDED 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 SECOND AMENDED COMPLAINT or for any other claim or relief requested by the Plaintiffs. You may lose 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.**

Clearfield County Court Administrator  
228 Courthouse  
230 E. Market Street  
Clearfield, PA 16830  
(814) 765-2641

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

ERIC PLOTNICK, M.D.,	:	
	:	
Plaintiff	:	
	:	No. 03-868 C.D.
vs.	:	
	:	
OTOLARYNGOLOGY GROUP OF	:	
CENTRAL PENNSYLVANIA, INC., and	:	
YI HOW KAO, M.D.,	:	
	:	
Defendants,	:	

**SECOND AMENDED COMPLAINT**

NOW COMES Plaintiff, Eric Plotnick, M.D., by his undersigned counsel, and files the following Second Amended Complaint in the above case, in support thereof averring as follows:

1. Plaintiff, Eric Plotnick, M.D., is an adult individual, currently residing at 1141 Manning Farms Court, Dunwoody, Georgia 30338.
2. Defendant, Otolaryngology Group of Central Pennsylvania, Inc., is a Pennsylvania Corporation having corporate offices located at 807 Turnpike Avenue, Suite 230, Clearfield, Clearfield County, Pennsylvania 16830.
3. Defendant, Yi How Kao, M.D. (hereinafter "Dr. Kao"), is an adult individual, currently residing at 325 Carogin Drive, State College, Centre County, Pennsylvania 16803.
4. In or about January of 2000, Plaintiff and Dr. Kao, who at the time Plaintiff believes was the Chief Executive Officer of the Otolaryngology Group of Central Pennsylvania, Inc., had discussions regarding Defendants' interest in employing Plaintiff on a full-time basis to provide medical services to the Defendants' patients.

5. Based upon knowledge, information, and belief, Plaintiff avers that the Defendant Corporation, Otolaryngology Group of Central Pennsylvania, Inc., existed as a shell corporation, created by Defendant, Dr. Kao, for the sole purpose of shielding Dr. Kao's personal assets from any judgments that may be entered against him in relation to the employment contract executed by Plaintiff, undertaking illegal activities, or abusing his availment of the corporate fiction and immunity protection that it carries. Specifically, Plaintiff avers that Dr. Kao failed to adhere to proper corporate formalities, as required under Pennsylvania law, in the operation of the corporate entity known as the Otolaryngology Group of Central Pennsylvania, Inc., in the following particulars:
- a) Otolaryngology Group of Central, Pennsylvania, Inc.'s corporate expenses give the appearance of being unrelated to the business of the corporation;
  - b) Otolaryngology Group of Central, Pennsylvania, Inc. has no regular corporate meetings nor kept corporate meeting minutes;
  - c) Otolaryngology Group of Central, Pennsylvania, Inc. has failed to abide by its by-laws, if enacted;
  - d) There has been and continues to be a substantial intermingling of the affairs of Dr. Kao and the Otolaryngology Group of Central, Pennsylvania, Inc.; and
  - e) Dr. Kao has used his control of the Otolaryngology Group of Central, Pennsylvania, Inc., and the assets of the Otolaryngology Group of Central, Pennsylvania, Inc. to further his personal interests.
6. Based upon the allegations set forth in the preceding Paragraph, Plaintiff believes and therefore avers that Dr. Kao may be held liable individually for any activities related to the Plaintiff's employment with the Defendant corporation.
7. Based upon the discussions between Plaintiff and Dr. Kao, Plaintiff and Defendants arrived at mutually acceptable "principles of agreement" with respect to the terms and

conditions of Plaintiff's employment.

8. Dr. Kao subsequently documented Plaintiff's and Defendants' "principles of agreement" in a letter to Plaintiff, a copy of which has been attached hereto as Exhibit "A", and is incorporate herein by reference as if same were set forth at length.
9. Specifically, Plaintiff's and Defendants' "principles of agreement" included, but was not limited to, the following:
  - a) Plaintiff was to be paid a base compensation of \$150,000.00 per year during the initial contract term and during the renewed term for the second year;
  - b) Plaintiff was to be paid a "production bonus" of 50% of collections over \$300,000.00, to be paid at the end of the year;
  - c) Defendants would pay for Plaintiff's malpractice insurance, reasonable health and disability insurance, fees to maintain licensure and hospital memberships and professional society memberships, reasonable continuing medical education expenses, pager, auto mileage reimbursement for Plaintiff's travel to Defendants' secondary office in Clearfield or a reasonable lease payment and expenses, and moving expenses;
  - d) Defendants could terminate Plaintiff's employment only for cause, defined as: 1) Plaintiff's loss of professional license; 2) Plaintiff's loss of ability to render medical service due to physical impairment; and 3) Plaintiff's acts of moral turpitude or fraudulent conduct;
  - e) Defendants were required to give Plaintiff four months notice prior to the end of the contract year for termination of services.
10. On or about February 1, 2000, Plaintiff and Defendants executed an "Employment Contract for Medical Services" (hereinafter "the contract"), a copy of which is attached hereto as Exhibit "B", and incorporated herein by reference as if same were set forth at length.
11. Under the terms of the contract, Plaintiff's initial term of employment was one year, commencing on February 1, 2000, with the contract automatically renewing for additional

one year terms unless either party gave the other three months prior written notice of their intention not to renew the contract. Plaintiff actually began his employment with Defendants in mid-January, 2000.

12. The contract further included, but was not limited to, the following provisions:
  - a) Plaintiff was to receive a base salary of \$150,000.00 per year;
  - b) Plaintiff was to be paid a "production bonus" of 50% of Plaintiff's *gross billings* (emphasis added) over \$300,000.00, to be paid within 30 days of the end of the year;
  - c) Defendants would pay for Plaintiff to maintain appropriate cell, paging, or telephone equipment;
  - d) Defendants would pay for Plaintiff's malpractice insurance (including pre-funded tail coverage), reasonable health and disability insurance, fees to maintain licensure and hospital memberships and professional society memberships, and reasonable continuing medical education expenses;
  - e) Defendants could terminate Plaintiff's employment *only for cause* (emphasis added), defined as: 1) Plaintiff's loss of professional license; 2) suspension or termination of Plaintiff's Federal Drug Enforcement Administration Number; 3) Plaintiff's ceasing to qualify for professional liability insurance at regular rates from Defendants' insurance carrier; 4) Plaintiff becoming a "sanctioned individual", as that term is used in 42 U.S.C. 1320a-7, regarding individuals penalized for Medicare or Medicaid fraud or abuse; 5) the execution of a written agreement between Plaintiff and Defendants to terminate the contract; 6) Plaintiff's death; 7) Plaintiff's failure or refusal to perform the duties of his employment faithfully and diligently and to comply with the provisions of the contract; 8) Plaintiff's failure or refusal to comply with reasonable policies, standards, and regulations that Defendants may establish from time to time; 9) Plaintiff's failure to become board-certified; 10) Plaintiff's failure to maintain medical staff membership and clinical privileges at Clearfield Hospital and Centre Community Hospital, or the suspension, reduction, or termination of any such medical staff membership or clinical privileges; or 11) Plaintiff's inability to fully and competently perform his duties for a period of 30 continuous days due to physical, mental, or psychology illness, injury, or condition.
13. According to Section XII of the contract, entitled "Employee Status", Plaintiff was to be considered an employee of the Defendants *so long as he abided by the terms and*

*conditions of the contract, and maintained at all times the proper licensing with the Commonwealth of Pennsylvania, and board certification* (emphasis added).

14. The contract executed by Plaintiff and Defendants did not contain a specific provision regarding auto mileage reimbursement for Plaintiff's travel to Defendants' office in Clearfield or a reasonable lease payment and expenses, as stated in the "principles of agreement" between Plaintiff and Defendant (Exhibit "A"). However, Dr. Kao verbally assured Plaintiff that Defendants would pay Plaintiff's lease payments and related expenses (including gas mileage) as a condition precedent of Plaintiff and Defendants execution of the contract.
15. Dr. Kao's verbal assurance to Plaintiff that Defendants would pay Plaintiff's lease payments and related expenses induced Plaintiff to execute the contract with Defendants, and Plaintiff relied to his detriment by entering into an employment agreement with Defendants based, in part, upon Dr. Kao's assurance.
16. Beginning on February 15, 2000, and continuing on a monthly basis through January 21, 2003, Defendants leased (*in Defendants' name*) a 2000 Toyota RAV4 for Plaintiff's benefit from Toyota Financial Services, making monthly lease payments of \$443.24 directly to Toyota Financial Services. Defendants also made all automobile insurance payments for Plaintiff's vehicle, and reimbursed Plaintiff for all of his gas mileage. At no point in time from February 15, 2000, through January 21, 2003, did Defendants advise Plaintiff that Defendants expected to be reimbursed by Plaintiff for the lease payments, automobile insurance payments, or reimbursement of gas mileage, paid by Defendants on Plaintiff's behalf.

17. The contract executed by Plaintiff and Defendants did not contain a specific provision regarding Defendants' reimbursement of Plaintiff's moving expenses, as stated in the "principles of agreement" between Plaintiff and Defendants (Exhibit "A"). However, Defendants, in fact, reimbursed Plaintiff for his moving expenses, further evidence of Defendants' intention to incorporate certain provisions of the "principles of agreement" (Exhibit "A") into the contract between Plaintiff and Defendants.
18. The original one-year contract term expired on January 31, 2001. By its terms, the contract automatically renewed for a period of one year. Plaintiff and Defendants did not execute any written modifications to the contract during the second year of Plaintiff's employment.
19. On February 1, 2002, Plaintiff and Defendants executed a written two-year extension of the original contract (through January 31, 2004). The only modification to the original contract was that the Plaintiff's base salary was increased to \$210,000.00 per year, to be paid in bi-monthly installments. A copy of the contract extension is attached hereto as Exhibit "C", and is incorporate herein by reference as if same were set forth at length.
20. The "production bonus" to be paid to Plaintiff, as specified in the original contract, was not altered by the written extension executed on February 1, 2002. Thus, Plaintiff was to continue to be paid a "production bonus" of 50% of Plaintiff's *gross billings* (emphasis added) over \$300,000.00, to be paid within 30 days of the end of the year.
21. Beginning in October of 2001, Plaintiff began to notify Dr. Kao of serious internal billing problems within Defendants' billing department. Specifically, Plaintiff expressed concern that Defendants' billing system lacked the capability to report and track accounts

that were 30, 60, 90, and 120 days old, and causing Plaintiff concern as to the status of his accounts receivable.

22. Plaintiff further advised Dr. Kao that a substantial amount of Plaintiff's gross billings were being lost as a result of: a) the negligent and/or substandard billing practices of Defendant; b) Defendants' failure and/or refusal to follow generally accepted accounting principles; and c) Defendants' failure and/or refusal to follow IRS reporting guidelines.
23. Specifically, Plaintiff advised Dr. Kao that Defendants had delinquent billings for Plaintiff's patients in excess of \$1,000,000.00, as a result of Plaintiff's accounts never being billed by Defendants, Plaintiff's bills being rejected by third party payors and never re-submitted by Defendants, or bills being sent out (and in some cases, collected) in Dr. Kao's name instead of Plaintiff's name.
24. Plaintiff regularly and continuously expressed his concern and frustration regarding Defendants' billing practices (which has continued to have a tremendous negative impact on the production bonuses owed by Defendants to Plaintiff under the terms of the contract), through the present date.
25. Defendants have conceded that they have not been able to pay Plaintiff the entire amount of the production bonuses owed him as a result of the Defendants' negligent billing practices and/or substandard billing system, and Defendants have, in fact, hired an independent third-party billing company, Healthcare Billing Consultants, Inc. (hereinafter "HBC"), to attempt to collect as much of Plaintiff's past due gross billings as possible.
26. Despite the best efforts of HBC, however, Defendants have conceded that they will not be able to collect all of the Plaintiff's past due gross billings, causing Plaintiff to suffer

immediate and irreparable financial hardship, and making Defendants non-compliant with “production bonus” provision of Plaintiff’s employment contract.

27. However, in order to partially compensate Plaintiff for the past due production bonuses owed, Defendants agreed in October of 2002 to pay past due production bonuses to Plaintiff for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002, based upon (but not limited to) revenue for office visits, surgeries, consultations (inpatient and outpatient) and allergy diagnosis and treatment.
28. The past due production bonuses to be paid to Plaintiff included, but was not limited to, reimbursement collected and posted under Plaintiff’s name, reimbursement already paid but never posted under Plaintiff’s name, and reimbursement billed under Plaintiff’s name but collected and posted under Defendants’ name.
29. The past due production bonuses to be paid to Plaintiff also included, but was not limited to, timely adjustments, based upon Defendants’ admission that certain of Plaintiff’s billings can never be collected, because the time period during which billing claims must have been submitted has expired (due to Defendants’ negligent billing practices and substandard billing system).
30. On January 21, 2003, Defendants altogether stopped making lease payments and automobile insurance payments on Plaintiff’s behalf, stopped reimbursing Plaintiff for his gas mileage, and cell phone, and stopped paying Plaintiff his “production bonus”.
31. On or about January 29, 2003, Dr. Kao delivered a letter to Plaintiff, advising Plaintiff that Defendants were terminating Plaintiff’s employment contract effective May 29, 2003. A copy of Dr. Kao’s letter is attached hereto as Exhibit “D”, and is incorporated

herein by reference as if same were set forth at length.

32. In his letter, Dr. Kao stated that Defendants were terminating Plaintiff's employment "purely for patient safety reasons", related to three "events" involving Plaintiff's patients that allegedly brought the issue of patient care and safety to the forefront.
33. According to Dr. Kao's letter, he had to be consulted by two emergency room physicians and an internist with respect to three of Plaintiff's "problem" patients who Plaintiff allegedly failed to sign out to Dr. Kao.
34. On January 31, 2003, Plaintiff responded in writing to Dr. Kao's termination letter. A copy of Plaintiff's correspondence is attached hereto as Exhibit "E" and is incorporate herein by reference as if same were set forth at length.
35. In his letter, Plaintiff advised Dr. Kao that Defendants had no cause for terminating the Plaintiff's contract. Specifically, Plaintiff advised that he was not aware of any existing or pending patient safety or quality of care issues. Plaintiff further stated that he did not see any provision in the Plaintiff's employment contract that provided for termination based upon the reasons outlined in Dr. Kao's letter of January 29, 2003.
36. In his letter of January 31, 2003, Plaintiff asked Dr. Kao to cite the specific policy language that allowed for termination of the contract.
37. On or about February 15, 2003, Plaintiff received his regularly scheduled salary payment. However, Plaintiff did not receive a "production bonus" check, as had been the case since October of 2002.
38. In response to a question posed by Plaintiff as to why Plaintiff did not receive a bonus check, Dr. Kao responded with a handwritten note dated March 17, 2003. Plaintiff

believes, and therefore avers, that the actual date of Dr. Kao's note was February 17, 2003. A copy of Dr. Kao's note is attached hereto as Exhibit "F", and is incorporated herein by reference as if same were set forth at length herein.

39. In his handwritten note, Dr. Kao stated that he was deducting the following "expenses" against Plaintiff's production bonus check(s) that were due:
  - a) Lease payments - \$16,399.88;
  - b) Mileage excess - \$2,551.20;
  - c) Deductible for two accidents - \$1,000.00;
  - d) Insurance - \$3,156.00 (1/2 of \$1,052.00 semi-annual premium).
  - e) Gas expense, and other expenses exceeding "reasonable" cell phone and pager expenses – to be determined.
40. According to Dr. Kao's handwritten note, "there is no mention of auto expenses in the contract."
41. Solely as a result of Defendants' breach of contract, and in an effort to mitigate his damages resulting from said breach of contract, Plaintiff accepted employment on or about February 8, 2003, with Ear, Nose and Throat Associates, P.C., located in Snellville, Georgia. Plaintiff's last date of employment for Defendants was May 26, 2003.
42. On April 14, 2003, Defendant Kao telephoned Plaintiff and admitted that he had no basis to terminate Plaintiff's employment contract on January 29, 2003.
43. On May 19, 2003, Defendant Kao telephoned Plaintiff and stated that Defendants would pay Plaintiff the following: a) past due "production bonus" for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 (\$14,460.57 gross); b) past due reimbursable expenses (gas, car payment, car insurance, cell phone) from November,

2002 through April, 2003 (\$2,303.39); c) past due "production bonus" for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 from April 2 to May 1; d) past due reimbursable expenses for April, 2003 (gas only) and May, 2003 (gas, car payment, car insurance, and cell phone; e) PMSLIC malpractice tail coverage (\$27,168.00); and f) regular payroll compensation through a half-day on May 28, 2003.

44. Subsequent to the telephone conversation between Plaintiff and Defendant Kao on May 19, 2003, Defendants, in fact, paid Plaintiff the following: a) past due "production bonus" for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 (\$14,460.57 gross); b) past due reimbursable expenses (gas, car payment, car insurance, cell phone) from November, 2002 through April, 2003 (\$2,303.39); c) past due "production bonus" for contract years January, 2000 to January, 2001, and February, 2001 to January, 2002 from April 2 to May 1; d) past due reimbursable expenses for April, 2003 (gas only) and May, 2003 (gas, car payment, car insurance, and cell phone; e) PMSLIC malpractice tail coverage (\$27,168.00); and f) regular payroll compensation through May 26, 2003 (as agreed to by the parties).
45. Under the terms of Plaintiff's employment agreement, Plaintiff's "production bonus" for contract year February, 2002 to January, 2003, was due to be paid no later than March 2, 2003. Defendants have not, to date, made any bonus payments to Plaintiff for this contract year.

**ERIC PLOTNICK, M.D., V.**  
**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**  
**COUNT I - BREACH OF CONTRACT**

46. Plaintiff incorporates by reference herein Paragraphs 1 through 45 of this Complaint, as if same were set forth at length.
47. From February 1, 2000, through present, Plaintiff has faithfully and in good faith complied with all of the provisions of the original contract executed by the parties in February of 2000, and the extension of the contract executed in February of 2002. Specifically, he has complied with Section XII of the contract, in that he has, in all material respects, abided by the terms and conditions of the contract, and has, at all times material hereto, maintained the proper licensing with the Commonwealth of Pennsylvania and board certification.
48. The reasons specified in Dr. Kao's letter of January 29, 2003, for Defendant's unilateral termination of Plaintiff's employment contract, are not grounds upon which termination "for cause" may be based, under Section XVI of the contract.
49. At no time prior to January 29, 2003, did Dr. Kao or any representative of Defendant notify or otherwise advise Plaintiff that Defendant had concerns regarding the quality of Plaintiff's care of his patients, or for the safety of Plaintiff's patients.
50. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his letter of January 29, 2003, were pretext for Defendant's wrongful termination of Plaintiff's employment agreement, based in part upon Defendant's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.

51. At no time prior to December of 2002 did Dr. Kao or any representative of Defendant advise Plaintiff that it would not pay for Plaintiff's automobile lease and automobile insurance, as it had done on a regular and continuous basis since February of 2000.
52. At no time prior to December of 2002 did Dr. Kao or any representative of Defendant question the reasonableness or necessity of the reimbursement requests submitted by Plaintiff for Plaintiff's gas expenses or cell phone expenses. In fact, Defendant reimbursed Plaintiff for these expenses on a regular and continuous basis since February of 2000.
53. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his note of March 17, 2003 (which Plaintiff believes to actually have been authored on February 17, 2003), for deducting certain expenses from Plaintiff's past due production bonuses, was a pretext for Defendant's wrongful termination of Plaintiff's employment agreement, based in part upon Defendant's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.
54. Plaintiff justifiably relied to his detriment upon Defendant's payment of an automobile lease, and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.
55. Defendant's action to unilaterally terminating the Plaintiff's employment contract constitutes a material breach of the employment contact that was executed by the parties.

56. Plaintiff has been irreparably damaged as a result of the Defendant's breach of contract.

As a result of the Defendant's breach of contract, Plaintiff is entitled to the following damages:

- a) Payment of past due "production bonus" for contract year 2/01/02 through 1/31/03 (in excess of \$155,000.00 gross – final amount to be determined);
- b) Payment of future "production bonus" that would have otherwise been earned by Plaintiff from 5/23/03 through 1/31/04 (final amount to be determined);
- c) Payment of delinquent "production bonuses" owed, based upon billings and collections from 2/01/00 through 1/31/02, that are currently being billed, collected, or adjusted off by HBC as lost revenue (in excess of \$10,000.00 gross – final amount to be determined);
- d) Payment of future lost wages owed from 5/27/03 through 1/31/04 (in excess of \$140,000.00 – final amount to be determined);
- e) A reasonable lease or car payment from 6/01/03 through 1/31/04, (in excess of \$3,500.00 - final amount to be determined);
- f) Reimbursement of Plaintiff's cell phone expenses from 6/01/03 through 1/31/04, (in excess of \$390.00 - final amount to be determined);
- g) Gas reimbursement from 6/01/03 through 1/31/04, (in excess of \$900.00 - final amount to be determined);
- h) Reimbursement for payment of life insurance policy premium, paid by Plaintiff in June of 2003 (coverage from 7/01/03 through January 31, 2004), or \$419.00;
- i) Payment of health insurance policy, payable at \$545.37 per month from 6/01/03 through 1/31/04; or, in the alternative, reimbursement for said health insurance premium payment, if Plaintiff is required to pay said premium because of Defendants' failure and/or refusal to do so;
- j) Payment of premium for M-Care coverage for the policy period of 1/01/03 through 5/23/03; or, in the alternative, reimbursement for said M-Care coverage payment, if Plaintiff is required to pay said premium because of Defendant's failure and/or refusal to do so (\$3,725.00 for pro-rated M-Care coverage);
- k) Reimbursement of car insurance paid by Plaintiff from 6/01/03 through 1/31/04 (in excess of \$700.00 – final amount to be determined);

- l) Statutory interest on all amounts owed; and
- m) Record court costs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant, in an amount in excess of the Arbitration limits of this Court.

**ERIC PLOTNICK, M.D., V.**  
**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**  
**COUNT II – PROMISSORY ESTOPPEL**

- 57. Plaintiff incorporates by reference herein Paragraphs 1 through 56 of this Complaint, as if same were set forth at length.
- 58. During the course of Plaintiff's dealings with Dr. Kao and/or Defendant, as more fully set forth above, Dr. Kao and/or Defendant continually represented to Plaintiff that Defendant would pay for Plaintiff's automobile lease, and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.
- 59. From 2/01/00 through 5/31/03, Defendant did, in fact, pay for Plaintiff's automobile lease and automobile insurance, and did reimburse Plaintiff for all of his gas expenses and cell phone expenses.
- 60. Such representations and actions by Dr. Kao, on behalf of Defendant, if false, constituted a concealment of material facts by Dr. Kao, on behalf of Defendant, and were made by Dr. Kao, on behalf of Defendant: a) with the intention of deceiving Plaintiff; b) with the intention that Plaintiff would rely and act upon such representations; and c) with knowledge that such representations were false.
- 61. Plaintiff did rely upon and act upon the representations of Dr. Kao, on behalf of Defendant, as a result of such representations and actions.

62. At such time, Plaintiff had no knowledge of the falsity of the representations and actions of Dr. Kao, on behalf of Defendant, and no means of ascertaining that fact.
63. Except for Dr. Kao's representations, on behalf of Defendant, that Defendant would pay for Plaintiff's automobile lease and automobile insurance, and reimburse Plaintiff for his gas expenses and cell phone expenses, and Defendant's actions, since 2/01/00, in actually paying for Plaintiff's automobile lease and automobile insurance, and reimbursing Plaintiff for all of his gas expenses and cell phone expenses, Plaintiff would not have entered into an employment contract with Defendant, and would not have renewed his employment contract on 2/01/01 and 2/01/02.
64. Dr. Kao, on behalf of Defendant, committed actual fraud, in attempting to deceive Plaintiff by representing that Defendant would pay for Plaintiff's automobile lease and automobile insurance, and would reimburse Plaintiff for his gas expenses and cell phone expenses, when Dr. Kao, on behalf of Defendant, knew this not to be true.
65. In the alternative, Dr. Kao, on behalf of Defendant, committed constructive fraud, resulting from Dr. Kao's gross negligence, on behalf of Defendant, or from the admissions, declarations, or conduct of Dr. Kao, on Defendant's behalf, intended to influence the conduct of Plaintiff, and which has misled Plaintiff to act to his prejudice.
66. Based upon the foregoing, Defendant is estopped to deny that it is obligated to pay for Plaintiff's automobile lease and automobile insurance, and to reimburse Plaintiff for his gas expenses and cell phone expenses, from June 1, 2003, through January 31, 2004, in an amount to be determined by the Court.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant in an amount in excess of the Arbitration limits of this Court.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**  
**COUNT III - BREACH OF CONTRACT**

67. Plaintiff incorporates by reference herein Paragraphs 1 through 66 of this Complaint, as if same were set forth at length.
68. From February 1, 2000, through present, Plaintiff has faithfully and in good faith complied with all of the provisions of the original contract executed by the parties in February of 2000, and the extension of the contract executed in February of 2002. Specifically, he has complied with Section XII of the contract, in that he has, in all material respects, abided by the terms and conditions of the contract, and has, at all times material hereto, maintained the proper licensing with the Commonwealth of Pennsylvania and board certification.
69. The reasons specified in Dr. Kao's letter of January 29, 2003, for Defendants' unilateral termination of Plaintiff's employment contract, are not grounds upon which termination "for cause" may be based, under Section XVI of the contract.
70. At no time prior to January 29, 2003, did Dr. Kao notify or otherwise advise Plaintiff that Dr. Kao had concerns regarding the quality of Plaintiff's care of his patients, or for the safety of Plaintiff's patients.
71. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his letter of January 29, 2003, were pretext for Dr. Kao's wrongful termination of Plaintiff's employment agreement, based in part upon Dr. Kao's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for

alternate employment.

72. At no time prior to December of 2002 did Dr. Kao advise Plaintiff that he would not pay for Plaintiff's automobile lease and automobile insurance, as he had done on a regular and continuous basis since February of 2000.
73. At no time prior to December of 2002 did Dr. Kao question the reasonableness or necessity of the reimbursement requests submitted by Plaintiff for Plaintiff's gas expenses and cell phone expenses. In fact, Dr. Kao reimbursed Plaintiff for these expenses on a regular and continuous basis since February of 2000.
74. Plaintiff believes, and therefore avers, that the reasons cited by Dr. Kao in his note of March 17, 2003 (which Plaintiff believes to actually have been authored on February 17, 2003), for deducting certain expenses from Plaintiff's past due production bonuses, was a pretext for Dr. Kao's wrongful termination of Plaintiff's employment agreement, based in part upon Dr. Kao's attempt to avoid paying Plaintiff his past due production bonuses, and upon Dr. Kao's belief that Plaintiff was looking for alternate employment.
75. Plaintiff justifiably relied to his detriment upon Dr. Kao's payment of an automobile lease and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.
76. Dr. Kao's action to unilaterally terminating the Plaintiff's employment contract constitutes a material breach of the employment contact that was executed by the parties.
77. For the reasons more fully set forth above in Paragraph 5, which is incorporated herein by reference as if same were set forth at length, Dr. Kao may be held liable individually for any activities related to the Plaintiff's employment with the Defendant corporation.

78. Plaintiff has been irreparably damaged as a result of the Defendant's breach of contract.

As a result of the Defendant's breach of contract, Plaintiff is entitled to the following damages:

- a) Payment of past due "production bonus" for contract year 2/01/02 through 1/31/03 (in excess of \$155,000.00 gross – final amount to be determined);
- b) Payment of future "production bonus" that would have otherwise been earned by Plaintiff from 5/23/03 through 1/31/04 (final amount to be determined);
- c) Payment of delinquent "production bonuses" owed, based upon billings and collections from 2/01/00 through 1/31/02, that are currently being billed, collected, or adjusted off by HBC as lost revenue (in excess of \$10,000.00 gross – final amount to be determined);
- d) Payment of future lost wages owed from 5/27/03 through 1/31/04 (in excess of \$140,000.00 – final amount to be determined);
- e) A reasonable lease or car payment from 6/01/03 through 1/31/04, (in excess of \$3,500.00 - final amount to be determined);
- f) Reimbursement of Plaintiff's cell phone expenses from 6/01/03 through 1/31/04, (in excess of \$390.00 - final amount to be determined);
- g) Gas reimbursement from 6/01/03 through 1/31/04, (in excess of \$900.00 - final amount to be determined);
- h) Reimbursement for payment of life insurance policy premium, paid by Plaintiff in June of 2003 (coverage from 7/01/03 through January 31, 2004), or \$419.00;
- i) Payment of health insurance policy, payable at \$545.37 per month from 6/01/03 through 1/31/04; or, in the alternative, reimbursement for said health insurance premium payment, if Plaintiff is required to pay said premium because of Defendants' failure and/or refusal to do so;
- j) Payment of premium for M-Care coverage for the policy period of 1/01/03 through 5/23/03; or, in the alternative, reimbursement for said M-Care coverage premium payment, if Plaintiff is required to pay said premium because of Defendant's failure and/or refusal to do so (\$3,725.00 for pro-rated M-Care coverage);

- k) Reimbursement of car insurance paid by Plaintiff from 6/01/03 through 1/31/04 (in excess of \$700.00 – final amount to be determined);
- l) Statutory interest on all amounts owed; and
- m) Record court costs.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant, in an amount in excess of the Arbitration limits of this Court.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**  
**COUNT IV – PROMISSORY ESTOPPEL**

- 79. Plaintiff incorporates by reference herein Paragraphs 1 through 78 of this Complaint, as if same were set forth at length.
- 80. During the course of Plaintiff's dealings with Dr. Kao, as more fully set forth above, Dr. Kao continually represented to Plaintiff that he would pay for Plaintiff's automobile lease and automobile insurance, and reimbursement of Plaintiff's gas expenses and cell phone expenses.
- 81. From 2/01/00 through 5/31//03, Dr. Kao did, in fact, pay for Plaintiff's automobile lease and automobile insurance, and did reimburse Plaintiff for all of his gas expenses and cell phone expenses.
- 82. Such representations and actions by Dr. Kao, if false, constituted a concealment of material facts by Dr. Kao, and were made by him: a) with the intention of deceiving Plaintiff; b) with the intention that Plaintiff would rely and act upon such representations; and c) with knowledge that such representations were false.
- 83. Plaintiff did rely upon and act upon the representations of Dr. Kao as a result of such representations and actions.

84. At such time, Plaintiff had no knowledge of the falsity of the representations and actions of Dr. Kao, and no means of ascertaining that fact.
85. Except for Dr. Kao's representations that he would pay for Plaintiff's automobile lease and automobile insurance, and reimburse Plaintiff for his gas expenses and cell phone expenses, and Dr. Kao's actions, since 2/01/00, in actually paying for Plaintiff's automobile lease and automobile insurance, and reimbursing Plaintiff for all of his gas expenses and cell phone expenses, Plaintiff would not have entered into an employment contract with Dr. Kao, and would not have renewed his employment contract on 2/01/01 and 2/01/02.
86. Dr. Kao committed actual fraud, in attempting to deceive Plaintiff by representing that he would pay for Plaintiff's automobile lease and automobile insurance, and would reimburse Plaintiff for his gas expenses and cell phone expenses, when Dr. Kao knew this not to be true.
87. In the alternative, Dr. Kao committed constructive fraud, resulting from his gross negligence, or from his admissions, declarations, or conduct, intended to influence the conduct of Plaintiff, and which has misled Plaintiff to act to his prejudice.
88. For the reasons more fully set forth above in Paragraph 5, which is incorporated herein by reference as if same were set forth at length, Dr. Kao may be held liable individually for any activities related to the Plaintiff's employment with the Defendant corporation.
89. Based upon the foregoing, Dr. Kao is estopped to deny that he is obligated to pay for Plaintiff's automobile lease and automobile insurance, and to reimburse Plaintiff for his gas expenses and cell phone expenses, from June 1, 2003, through January 31, 2004, in

an amount to be determined by the Court.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendant in an amount in excess of the Arbitration limits of this Court.

**ERIC PLOTNICK, M.D., V.**  
**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**  
**COUNT V – VIOLATION OF WAGE PAYMENT AND COLLECTION LAW**

90. Plaintiff incorporates by reference herein Paragraphs 1 through 89 of this Complaint, as if same were set forth at length.
91. Under Pennsylvania's Wage Payment and Collection Law ("WPCL"), 43 P.S. § 260.1 et seq., whenever an employer separates an employee from payroll, the wages or compensation earned shall become due and payable not later than the next regular payday of his employer on which such wages would otherwise be due and payable.
92. Under the WPCL, the term "wages" includes fringe benefits or wage supplements whether payable by the employer from his funds or from amounts withheld from the employer's pay by the employer. In turn, "fringe benefits or wage supplements" are defined as including: all monetary employer payments to provide benefits under any employee benefit plan, as well as separation, vacation, holiday, or guaranteed pay; reimbursement of expenses; and any other amount to be paid pursuant to an agreement to the employee, a third party, or fund for the benefit of employees.
93. Under Section "V" of Plaintiff's Employment Contract (Exhibit "B"), Defendant was required to calculate and pay Plaintiff the production bonus to which Plaintiff was entitled within 30 days after the end of each year of the Contract. As such, Plaintiff's production bonuses were due to be paid by Defendant no later than March 2, 2001 (for

contract year one), March 2, 2002 (for contract year two), and March 2, 2003 (for contract year three).

94. Despite Plaintiff's requests, Defendant has refused to pay him the wages and/or compensation that are due under his employment contract.
95. Defendant's refusal to pay Plaintiff his earned wages and/or compensation, as more fully set forth in Paragraph 56(a), 56(c), and 56(j) above, is a violation of WPCL §§ 260.3 and 260.5.
96. The wages and/or compensation due Plaintiff have remained unpaid, despite the absence of a good faith contest, for more than thirty days following the date on which they were due, thereby entitling Plaintiff to an award of damages pursuant to WPCL §§ 260.9a and 260.10.

WHEREFORE, Plaintiff requests that judgment be entered against Defendant in an amount in excess of the Arbitration limits of this Court, plus liquidated damages, attorney's fees, costs, and such other relief as the Court deems proper.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**  
**COUNT VI – VIOLATION OF WAGE PAYMENT AND COLLECTION LAW**

97. Plaintiff hereby incorporates Paragraphs 1 through 96 above as though the same were fully set forth at length herein.
98. Under Pennsylvania's Wage Payment and Collection Law ("WPCL"), 43 P.S. § 260.1 et seq., officers and/or directors of a corporation who are decision and policymakers for a corporation are considered "Employers", and may be held personally liable for unpaid wages owed former employees of the corporation.

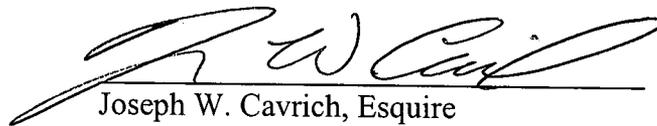
99. At all times material hereto, Defendant, Yi How Kao, M.D., was an officer and director of Otolaryngology Group of Central Pennsylvania, Inc., and was a decision and policymaker for the corporation.
100. Defendant, Yi How Kao, M.D., is considered an “Employer” under the WPCL, and may be held personally liable for unpaid wages owed former employees of the corporation.
101. Under Pennsylvania’s Wage Payment and Collection Law (“WPCL”), 43 P.S. § 260.1 et seq., whenever an employer separates an employee from payroll, the wages or compensation earned shall become due and payable not later than the next regular payday of his employer on which such wages would otherwise be due and payable.
102. Under the WPCL, the term “wages” includes fringe benefits or wage supplements whether payable by the employer from his funds or from amounts withheld from the employer’s pay by the employer. In turn, “fringe benefits or wage supplements” are defined as including: all monetary employer payments to provide benefits under any employee benefit plan, as well as separation, vacation, holiday, or guaranteed pay; reimbursement of expenses; and any other amount to be paid pursuant to an agreement to the employee, a third party, or fund for the benefit of employees.
103. Under Section “V” of Plaintiff’s Employment Contract (Exhibit “B”), Defendant was required to calculate and pay Plaintiff the production bonus to which Plaintiff was entitled within 30 days after the end of each year of the Contract. As such, Plaintiff’s production bonuses were due to be paid by Defendant no later than March 2, 2001 (for contract year one), March 2, 2002 (for contract year two), and March 2, 2003 (for contract year three).

104. Despite Plaintiff's requests, Defendant has refused to pay him the wages and/or compensation that are due under his employment contract.
105. Defendant's refusal to pay Plaintiff his earned wages and/or compensation, as more fully set forth in Paragraph 56(a), 56(c), and 56(j) above, is a violation of WPCL §§ 260.3 and 260.5.
106. The wages and/or compensation due Plaintiff have remained unpaid, despite the absence of a good faith contest, for more than thirty days following the date on which they were due, thereby entitling Plaintiff to an award of damages pursuant to WPCL §§ 260.9a and 260.10.

WHEREFORE, Plaintiff requests that judgment be entered against Defendant in an amount in excess of the Arbitration limits of this Court, plus liquidated damages, attorney's fees, costs, and such other relief as the Court deems proper.

Respectfully submitted,

**URBAN & CAVRICH, P.C.**



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

508 Allegheny Street  
P.O. Box 503  
Hollidaysburg, PA 16648  
(814) 695-7898

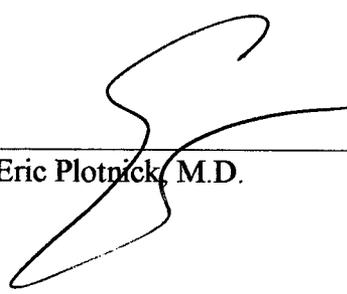
**VERIFICATION**

I, Eric Plotnick, M.D., hereby state:

1. I verify that the facts set forth in the foregoing Second Amended Complaint are true and correct based on my personal knowledge and information; and

2. I understand that the statements made in the foregoing Second Amended Complaint are made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsifications to authorities.

Dated: 12/2/03

  
\_\_\_\_\_  
Eric Plotnick, M.D.

OTOLARYNGOLOGY GROUP  
OF CENTRAL PA

477 E. BEAVER AVENUE  
SUITE 150  
STATE COLLEGE, PA. 16801  
814 231-7750

Y. H. KAO, M.D., F.A.C.S.  
EWING TIBBELS, M.D.

MEDICAL ARTS BUILDING  
807 TURNPIKE AVENUE  
SUITE 230  
CLEARFIELD, PA. 16830  
814 788-5110  
Fax 814 788-5113

LEWIS NEWBERG, M.D.

Eric,

My attorney was also out of town.  
Enclosed please find principles of our  
agreement outlined. I will have Mr. Smith  
put these into a formal contract. If  
you have any concerns or questions please  
call.

J. Hoar

EXHIBIT

"A"

OTOLARYNGOLOGY GROUP  
OF CENTRAL PA

477 E. BEAVER AVENUE  
SUITE 180  
STATE COLLEGE, PA. 16801  
814 231-7780

Y. H. KAO, M.D., F.A.C.S.  
EWING TIBBELS, M.D.

MEDICAL ARTS BUILDING  
807 TURNPIKE AVENUE  
SUITE 230  
CLEARFIELD, PA. 16830  
814 768-5110  
Fax 814 768-5113

LEWIS NEWBERG, M.D.

- 1.) Base compensation of \$150,000 per measurement year during the initial term and during the renewed term for the 2<sup>nd</sup> year.
- 2.) Production bonus will be 50% of collections over \$300,000. Production bonus will be paid at the end of the year.
- 3.) ~~Malpractice insurance, reasonable health and disability insurance, fees to maintain licensure and hospital memberships and professional society membership, reasonable CME expenses, pager, auto mileage reimbursement to secondary office or reasonable lease payment and expenses, and moving expenses will be provided.~~
- 4.) Participation in retirement plan is available after first year of employment and will be deducted from production bonus.
- 5.) Dr. Plotnick may choose to have no buy-in for partnership. In return Dr. Kao will be entitled to receive the entire compensation from one subsequent associate who choose to buy into the practice. Partnership is at discretion of Dr. Kao after a 2-year period of service.
- 6.) There will be a restrictive covenant of 25 miles from both offices for a length of 2 years after termination.
- 7.) Dr. Kao may terminate this agreement at any time for cause only. An event for termination for cause shall be:
  - a.) Loss of professional license.
  - b.) Loss of ability to render medical service due to physical impairment.
  - c.) Acts of moral turpitude or fraudulent conduct.
- 8.) Dr. Kao will give Dr. Plotnick 4 months notice prior to end of the year for termination of services. Dr. Plotnick will give 3 months notice before termination of services.
- 9.) Up to 2 weeks of paid vacation and one week of sick time will be provided.
- 10.) Up to 2 weeks of CME time will be provided.
- 11.) Patents titled "Compositions for the Treatment of Sleep Apnea and Methods Related Thereto" File No. 19566-0001 are property of Drs. Kao and Newberg solely.

## EMPLOYMENT CONTRACT FOR MEDICAL SERVICES

MADE this 1st day of February 2000, by and between OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC., Pennsylvania professional corporation with principal office at 807 Turnpike Avenue, Suite 230, Clearfield, Pennsylvania, 16830, (hereinafter "CORPORATION"),

A

N

D

ERIC NEIL PLOTNICK, M.D., residing at 750 Toffrees Ave #221  
State College, PA 16803, (hereinafter "PHYSICIAN").

WHEREAS, the CORPORATION has been organized to provide Otolaryngology services in central Pennsylvania and has offices in Clearfield and in State College; and,

WHEREAS, PHYSICIAN is qualified to practice Otolaryngology; licensed to practice medicine in the State of Pennsylvania, and has applied for privileges at Clearfield Hospital and Centre Community Hospital allowing him to provide services to the general public at those hospitals; and,

WHEREAS, the parties desire to provide a full statement of their agreement in connection with the performance of services during the term of this contract.

NOW THEREFORE, in consideration of the mutual covenants and promises of this contract, the parties, intending to be legally bound, agree:

EXHIBIT

I. APPOINTMENT OF THE MEDICAL STAFF:

A. Prior to rendering services, the PHYSICIAN must be properly evaluated and appointed as a member of the Medical Staff in accordance with the By-Laws of Clearfield Hospital and Centre Community Hospital, and subject to such appointment, shall be entitled to and subject to all rights and duties of an Active Staff member.

B. If the appointment of the PHYSICIAN is suspended or revoked for any reason, the PHYSICIAN shall no longer be permitted to practice and this contract shall terminate. He shall, however, be entitled to exercise the pertinent appeal provision of the By-Laws of Clearfield Hospital and Centre Community Hospital relative to the suspension or revocation of appointment, and if his appeal is successful, be reinstated under this Agreement.

II. SERVICES TO BE PROVIDED:

The PHYSICIAN shall provide medical services in his specialty as directed by the CORPORATION. The CORPORATION may also require the PHYSICIAN to perform such other administrative, hospital or public service functions as may reasonably required.

The CORPORATION shall establish the hours and schedule during which the PHYSICIAN shall provide services. The CORPORATION shall specify the office in which PHYSICIAN shall work as part of his schedule. The CORPORATION shall also establish a rotating call schedule among the physicians employed by it.

PHYSICIAN shall devote his full time and best efforts to the performance of his duties under this Agreement. During the term of this Agreement, the PHYSICIAN shall not at any time or place, either directly or indirectly engage in the practice of medicine or

surgery except pursuant to this Agreement, and all fees or other income attributable to his professional services during the term of this Agreement shall belong to the CORPORATION.

In the event the CORPORATION is dissolved or liquidated while this Agreement is in effect, all files, documents, records whether in written, recorded or other electronic form, relating to each patient shall be delivered to any physician designated in writing by the patient or in the absence of the patient's designation, to the physician employee who had responsibility for the care of the patient.

PHYSICIAN shall participate as a provider in the Medicare, Medicaid and Medical Assistance Programs extended by the United States Government and the State of Pennsylvania, and in such other third party payment programs as made from time to time be requested by the CORPORATION.

PHYSICIAN shall participate in such quality assurance and utilization review programs as may from time to time be requested by the CORPORATION or by third party payors.

### III. FACILITIES AND EXPENSES:

The CORPORATION shall provide at its expense office and clinical facilities, equipment and supplies as it deems necessary for PHYSICIAN to provide services and his other professional duties under this Agreement.

The PHYSICIAN shall have and maintain appropriate cell, paging or telephone equipment and agree to use the same as may be required by the CORPORATION. This equipment and all fees reasonably and actually related to corporate affairs shall be paid by the CORPORATION.

IV. TERM:

This Agreement shall have an initial term of one year commencing on February 1, 2000. This Agreement shall automatically renew for additional one year terms unless either party gives to the other three months prior written notice of their intention not to renew the Agreement.

V. COMPENSATION:

A. Salary.

PHYSICIAN shall receive a base salary of \$150,000.00 per year. PHYSICIAN's salary shall be paid in bi-weekly installments on the first and fifteenth day of each month.

B. Bonus.

In addition to his base salary, PHYSICIAN shall also receive a production bonus for each full year actually completed under this Agreement equal to 50% of the amount by which the PHYSICIAN's gross billings exceed \$300,000.00 in each year of this contract. The CORPORATION or its accountant shall calculate and pay this bonus within 30 days after the end of each year of this Agreement.

VI. RETIREMENT BENEFITS:

The PHYSICIAN shall have the option to participate in such retirement plans as the CORPORATION may from time to time adopt. However, PHYSICIAN shall not be eligible to participate in the retirement plan until he has completed his first year of employment. PHYSICIAN agrees that if he elects to participate in the CORPORATION's Retirement Plan all contributions made by the CORPORATION on behalf of the PHYSICIAN to the Retirement Plan shall be deducted from the PHYSICIAN's annual bonus for that particular year as calculated under paragraph IV.B. above.

VII. VACATION:

After completion of his initial 12 months of employment, the PHYSICIAN shall be entitled to two weeks of paid vacation. The vacation shall be taken at such times as may be approved by the CORPORATION and must be scheduled at least two weeks in advance.

The PHYSICIAN shall also be entitled to all paid holidays as approved by the CORPORATION.

PHYSICIAN shall also have up to five days of paid sick-leave per year.

Unused days of vacation and sick-leave may not be carried over from one year to another.

VIII. OTHER BENEFITS:

The CORPORATION shall provide to PHYSICIAN and his dependents health and disability insurance as the CORPORATION may from time to time, at its exclusive option and in its sole discretion, provide to its other employees.

The CORPORATION shall also pay or reimburse PHYSICIAN for all fees to maintain his professional license, hospital memberships and other professional society memberships.

VII. RECORDS:

The PHYSICIAN agrees to maintain current, complete and accurate records as required by applicable regulations of federal, state and local agencies, third party payors or as shall be required by the Hospitals or CORPORATION from time to time.

IX. ETHICS AND STANDARDS:

PHYSICIAN agrees to abide by all applicable canons of professional ethics, regulations governing the administration of the Hospitals where he has staff privileges, rules and regulations

promulgated by the United States Government and the Commonwealth of Pennsylvania for the administration of Medicare and Medicaid, Medical Assistance or similar government programs, all rules and regulations promulgated by other third party payors and all rules, regulations and policies as may from time to time be adopted by the CORPORATION.

X. COVENANT NOT TO COMPETE:

For a period of two years after this Agreement terminates, the PHYSICIAN shall not, without the prior written consent of the CORPORATION, for himself or on behalf of any other person, partnership, association, corporation or organization, directly or indirectly, engage in the practice of Otolaryngology within a 25-mile radius of Clearfield Hospital and Centre Community Hospital. During the term of this Agreement and for a period of two years after termination of this Agreement, the PHYSICIAN shall not, directly or indirectly, solicit for employment or employ any employee of the CORPORATION for any reason whether the employee is employed on the date of this Agreement or thereafter. The PHYSICIAN acknowledges that each restriction set forth in this section is a material condition of an inducement to the CORPORATION to employ the PHYSICIAN and is reasonable in its duration and scope. The PHYSICIAN agrees that upon breach or violation by him of the foregoing provisions, the CORPORATION, in addition to all other remedies, shall be entitled as a matter of right to injunctive relief in any court of competent jurisdiction to enjoin and restrain the PHYSICIAN and each and every other person, partnership, association, corporation, or organization concerned therein, from the continuance of any action constituting a breach

thereof. If the period of time or area herein specified shall be adjudged unreasonable in any court proceeding, then the period of time shall be reduced by the number of months or the area reduced as is deemed reasonable so that his covenant may be enforced during such period of time as adjudged to be reasonable.

XI. CONFIDENTIALITY:

PHYSICIAN agrees to maintain the patient's records, billing, finances, business affairs, administrative practices and all other matters regarding the CORPORATION in complete confidence. PHYSICIAN promises that he shall not discuss or reveal either verbally, in writing or in other recorded form any such information without the prior written authorization of the CORPORATION's President. PHYSICIAN further agrees that all records, reports, policy materials or other documents containing such information or shall be and remain the exclusive property of the CORPORATION, and PHYSICIAN shall not be entitled to retain copies for himself without the prior written authorization from the CORPORATION's President. Upon termination of this Agreement, the PHYSICIAN agrees to immediately return all such materials to the CORPORATION. PHYSICIAN agrees that the covenant contained in this paragraph is a material condition of and inducement to the CORPORATION for entering this Agreement with him. PHYSICIAN agrees that the CORPORATION may institute an action in equity and/or at law in order to prevent or remedy a breach of this covenant.

XII. EMPLOYEE STATUS:

The PHYSICIAN shall be considered an employee of the CORPORATION so long as he abides by the terms and conditions of this Agreement and maintains at all times the proper licensing with

the Commonwealth of Pennsylvania and Board Certification if he is or becomes Board Certified during the terms of this Agreement.

**XIII. CONTINUING MEDICAL EDUCATION:**

PHYSICIAN will also receive his regular salary for participation in a maximum of 10 days Continuing Medical Education per year. The CORPORATION shall pay or reimburse the PHYSICIAN for all registration fees, travel and lodging and other expenses which he reasonably and actually incurs to participate in Continuing Medical Education programs.

PHYSICIAN must obtain the CORPORATION's prior approval of specific Continuing Medical Education programs to be entitled under this paragraph.

PHYSICIAN's Continuing Medical Education shall be taken at times approved by the CORPORATION.

Unused days of Continuing Medical Education may not be carried over from one year to another.

**XIV. PROFESSIONAL LIABILITY INSURANCE:**

The CORPORATION shall at its expense, obtain and maintain in force during the time of this Agreement, Professional Liability Insurance covering the professional services rendered by the PHYSICIAN hereunder. Limits of this insurance shall not be less than those required by the Pennsylvania Health Care Services Malpractice Act or any successor statute and shall also provide pre-funded "tail" coverage.

**XV. PATENTS:**

PHYSICIAN acknowledges that he shall acquire no interest in a patent identified as "Compositions for the Treatment of Sleep Apnea and Methods Related Thereto," File No. 19566-0001 which PHYSICIAN

acknowledges to be the exclusive property of Dr. Kao and Dr. Newberg.

XVI. TERMINATION:

This Agreement shall be terminated on the occurrence of any of the following events:

1. PHYSICIAN's loss of license to render the professional services,
2. Suspension or termination of PHYSICIAN's Federal Drug Enforcement Administration Number,
3. PHYSICIAN's ceasing to qualify for professional liability insurance at regular rates from CORPORATION's regular insurance carrier,
4. PHYSICIAN's becoming a "sanctioned individual," as that term is used in 42 U.S.C. 1320a-7, regarding individuals penalized for Medicare or Medicaid fraud or abuse,
5. The execution of a written agreement between CORPORATION and PHYSICIAN to terminate this Agreement,
6. PHYSICIAN's death,
7. PHYSICIAN's failure or refusal to perform the duties of his employment faithfully and diligently and to comply with the provisions of this Agreement,
8. PHYSICIAN's failure or refusal to comply with reasonable policies, standards, and regulations that CORPORATION may establish from time to time,
9. PHYSICIAN's failure to become Board-certified in Otolaryngology no later than 2 years, or to maintain such certification,
10. PHYSICIAN's failure to maintain medical staff membership and clinical privileges at Clearfield Hospital and Centre Community Hospital by 6 mo or the suspension, reduction or termination of any such medical staff membership or clinical privileges,
11. PHYSICIAN's inability to fully and competently perform his duties hereunder, for a period of 30 continuous days due to physical, mental or psychology illness, injury or condition.

On termination of this Agreement as set forth in the above paragraphs, PHYSICIAN shall be entitled to receive only salary accrued but unpaid as of the date of termination and shall not be entitled to additional for unused vacation, sick or Continuing Medical Education days.

**XVII. NOTICES:**

All notices or communications required by or bearing upon this Agreement or between the parties shall be in writing and sent by First Class Mail to the parties as follows unless otherwise specified above:

**CORPORATION:**  
OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.  
807 Turnpike Avenue  
Suite 230  
Clearfield, PA 16830

**PHYSICIAN:**  
Eric Neil Plotnick, M.D.  
750 Telford Ave #221  
Hate College, PA 16803

**XVIII. GENERAL PROVISIONS:**

- a) This Agreement shall be governed by the laws of Pennsylvania;
- b) The parties acknowledge that this is a personal service contract, and therefore, PHYSICIAN cannot assign or delegate his rights and duties hereunder, nor shall PHYSICIAN's rights or duties hereunder extend to his heirs, executors, administrators, guardians or representatives; Any attempt to assign or delegate rights and duties hereunder by PHYSICIAN shall immediately terminate this Agreement;
- c) In construing or interpreting this Agreement, "Hospital," "CORPORATION" and "PHYSICIAN" shall mean, wherever applicable, the singular or plural, the masculine or the feminine, individual, individuals, partnership or corporation, as the case may be;
- d) This Agreement represents the sole agreement of the parties and supersedes all prior communications, representations and negotiations, whether oral or written;
- e) This Agreement can only be modified or amended by the prior written consent of both parties hereto;

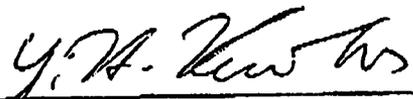
f) Jurisdiction and venue shall rest in the Court of Common Pleas of Clearfield County, Pennsylvania, for all suits, claims and causes of action whatsoever.

IN WITNESS WHEREOF, said Corporation has caused its corporate seal to be hereto affixed and these presents signed by its President the first day written above.

ATTEST:

CORPORATION:

\_\_\_\_\_

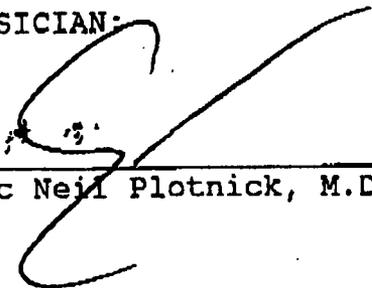
  
\_\_\_\_\_  
President

Corporate Seal:

ATTEST:

PHYSICIAN:

\_\_\_\_\_

  
\_\_\_\_\_  
Eric Neil Plotnick, M.D.

**EXTENSION OF EMPLOYMENT CONTRACT  
FOR MEDICAL SERVICES**

MADE this 1st day of February, 2002, between OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC., Pennsylvania professional corporation with principal office at 807 Turnpike Avenue, Suite 230, Clearfield, Pennsylvania, 16830 (hereinafter "CORPORATION"),

A

N

D

ERIC NEIL PLOTNICK, M.D., residing at ~~2086 Mary Ellen Lane~~, State College, Pennsylvania, 16803, (hereinafter "PHYSICIAN").

WHEREAS, the parties entered an Employment Contract For Medical Services dated February 1, 2000, which is referred to and incorporated herein by reference; and,

WHEREAS, the parties desire to renew and extend that Contract for an additional term of two years.

NOW WITNESSETH

In consideration of the mutual covenants and promises of this contract, the parties, intending to be legally bound, agree:

1. EXTENSION: The parties agree that their Employment Contract For Medical Services dated February 1, 2000, shall be extended for an additional term of two years commencing on February 1, 2002 and ending on January 31, 2004.

2. Compensation: Physician shall receive a base salary of \$210,000.00 per year. Physician salary shall be paid in bi monthly installments on the first & fifteenth day of each month. The production bonus formula shall remain the same using the same amount of \$300,000.00.

EXHIBIT

" C "

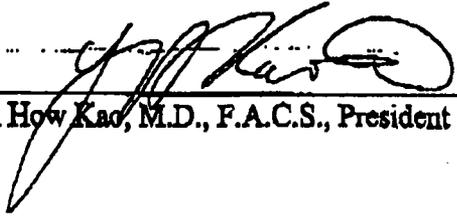
2. REAFFIRMATION OF OTHER TERMS AND PROVISIONS: The parties otherwise ratify and reaffirm all other terms and conditions of their original contract dated February 1, 2000.

In witness whereof, we have hereto set our hands.

ATTEST:

OTOLARYNGOLOGY GROUP OF  
CENTRAL PA, INC.

\_\_\_\_\_

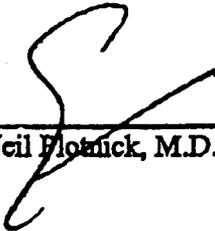
  
\_\_\_\_\_  
Yi How Kao, M.D., F.A.C.S., President

Corporate Seal

ATTEST:

PHYSICIAN:

\_\_\_\_\_

  
\_\_\_\_\_  
Eric Neil Flotnick, M.D.

Otolaryngology Group Of Central Pa  
Y.H.Kao, M.D., F.A.C.S.  
Eric Plotnick, M.D.  
Ewing Tibbels, M.D.

Dear Dr. Plotnick,

Recently three different events have brought the issue of patient care and safety to the forefront. All the patients could have developed complications and suffered significant morbidity, if not mortality, unless they were properly treated. Unfortunately I had to be consulted by emergency room physicians in two cases and an internist in another. The point is that these patients could have been kept under closer observation by the Otolaryngology Group and the emergent intervention obviated.

I have previously requested that you sign out any problem patients on at least three occasions. Unfortunately this request has been disregarded.

Because of these events, and purely for patient safety reasons, I am compelled to terminate your position in the Otolaryngology Group four months from the receipt of this letter as according to contract.

Sincerely,

*Y. H. Kao*  
Yi H. Kao M.D.

*Jan 29. 2003*

EXHIBIT

"D"

Yi How Kao, MD  
Otolaryngology Group  
of Central Pennsylvania, Inc.  
807 Turnpike Ave.  
Suite 230  
Clearfield, PA 16830

Eric Plotnick, MD  
2086 Mary Ellen Lane  
State College, PA 16803

January 31, 2003

Dear Dr. Kao,

I received your letter of January 29, 2003 proposing termination of my employment with great surprise. Your assertions are unequivocally without merit. To date, I am not aware of any existing or pending patient safety or quality of care issues within the practice that fit the criteria you describe. No cases have been presented or are pending before any hospital quality care committees for review. None of my patients have been at risk for impending harm; none have suffered harm.

I see no provision in the contract that provides for termination based on reasons you outline. Please cite for me the contract language that does so.

I am most willing to discuss with you any specific cases you have in mind, which appropriately should have been discussed in a timely fashion with proper supporting documentation.

You have no cause for termination of the contract.

Sincerely,

Eric Plotnick, MD

EXHIBIT  
"E"

March 17. 03

Dr Plotnick,

I am deducting an expenses against your house  
as follows:

Lease Payments	16399.88	
Mileage, excess	2551.20	
Deductible, 2 accidents	1000.00	
Insurance	3156.00	( $\frac{1}{2}$ of \$1052 semi annual premium)
	<u>24,107.08</u>	

Gas expense and other expenses exceeding "reasonable" cell  
phone & pager expenses are being calculated.

There is no mention of auto expenses in the  
contract.

*Y. H. Kao*  
Y. H. Kao MD

EXHIBIT

"F"

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF SERVICE  
OF DISCOVERY**

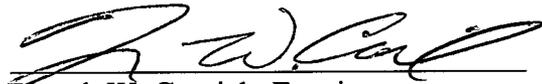
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 5<sup>TH</sup> DAY OF  
DECEMBER, 2003.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

**DEC 11 2003**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF SERVICE OF DISCOVERY**

**TO: PROTHONOTARY**

You are hereby notified that Plaintiff, Eric Plotnick, M.D., served Interrogatories and a Request for Production of Documents Directed to Defendants, via first class mail, upon the persons listed below this 5<sup>th</sup> day of December, 2003:

Peter F. Smith, Esquire  
30 South Second Street  
Clearfield, PA 16830  
(Attorney for Defendants)

**URBAN & CAVRICH, P.C.**

By:

  
Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

NOTICE OF DEPOSITION

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 5<sup>th</sup> DAY OF  
JANUARY, 2004.



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

**JAN 06 2004**

William A. Shaw  
Prothonotary/Clerk of Courts



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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

NOTICE OF DEPOSITION

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 5<sup>th</sup> DAY OF  
JANUARY, 2004.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

JAN 06 2004

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

:  
:  
:  
: No. 03-868 C.D.  
:  
:  
:  
:  
:  
:  
:

**NOTICE OF DEPOSITION**

TO: Peter F. Smith, Esquire  
30 South Second Street  
Clearfield, PA 16830

Please take notice that the deposition of **Maryann Kao** shall be taken upon oral examination by an official Court Reporter at the offices of Peter F. Smith, Esquire, 30 South Second Street, Clearfield, PA 16830, on the 15<sup>th</sup> day of January, 2004, commencing immediately following the deposition of Yi How Kao, M.D.

The scope of said deposition testimony will include inquiry into all facts and all other matters relevant to the issues raised in the above case.

You are invited to attend and participate.

**URBAN & CAVRICH, P.C.**



Attorney for Plaintiff  
**JOSEPH W. CAVRICH, ESQUIRE**  
Pa. I.D. #52693  
503 Allegheny Street  
Hollidaysburg, PA 16648  
814-695-7898

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

ERIC PLOTNICK, M.D., :  
Plaintiff :  
 :  
vs. : No. 03-868-CD  
 :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D., :  
Defendants :

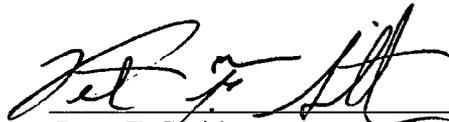
**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent the original of **DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES** and **DEFENDANTS' ANSWER TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS** with documents numbered 1 through 330 sequentially to Attorney for Plaintiff by U.S. First Class Mail, Postage Prepaid on January 14, 2004 at the following address:

Joseph W. Cavrich, Esquire  
Urban & Cavrich, P.C.  
503 Allegheny Street  
P. O. Box 508  
Hollidaysburg, PA 16648

Respectfully submitted,

Date: January 14, 2004

  
Peter F. Smith  
Attorney for Defendants

**FILED**

**JAN 15 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**MOTION TO EXTEND  
DISCOVERY DEADLINE,  
WITH REQUEST FOR  
EXPEDITED CONSIDERATION**

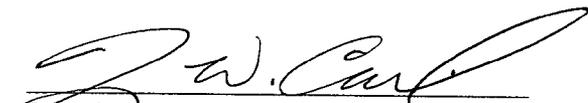
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrigh, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN MOTION WAS  
SERVED UPON ALL COUNSEL  
OF RECORD VIA FIRST CLASS MAIL  
THIS 27<sup>TH</sup> DAY OF JANUARY, 2004.

  
Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

**FILED**

**JAN 28 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,	:	
	:	
Plaintiff	:	
	:	No. 03-868 C.D.
vs.	:	
	:	
OTOLARYNGOLOGY GROUP OF	:	
CENTRAL PENNSYLVANIA, INC., and	:	
YI HOW KAO, M.D.,	:	
	:	
Defendants,	:	

**MOTION TO EXTEND DISCOVERY DEADLINE,  
WITH REQUEST FOR EXPEDITED CONSIDERATION**

NOW COMES Plaintiff, Eric Plotnick, M.D., by his undersigned counsel, and files the following Motion to Extend Discovery Deadline, with Request for Expedited Consideration, in support thereof averring as follows:

1. Plaintiff filed a Complaint in the above case on or about June 13, 2003.
2. On or about August 5, 2003, Defendants filed Preliminary Objections to the Complaint.
3. On or about August 21, 2003, Defendants filed a timely Amended Complaint.
4. On or about September 4, 2003, Defendants filed Preliminary Objections to Plaintiff's Amended Complaint.
5. In the Preliminary Objections, Defendants have asked this Honorable Court to strike Paragraph 5 and Counts III and IV of the Amended Complaint, based upon Defendants' belief that Plaintiff pled insufficient facts to support an attempt to pierce the Defendant Medical Practice's corporate veil.
6. After oral argument on the Preliminary Objections, The Honorable John K. Reilly, Jr.

entered an Order on November 17, 2003, continuing argument on the Preliminary Objections for a period of sixty (60) days to permit plaintiff to complete discovery on the issue of piercing the corporate veil (a copy of Judge Reilly's Order is attached hereto as Exhibit "A").

7. On December 5, 2003, Plaintiff served Interrogatories and Request for Production of Documents upon Defendants. Plaintiff's discovery requests were confined to the issue of piercing the corporate veil.

8. Plaintiff also noticed the depositions of Dr. Kao and Marianne Kao for January 14, 2004. However, because Defendants were unable to provide discovery responses prior to the depositions, counsel for the parties mutually agreed to informally extend the sixty (60) day discovery deadline regarding the issue of piercing the corporate veil. The depositions of Dr. and Mrs. Kao were also rescheduled to January 28, 2004.

9. On January 15, 2004, the undersigned counsel received Defendants' Answers to Plaintiff's Interrogatories, and Defendants' Objections and Responses to Plaintiff's Request for Production of Documents.

10. Plaintiff contends that the Defendants' discovery responses are incomplete, and that the Defendants' objections to the Request for Production of Documents are improper. Plaintiff has, contemporaneously with the filing of the within motion, filed a Motion to Compel Discovery Responses. Plaintiff has also postponed the depositions of Dr. and Mrs. Kao.

11. Plaintiff requires a ruling on the Motion to Compel Discovery, and time to review any additional documents that the Court orders Defendants to produce, prior to deposing Dr. and Mrs. Kao. Plaintiff respectfully requests that this Honorable Court enter an Order continuing argument on Defendants' Preliminary Objections for an additional period of sixty (60) days, to

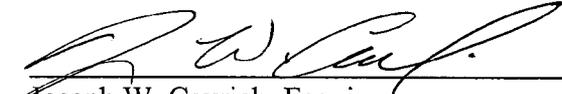
permit Plaintiff to complete discovery on the issue of piercing the corporate veil.

12. Because of the urgency of the issues raised herein, Plaintiff further respectfully requests that this Honorable Court expedite its consideration and ruling on the within Motion.

WHEREFORE, Plaintiff respectfully requests that the within Motion be granted.

Respectfully submitted,

**URBAN & CAVRICH, P.C.**

  
\_\_\_\_\_  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

PA ID# 52693  
503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

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

ERIC PLOTNICK, M.D.

-vs-

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.  
and YI HOW KAO, M.D.

No. 03 - 868 - CD

**ORDER**

NOW, this 17<sup>th</sup> day of November, 2003, this being the day and date set for argument into Preliminary Objections filed on behalf of Defendant above-named, upon agreement of the parties, it is the ORDER of this Court that argument be and is hereby continued for a period of sixty (60) days to permit plaintiff to complete discovery on the issue of piercing the corporate veil.

By the Court,

/s/ JOHN K. REILLY, JR.

President Judge

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

NOV 18 2003

Attest.

*William D. Shuman*  
Prothonotary/  
Clerk of Courts

Exhibit "A"

CP

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

ERIC PLOTNICK, M.D. :  
 :  
vs. : No. 03-868-CD  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., :  
and YI HOW KAO, M.D. :

**ORDER**

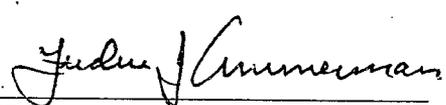
AND NOW, this 5<sup>th</sup> day of February, 2004, it is the ORDER of the Court that argument on Plaintiff's Motion to Extend Discovery Deadline, with Request for Expedited Consideration in the above matter has been scheduled for **Wednesday, February 25, 2004 at 10:00 A.M.** before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

**FILED**

**FEB 05 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge



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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2004, upon consideration of Plaintiff's Motion to Compel Discovery, it is hereby ORDERED that Plaintiff's Motion is GRANTED, and that Defendants are compelled to produce, within ten (10) days, the following:

- a) Annual financial statements for the Otolaryngology Group of Central Pennsylvania, Inc., from 1999 to present;
- b) PA income tax returns for the Otolaryngology Group of Central Pennsylvania, Inc., from 1999 to present;
- c) Statements for the Otolaryngology Group of Central Pennsylvania, Inc.'s bank account for January, 1999 through December, 2002, and spreadsheets for the corporation's monthly bank statements from January, 1999 through December, 2003;
- d) Lease agreements (excluding real estate leases) between Dr. Kao and the Otolaryngology Group of Central Pennsylvania, Inc.; and
- e) Corporate credit card statements for the Otolaryngology Group of Central Pennsylvania, Inc., from January, 1999 through December, 2002.

BY THE COURT,

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

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**MOTION TO COMPEL  
DISCOVERY RESPONSES,  
WITH REQUEST FOR  
EXPEDITED CONSIDERATION**

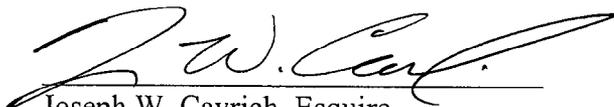
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN MOTION WAS SERVED  
UPON ALL COUNSEL OF RECORD VIA  
FIRST CLASS MAIL THIS 27<sup>TH</sup> DAY  
OF JANUARY, 2004.



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

**JAN 28 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**MOTION TO COMPEL DISCOVERY RESPONSES,  
WITH REQUEST FOR EXPEDITED CONSIDERATION**

NOW COMES Plaintiff, Eric Plotnick, M.D., by his undersigned counsel, and files the following Motion to Compel Discovery Responses, with Request for Expedited Consideration, in support thereof averring as follows:

1. Plaintiff filed a Complaint in the above case on or about June 13, 2003.
2. On or about August 5, 2003, Defendants filed Preliminary Objections to the Complaint.
3. On or about August 21, 2003, Defendants filed a timely Amended Complaint.
4. On or about September 4, 2003, Defendants filed Preliminary Objections to Plaintiff's Amended Complaint.
5. In the Preliminary Objections, Defendants have asked this Honorable Court to strike Paragraph 5 and Counts III and IV of the Amended Complaint, based upon Defendants' belief that Plaintiff pled insufficient facts to support an attempt to pierce the Defendant Medical Practice's corporate veil.
6. After oral argument on the Preliminary Objections, The Honorable John K. Reilly, Jr.

entered an Order on November 17, 2003, continuing argument on the Preliminary Objections for a period of sixty (60) days to permit plaintiff to complete discovery on the issue of piercing the corporate veil.

7. On December 5, 2003, Plaintiff served Interrogatories and Request for Production of Documents upon Defendants, limited to the issue of piercing the corporate veil.

8. On January 15, 2004, the undersigned counsel received Defendants' Answers to Plaintiff's Interrogatories, and Defendants' Objections and Responses to Plaintiff's Request for Production of Documents.

9. Specifically, Defendants have asserted general objections to Request for Production of Document Nos. 3, 5, and 13, which asked Defendants to produce: a) Dr. Kao's state and federal income tax returns for the last five years; b) the monthly bank statements, yearly bank statements, or other statements of account, for all personal bank accounts held either individually or jointly by Dr. Kao for the last five years; and c) statements for the last five years for all credit cards held in the name of either Dr. Kao or Marianne Kao to pay for corporate expenses of the Otolaryngology Group (a copy of Defendants' Objections and Responses to Plaintiff's Request for Production of Documents is attached hereto as Exhibit "A").

10. The grounds asserted by Defendants for the objections to the aforementioned discovery are that the documents are irrelevant, highly confidential, and their disclosure would harass and embarrass Dr. Kao.

11. Plaintiff contends that the Defendants' objections to the Request for Production of Documents are without merit. Specifically, two of the allegations contained in Plaintiff's Complaint in regard to the issue of piercing the corporate veil are whether: a) there has been and

continues to be a substantial intermingling of the affairs of Dr. Kao and the Otolaryngology Group of Central, Pennsylvania, Inc.; and b) Dr. Kao has used his control of the Otolaryngology Group of Central, Pennsylvania, Inc., and the assets of the Otolaryngology Group of Central, Pennsylvania, Inc. to further his personal interests.

12. Plaintiff contends that Dr. Kao's tax returns, personal bank statements, and personal credit card statements are reasonably calculated to lead to the discovery of admissible evidence, and are therefore relevant and discoverable.

13. As far as Defendants' concerns about the potential disclosure of confidential information, Plaintiff would consent to the entry of an appropriate protective order by this Court with respect to any confidential documents produced.

14. For the foregoing reasons, Plaintiff respectfully requests that this Honorable Court enter an Order compelling Defendants to file full and complete Responses to Plaintiff's Request for Production of Document Nos. 3, 5, and 13.

15. Plaintiff also contends that the Defendants' discovery responses are incomplete.

16. Specifically, Defendants have failed to produce the following:

- ✓a) Annual financial statements for the corporation (Request for Production No. 1);
- ✓b) PA income tax returns (Request for Production No. 2);
- ✓c) Statements for the corporation's bank account for January, 1999 through December, 2002, and spreadsheets for the corporation's monthly bank statements from January, 1999 through December, 2003 (Request for Production No. 4);
- ✓d) Lease agreements between Dr. Kao and the corporation (Defendants have only responded with respect to real estate leases (Request for Production No. 9); and
- ✓e) Corporate credit card statements for January, 1999 through December, 2002 (Request for Production No. 12).

*Handwritten initials and scribbles*

17. The Plaintiffs' aforementioned discovery requests seeks relevant information which is vital to the continued evaluation and pursuit of Plaintiff's attempt to pierce the corporate veil. To the extent Plaintiffs are deprived of the information requested through discovery, they are irremediably prejudiced.

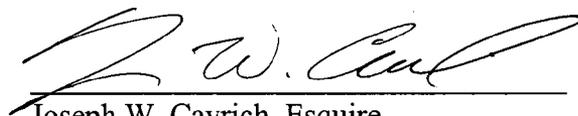
18. Based upon the foregoing, Plaintiff respectfully requests that this Honorable Court enter an Order compelling Defendants to produce the documents specified in Paragraph 16 above, within ten (10) days of the date of the Court's Order.

19. Because of the urgency of the issues raised herein, Plaintiff further respectfully requests that this Honorable Court expedite its consideration and ruling on the within Motion.

WHEREFORE, Plaintiff respectfully requests that the within Motion be granted.

Respectfully submitted,

**URBAN & CAVRICH, P.C.**

A handwritten signature in cursive script, appearing to read "J. W. Cavrigh", written over a horizontal line.

Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

PA ID# 52693  
503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YIHOW KAO, M.D.,  
Defendants

No. 03-868-CD

**DEFENDANTS' ANSWER TO  
PLAINTIFF'S REQUEST FOR  
PRODUCTION OF DOCUMENTS**

Filed on Behalf of:  
**Defendants**

Counsel of Record for this Party:  
**Peter F. Smith**  
Supreme Court ID #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel of Record for Plaintiff:  
**Joseph W. Cavrigh, Esquire**  
PA I.D. #52693  
URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

Exhibit "A"

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

ERIC PLOTNICK, M.D.,  
Plaintiff

No. 03-868-CD

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

**ANSWER TO REQUEST FOR PRODUCTION OF DOCUMENTS**

1. See attached copies numbered 1 - 127 sequentially.

2. See attached copies of IRS Form 1120S for tax years 1999 through 2002 filed by the Otolaryngology Group of Central Pennsylvania, Inc. numbered 128 -166 sequentially.

3. Objection, the documents requested are irrelevant, highly confidential and their disclosure would harass and embarrass Dr. Kao.

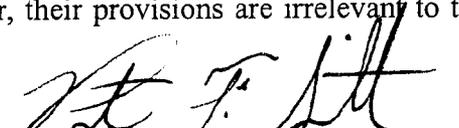
  
Peter F. Smith, Esquire

4. Copies of statements for the corporate bank account at County National Bank for January 2003 through December 2003 are attached. Spreadsheets prepared from monthly statements of that account from January 2000 through December 2002 are also attached. These attachments are numbered 167 - 275 sequentially.

5. Objection, the documents requested are irrelevant, highly confidential and their disclosure would harass and embarrass Dr. Kao.

  
Peter F. Smith, Esquire

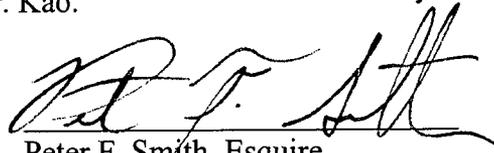
6. Copies of the declaration pages from the policies requested are attached and submitted and numbered sequentially 276 through 288. It would be unduly burdensome to duplicate and provide the entire policies, moreover, their provisions are irrelevant to the issues before the Court and therefore objected to.

  
Peter F. Smith, Esquire

7. The corporation owns no real estate.
8. Dr. Kao leases no real estate to the corporation.
9. Dr. Kao leases no real estate to the corporation.
10. Dr. Kao has made no loans to the corporation.
11. The corporation has made no loans to Dr. Kao.

12. Credit card statements have been maintained only for the preceding year and copies are attached and numbered sequentially 289 through 324. Monthly credit card charges do appear on the spreadsheet submitted in response to Request number 5 above.

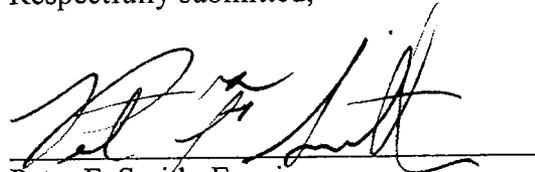
13. Objection, this information will be provided in sufficient detail in response to Plaintiff's Interrogatory number 13. Production of statements from Dr. Kao's personal credit account would necessarily involve the disclosure of personal information irrelevant to these proceedings which would harass and embarrass Dr. Kao.



Peter F. Smith, Esquire

14. See attached copies numbered sequentially 276 through 278.
15. Those copies cannot be located but will be produced if they are located.
16. See attached copies numbered sequentially 325 through 330. Dr. Plotnick should have a copy of the lease for the vehicle which he used.
17. Dr. Kao does acknowledge that personal vehicles have on occasion been used for corporate purposes and that the corporation has later reimbursed him or employees for such vehicle expenses. Dr. Kao cannot locate documentation which would establish whether or not these vehicles were leased or owned. Copies will be provided, to the extent relevant, if they are located.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendants

Date: January 14, 2004

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

ERIC PLOTNICK, M.D., :  
Plaintiff :  
 :  
vs. : No. 03-868-CD  
 :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D., :  
Defendants :

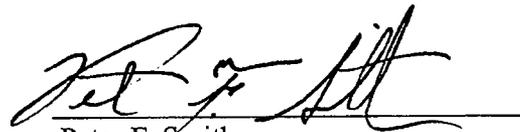
**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent the original of **DEFENDANTS' ANSWERS TO PLAINTIFF'S INTERROGATORIES** and **DEFENDANTS' ANSWER TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS** with documents numbered 1 through 330 sequentially to Attorney for Plaintiff by U.S. First Class Mail, Postage Prepaid on January 14, 2004 at the following address:

Joseph W. Cavrigh, Esquire  
Urban & Cavrigh, P.C.  
503 Allegheny Street  
P. O. Box 508  
Hollidaysburg, PA 16648

Respectfully submitted,

Date: January 14, 2004

  
Peter F. Smith  
Attorney for Defendants

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**AFFIDAVIT OF SERVICE**

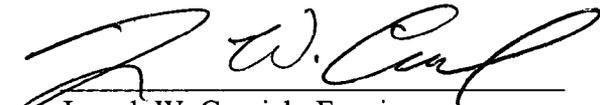
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN AFFIDAVIT WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 9<sup>th</sup> DAY OF  
FEBRUARY, 2003.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

**FEB 10 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

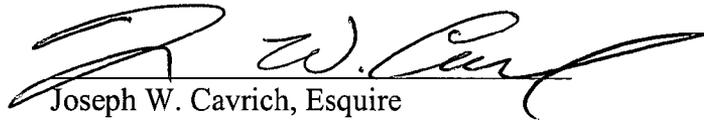
**AFFIDAVIT OF SERVICE**

I, Joseph W. Cavrich, Esquire, attorney for Plaintiff, Eric Plotnick, M.D., do hereby swear or affirm that on February 9, 2004, I served by first class mail a copy of a Motion to Compel Discovery and signed Rule Returnable upon Defendants at the office of their attorney, Peter F. Smith, Esquire, 30 South Second Street, Clearfield, PA 16830.

Date: February 9, 2004

**URBAN & CAVRICH, P.C.**

By



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

PA ID# 52693  
P.O. Box 503  
Hollidaysburg, PA 16648  
(814) 695-7898

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ERIC PLOTNICK, M.D. :

VS. : NO. 03-868-CD

OTOLARYNGOLOGY GROUP OF :

CENTRAL PENNSYLVANIA, INC., and :

YI HOW KAO, M.D. :

**FILED**

**FEB 25 2004**

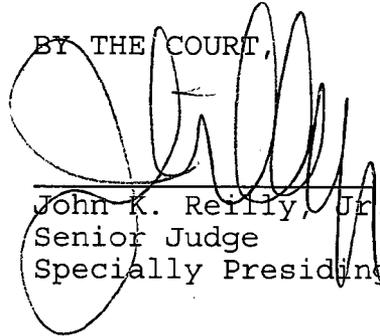
William A. Shaw  
Prothonotary/Clerk of Courts

O R D E R

NOW, this 25th day of February, 2004, upon consideration of Plaintiff's Motion to Compel Discovery and argument thereon, it is the ORDER of this Court that said motion be and is hereby granted to the extent that Defendants shall, within sixty (60) days from date hereof, supply to Plaintiff full and complete responses to Plaintiff's Request for Production of Document No. 13, and; further, all annual financial statements for Defendant Corporation; all Pennsylvania Income Tax Returns as requested in Request for Production No. 2; all statements for the corporation's bank account for January 1999 through December 2002; and spreadsheets for the corporation's monthly bank statements from January 1999 through December 2003. In the event any costs or expenses should be incurred in complying with this request, said costs and/or expenses shall be paid by Plaintiff. Further, Defendants shall provide all lease agreements between Defendant Kao and Defendant Corporation regarding any leased personal property; and,

finally, Defendants shall supply to Plaintiff all corporate credit card statements for January 1999 through December 2002. Again, should any costs or expenses be incurred in meeting this requirement, said costs or expenses shall be borne by the Plaintiff.

BY THE COURT,



John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

GA

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

ERIC PLOTNICK, M.D. :  
VS. : NO. 03-868-CD  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D. :

**FILED**

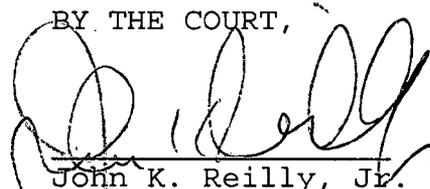
**FEB 25 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

O R D E R

NOW, this 25th day of February, 2004, upon consideration of Motion to Extend Discovery Deadline filed on behalf of Plaintiff above-named, it is the ORDER of this Court that said motion be and is hereby granted to the extent that Plaintiffs shall be granted twenty (20) days from the date of completion of production of documents as ordered by this Court this date to depose Defendant Kao and/or any other individuals he may so desire.

BY THE COURT,



John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

CA

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**MOTION FOR SANCTIONS**

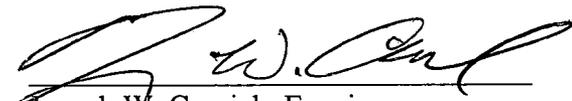
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN MOTION WAS SERVED  
UPON ALL COUNSEL OF RECORD VIA  
FIRST CLASS MAIL THIS 6<sup>TH</sup> DAY  
OF MAY, 2004.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

**MAY 07 2004**

William A. Shaw  
Prothonotary/Clerk of Courts



a period of sixty (60) days to permit plaintiff to complete discovery on the issue of piercing the corporate veil.

7. On December 5, 2003, Plaintiff served Interrogatories and Request for Production of Documents upon Defendants, limited to the issue of piercing the corporate veil.

8. On January 15, 2004, the undersigned counsel received Defendants' Answers to Plaintiff's Interrogatories, and Defendants' Objections and Responses to Plaintiff's Request for Production of Documents.

9. Specifically, Defendants asserted general objections to Request for Production of Document Nos. 3, 5, and 13, which asked Defendants to produce: a) Dr. Kao's state and federal income tax returns for the last five years; b) the monthly bank statements, yearly bank statements, or other statements of account, for all personal bank accounts held either individually or jointly by Dr. Kao for the last five years; and c) statements for the last five years for all credit cards held in the name of either Dr. Kao or Marianne Kao to pay for corporate expenses of the Otolaryngology Group.

10. On January 27, 2004, Plaintiff filed a Motion to Compel Discovery Responses. Plaintiff argued in his motion that Defendants' objections to the Request for Production of Documents were without merit, that certain of Defendants' discovery responses were incomplete, and that all of Plaintiff's discovery requests were reasonably calculated to lead to the discovery of admissible evidence on the issue of piercing the corporate veil, and were therefore relevant and discoverable.

11. On February 25, 2004, this Honorable Court entered an Order granting, in part, Plaintiff's Motion to Compel (a copy of the Court's Order is attached hereto as Exhibit "A").

12. Specifically, the Court ordered Defendants to produce, no later than April 25, 2004, the following:

- a) full and complete responses to Plaintiff's Request for Production No. 13;
- b) all annual financial statements for Defendant corporation;
- c) all Pennsylvania income tax returns as requested in Request for Production No. 2;
- d) all statements for the corporation's bank account for January 199 through December 2002;
- e) spreadsheets for the corporation's monthly bank statements from January 199 through December 2003;
- f) all lease agreements between Defendant Kao and Defendant corporation regarding any leased personal property; and
- g) all corporate credit card statements for January 1999 through December 2002.

13. Rule 4019(g)(1) of the Pennsylvania Rules of Civil Procedure authorizes the Court to sanction a party who fails to comply with an Order of Court. As Defendants have failed to comply with Judge Reilly's Order of February 25, 2004, sanctions are appropriate.

14. The Plaintiff's aforementioned discovery requests seek relevant information that is vital to the continued evaluation and pursuit of this matter. To the extent Plaintiff is deprived of the information requested through discovery, he is irremediably prejudiced.

15. Plaintiff asserts that the Defendants' conduct in this case continues to demonstrate Defendants' intentions to delay Defendants' obligation to respond to discovery, and to unnecessarily increase Plaintiff's litigation costs by forcing Plaintiff to repeatedly file motions to compel discovery responses.

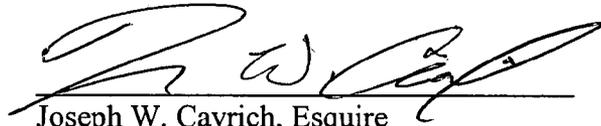
16. Based upon the foregoing, Plaintiff respectfully request that this Honorable Court enter an Order: 1) requiring Defendants to provide, within five (5) days, full and complete responses to

discovery, as previously ordered by Judge Reilly; 2) precluding Defendants from offering any testimony or evidence in opposition to Plaintiff's attempt to pierce Defendant's corporate veil; and 3) requiring Defendants to pay Plaintiff's counsel fees in regard to the preparation and presentation of the within Motion for Sanctions.

WHEREFORE, Plaintiff respectfully requests that the within Motion be granted.

Respectfully submitted,

**URBAN & CAVRICH, P.C.**

A handwritten signature in black ink, appearing to read 'J. W. Cavrich', written over a horizontal line.

Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

PA ID# 52693  
503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898



1

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

ERIC PLOTNICK, M.D. :  
VS. : NO. 03-868-CD  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D. :

O R D E R

NOW, this 25th day of February, 2004, upon consideration of Plaintiff's Motion to Compel Discovery and argument thereon, it is the ORDER of this Court that said motion be and is hereby granted to the extent that Defendants shall, within sixty (60) days from date hereof, supply to Plaintiff full and complete responses to Plaintiff's Request for Production of Document No. 13, and; further, all annual financial statements for Defendant Corporation; all Pennsylvania Income Tax Returns as requested in Request for Production No. 2; all statements for the corporation's bank account for January 1999 through December 2002; and spreadsheets for the corporation's monthly bank statements from January 1999 through December 2003. In the event any costs or expenses should be incurred in complying with this request, said costs and/or expenses shall be paid by Plaintiff. Further, Defendants shall provide all lease agreements between Defendant Kao and Defendant Corporation regarding any leased personal property; and,

finally, Defendants shall supply to Plaintiff all corporate credit card statements for January 1999 through December 2002. Again, should any costs or expenses be incurred in meeting this requirement, said costs or expenses shall be borne by the Plaintiff.

BY THE COURT,

/s/ JOHN K. REILLY, JR.

John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

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

FEB 25 2004

Attest.

*Christina L. Shaw*  
Christina L. Shaw  
Clerk of Courts



It is hereby further ORDERED that Defendants are directed to reimburse Plaintiff's counsel the sum of \$500.00, for the preparation and presentation of the Motion for Sanctions.

BY THE COURT,

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

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**AFFIDAVIT OF SERVICE**

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN AFFIDAVIT WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 6<sup>th</sup> DAY OF  
MAY, 2004.



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

**MAY 07 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

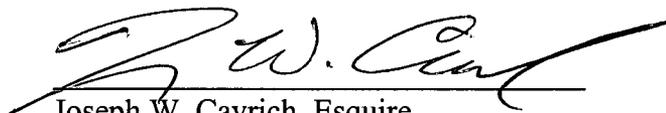
**AFFIDAVIT OF SERVICE**

I, Joseph W. Cavrigh, Esquire, attorney for Plaintiff, Eric Plotnick, M.D., do hereby swear or affirm that on May 6, 2004, I served by first class mail a copy of a Motion for Sanctions upon Defendants at the office of their attorney, Peter F. Smith, Esquire, 30 South Second Street, Clearfield, PA 16830.

Date: 5/6/2004

**URBAN & CAVRICH, P.C.**

By



Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

PA ID# 52693  
503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent **DEFENDANTS' SUPPLEMENT TO EARLIER ANSWERS TO DISCOVERY** with documents numbered 331 through 1,521 sequentially to Attorney for Plaintiff by U.S. Mail, Postage Prepaid on May 14, 2004 at the following address:

Joseph W. Cavrich, Esquire  
Urban & Cavrich, P.C.  
503 Allegheny Street  
P. O. Box 508  
Hollidaysburg, PA 16648

Respectfully submitted,



Peter F. Smith  
Attorney for Defendants

Date: May 14, 2004

**FILED**

**MAY 17 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

**DEFENDANTS' SUPPLEMENT TO  
ITS EARLIER ANSWERS TO  
DISCOVERY**

Filed on Behalf of:  
**Defendants**

Counsel of Record for this Party:  
**Peter F. Smith**  
Supreme Court ID #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel of Record for Plaintiff:  
**Joseph W. Cavrigh, Esquire**  
PA I.D. #52693  
URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

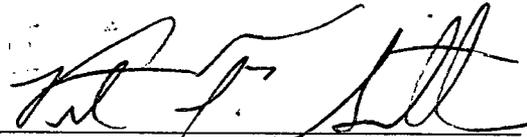


3. Attached hereto and incorporated herein by reference in response to Request for Production Number 13 are true, correct and complete copies of the credit card accounts that were used to pay corporate expenses. Each page of these statements is marked sequentially commencing with number 339 and ending with 533.

4. Attached hereto and incorporated herein by reference are true, correct and complete copies of the corporate bank account maintained at County National Bank for the period commencing January 1, 1999 and concluding December 31, 2003. Each page of the statements is numbered sequentially commencing with 534 and ending with 1,521.

5. There were no lease agreements between the Defendant Yi How Kao, M.D. and the corporate Defendant. Therefore, none are attached.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter F. Smith', written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Defendants

Date: May 14, 2004

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF INTENT  
TO SERVE SUBPOENA**

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrigh, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 27<sup>th</sup> DAY OF  
MAY, 2003.

  
Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

**FILED**

**MAY 28 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF INTENT TO SERVE A SUBPOENA  
TO PRODUCE DOCUMENTS AND THINGS  
FOR DISCOVERY PURSUANT TO RULE 4009.21**

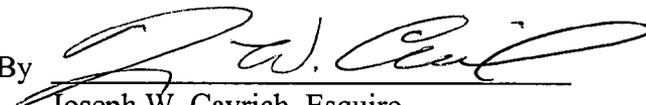
Plaintiff intends to serve a subpoena identical to the one that is attached to this notice.

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.

Date: May 27, 2004

**URBAN & CAVRICH, P.C.**

By

  
\_\_\_\_\_  
Joseph W. Cavrich, Esquire

Attorney for Plaintiff

PA ID# 52693  
508 Allegheny Street  
P.O. Box 503  
Hollidaysburg, PA 16648  
(814) 695-7898

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Eric Plotnick MD  
Plaintiff(s)

\*

Vs.

\*

No. 2003-00868-CD

Otolaryngology Group of Central Pennsylvania, Inc.  
Yi How Kao MD  
Defendant(s)

\*

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO  
RULE 4009.22

TO: Evelyn A. Witters, President - Healthcare Billing Consultants, Inc.  
(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 ATTACHED

(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: Joseph W. Carrich, Esq.  
ADDRESS: Urban B Carrich, P.C.  
503 Allegheny St., Hollidaysburg, PA 16648  
TELEPHONE: 814-695-7898  
SUPREME COURT ID # 52693  
ATTORNEY FOR: Plaintiff

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy

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

DATE: Friday, May 07, 2004  
Seal of the Court

## LIST OF DOCUMENTS

1. All *updated* monthly financial reports prepared by Healthcare Billing Consultants, Inc., on behalf of Otolaryngology Group of Central Pennsylvania, Inc., for any and all time periods *subsequent* to those time periods covered by the documents produced by Healthcare Billing Consultants on October 14, 2003, including, but not limited to the following:

- a. Business summaries for each month, including charges, receipts, and adjustments for each day of the month;
- b. Group Analysis;
- c. Provider Analysis (including Provider Nos. 1, 2, 3, 6, 7, 9);
- d. Location Analysis;
- e. Procedure Analysis;
- f. Department Analysis;
- g. Transaction Analysis;
- h. ATB Category Analysis; and
- i. Special Reports, including:
  1. Already Paid (AP) for Provider 2 for contract years 00-01, 01-02, 02-03;
  2. Receipts for Provider 2 for contract years 00-01, 01-02, 02-03;
  3. Time adjustments for 00-01, 01-02, 02-03;
  4. Already Paid (AP) for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003;
  5. Payments for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003;
  6. Time adjustments for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003.

2. Copies of any and all correspondence, notes, memoranda, or other documents (other than those documents produced on October 14, 2003, or documents to be produced in connection with document request no. 1 above) exchanged between Healthcare Billing Consultants, Inc. and either Otolaryngology Group of Central Pennsylvania, Inc., Yi How Kao, M.D., or Maryann Kao, as the documents relate to the Defendants' retention of Healthcare Billing Consultants, Inc., including, but not limited to, the following:

- a. The reason(s) why Healthcare Billing Consultants, Inc. was retained;
- b. The scope and/or extent of work to be performed by Healthcare Billing Consultants, Inc.;
- c. The progress of the work being performed by Healthcare Billing Consultants, Inc.;

3. Copies of any and all correspondence, notes, memoranda, or other documents (other than those documents produced on October 14, 2003, or documents to be produced in connection with document request no. 1 above) exchanged between Healthcare Billing Consultants, Inc. and either Otolaryngology Group of Central Pennsylvania, Inc., Yi How Kao, M.D., or Maryann Kao, that in any way reference Eric Plotnick, M.D.

4. Copies of any and all notes, journals, diaries, or other memoranda authored by Evelyn Witters in an effort to memorialize or otherwise document meetings or conversations held between representatives of Healthcare Billing Consultants, Inc. and either Otolaryngology Group of Central Pennsylvania, Inc., Yi How Kao, M.D., or Maryann Kao (regardless of the author of said documents), for the purposes of discussing the following:

- a. The reason(s) why Healthcare Billing Consultants, Inc. was being retained;
- b. The scope and/or extent of work to be performed by Healthcare Billing Consultants, Inc.;
- c. The progress of the work being performed by Healthcare Billing Consultants, Inc.;
- d. Eric Plotnick, M.D.

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

NOTICE OF DEPOSITION

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrigh, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 7<sup>th</sup> DAY OF  
JUNE, 2004.

  
Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

**FILED**  
JUN 08 2004  
William A. Shaw  
Prothonotary/Clerk of Courts



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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

NOTICE OF DEPOSITION

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
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THE WITHIN NOTICE WAS  
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OF RECORD THIS 7<sup>th</sup> DAY OF  
JUNE, 2004.



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

**JUN 08 2004**

William A. Shaw  
Prothonotary/Clerk of Courts



CA

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

ERIC PLOTNICK, M.D. :  
 :  
 :  
 vs. : No. 03-868-CD  
 :  
 :  
 OTOLARYNGOLOGY GROUP OF :  
 CENTRAL PENNSYLVANIA, INC. :  
 and YI HOW KAO, M.D. :

**ORDER**

AND NOW, this 16 day of June, 2004, upon consideration of Plaintiff's Motion for Sanctions in the above matter, it is the ORDER of the Court that argument on said Motion has been scheduled for the 13 day of July, 2004, at 10:30 A.M. before the Honorable John K. Reilly, Jr., Sr., Judge, Specially Presiding, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

**FILED**

**JUN 16 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**AFFIDAVIT OF SERVICE**

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN AFFIDAVIT WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 25<sup>th</sup> DAY OF  
JUNE, 2004.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

**JUN 28 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

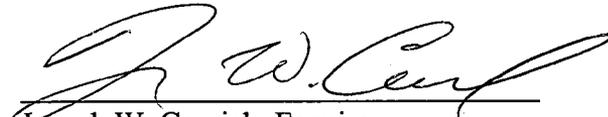
**AFFIDAVIT OF SERVICE**

I, Joseph W. Cavrich, Esquire, attorney for Plaintiff, Eric Plotnick, M.D., do hereby swear or affirm that on June 25, 2004, I served by first class mail a copy of a Rule Returnable for Plaintiff's Motion for Sanctions upon Defendants at the office of their attorney, Peter F. Smith, Esquire, 30 South Second Street, Clearfield, PA 16830.

Date: 6/25/2004

**URBAN & CAVRICH, P.C.**

By



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

PA ID# 52693  
503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**CERTIFICATE PREREQUISITE  
TO SERVICE OF SUBPOENA**

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN CERTIFICATE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 1<sup>st</sup> DAY OF  
JULY, 2004.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED** *NO CC*  
*m/10:37*  
**JUL 02 2004**  
*Shaw*  
William A. Shaw  
Prothonotary/Clerk of Courts



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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF INTENT  
TO SERVE SUBPOENA**

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 27<sup>th</sup> DAY OF  
MAY, 2003.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF INTENT TO SERVE A SUBPOENA  
TO PRODUCE DOCUMENTS AND THINGS  
FOR DISCOVERY PURSUANT TO RULE 4009.21**

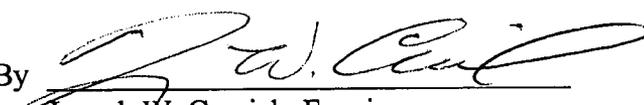
Plaintiff intends to serve a subpoena identical to the one that is attached to this notice.

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.

Date: May 27, 2004

**URBAN & CAVRICH, P.C.**

By

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

PA ID# 52693  
508 Allegheny Street  
P.O. Box 503  
Hollidaysburg, PA 16648  
(814) 695-7898

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Eric Plotnick MD  
Plaintiff(s)

Vs.

Otolaryngology Group of Central Pennsylvania, Inc.  
Yi How Kao MD  
Defendant(s)

No. 2003-00868-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO  
RULE 4009.22

TO: Evelyn A. Witters, President - Healthcare Billing Consultants, Inc.  
(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 ATTACHED

(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: Joseph W. Carrich, Esq.  
ADDRESS: Urban B Carrich, P.C.  
503 Allegheny St., Hollidaysburg, PA 16648  
TELEPHONE: 814-695-7898  
SUPREME COURT ID # 52693  
ATTORNEY FOR: Plaintiff

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy

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

DATE: Friday, May 07, 2004  
Seal of the Court

## LIST OF DOCUMENTS

1. All *updated* monthly financial reports prepared by Healthcare Billing Consultants, Inc., on behalf of Otolaryngology Group of Central Pennsylvania, Inc., for any and all time periods *subsequent* to those time periods covered by the documents produced by Healthcare Billing Consultants on October 14, 2003, including, but not limited to the following:
  - a. Business summaries for each month, including charges, receipts, and adjustments for each day of the month;
  - b. Group Analysis;
  - c. Provider Analysis (including Provider Nos. 1, 2, 3, 6, 7, 9);
  - d. Location Analysis;
  - e. Procedure Analysis;
  - f. Department Analysis;
  - g. Transaction Analysis;
  - h. ATB Category Analysis; and
  - i. Special Reports, including:
    1. Already Paid (AP) for Provider 2 for contract years 00-01, 01-02, 02-03;
    2. Receipts for Provider 2 for contract years 00-01, 01-02, 02-03;
    3. Time adjustments for 00-01, 01-02, 02-03;
    4. Already Paid (AP) for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003;
    5. Payments for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003;
    6. Time adjustments for Provider 3, Dept. 09 (Allergy) for calendar years 2000, 2001, 2002, and 2003.
2. Copies of any and all correspondence, notes, memoranda, or other documents (other than those documents produced on October 14, 2003, or documents to be produced in connection with document request no. 1 above) exchanged between Healthcare Billing Consultants, Inc. and either Otolaryngology Group of Central Pennsylvania, Inc., Yi How Kao, M.D., or Maryann Kao, as the documents relate to the Defendants' retention of Healthcare Billing Consultants, Inc., including, but not limited to, the following:
  - a. The reason(s) why Healthcare Billing Consultants, Inc. was retained;
  - b. The scope and/or extent of work to be performed by Healthcare Billing Consultants, Inc.;
  - c. The progress of the work being performed by Healthcare Billing Consultants, Inc.;
3. Copies of any and all correspondence, notes, memoranda, or other documents (other than those documents produced on October 14, 2003, or documents to be produced in connection with document request no. 1 above) exchanged between Healthcare Billing Consultants, Inc. and either Otolaryngology Group of Central Pennsylvania, Inc., Yi How Kao, M.D., or Maryann Kao, that in any way reference Eric Plotnick, M.D.

4. Copies of any and all notes, journals, diaries, or other memoranda authored by Evelyn Witters in an effort to memorialize or otherwise document meetings or conversations held between representatives of Healthcare Billing Consultants, Inc. and either Otolaryngology Group of Central Pennsylvania, Inc., Yi How Kao, M.D., or Maryann Kao (regardless of the author of said documents), for the purposes of discussing the following:

- a. The reason(s) why Healthcare Billing Consultants, Inc. was being retained;
- b. The scope and/or extent of work to be performed by Healthcare Billing Consultants, Inc.;
- c. The progress of the work being performed by Healthcare Billing Consultants, Inc.;
- d. Eric Plotnick, M.D.

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

ERIC PLOTNICK, M.D. :  
 :  
vs. : No. 03-868-CD  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC. :  
and YI HOW KAO, M.D. :

**ORDER**

AND NOW, this 6 day of August, 2004, it is the ORDER of  
the Court that argument regarding Plaintiff's Bill of Costs in the above matter has  
been scheduled for the 13 day of August, 2004, at 11:00  
A.M. in the Clearfield County Courthouse, Clearfield, PA. Please report to the  
Court Administrator's Office. You will be directed from there where this will be  
held.

BY THE COURT:

  
JOHN K. REILLY, JR.  
Senior Judge

**FILED**

**AUG 09 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

NOTICE OF DEPOSITION

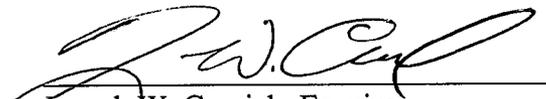
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 25<sup>th</sup> DAY OF  
AUGUST, 2004.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

FILED <sup>mc</sup>  
m/10:40/BJ  
AUG 26 2004  
E/AB  
William A. Shaw  
Prothonotary/Clerk of Courts



CA

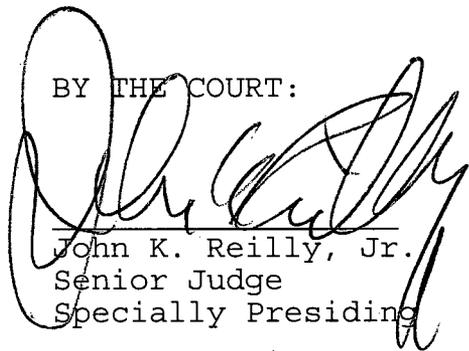
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

ERIC PLOTNICK, M.D. :  
VS. : NO. 03-868-CD  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D. :

ORDER

NOW, this 25th day of August, 2004, upon consideration of Motion for Sanctions filed on behalf of Plaintiffs above-named, including a request for counsel fees, it is the ORDER of this Court that said motion be and is hereby granted to the extent that Defendant shall pay to Plaintiff counsel fees in the amount of Two Hundred Fifty (\$250.00) Dollars.

BY THE COURT:



John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

**FILED**

**AUG 27 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D., :  
Plaintiff :  
 : No. 03-868-CD  
vs. :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D., :  
Defendants :

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent **DEFENDANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFF** to Attorney for Plaintiff by U.S. Mail, Postage Prepaid at the following address:

Joseph W. Cavrich, Esquire  
Urban & Cavrich, P.C.  
503 Allegheny Street  
P. O. Box 508  
Hollidaysburg, PA 16648

Respectfully submitted,



Peter F. Smith  
Attorney for Defendants

Date:

10/29/04

**FILED**  
NOV 01 2004  
NOV 01 25 1511 NOCC

William A. Shaw  
Prothonotary

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF SERVICE  
OF DISCOVERY RESPONSES**

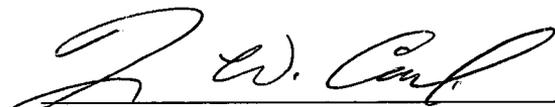
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrigh, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
513 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 20<sup>TH</sup> DAY OF  
JANUARY, 2005.



Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

**FILED** <sup>no cc</sup>  
1/10:35  
JAN 21 2005 614

William A. Shaw  
Prothonotary/Clerk of Courts



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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

NOTICE OF DEPOSITION

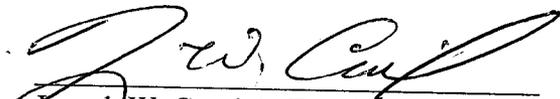
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
513 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 17<sup>th</sup> DAY OF  
FEBRUARY, 2004.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

llc FEB 18 2005

h/10:15/llc  
William A. Shaw  
Prothonotary  
w/c/c







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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

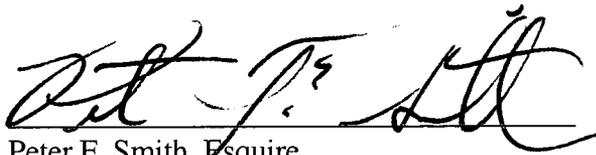
**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent a **NOTICE TO TAKE ORAL DEPOSITION** to the Attorney for the Plaintiff by U.S. First Class Mail, Postage Prepaid at the following address:

Joseph W. Cavrigh, Esquire  
Urban & Cavrigh, P.C.  
513 Allegheny Street  
Hollidaysburg, PA 16648

Respectfully submitted,

Date: February 21, 2005



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

FILED <sup>NO</sup> <sub>CC</sub>  
01:15:01  
FEB 22 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

Type of Case:  
**CIVIL**

Type of Pleading:  
**SECOND SUPPLEMENTAL  
PRODUCTION OF  
DOCUMENTS**

Filed on Behalf of:  
**Defendants**

Counsel of Record for this Party:  
**Peter F. Smith**  
Supreme Court ID #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel of Record for Plaintiff:  
**Joseph W. Cavrigh, Esquire**  
PA I.D. #52693  
URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

**FILED** <sup>12</sup> NO cc  
03/4/05  
MAR 09 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

**SECOND SUPPLEMENTAL PRODUCTION OF DOCUMENTS**

COMES NOW, the Defendants, by their attorney Peter F. Smith, who supplement the documents produced in this matter as follows:

1. Journal entries kept by Healthcare Billing Consultants, Inc.'s Clearfield Office of services to the Defendants and the Plaintiff commencing January 24, 2002 and ending on September 23, 2002. These documents are numbered sequentially commencing with 1,522 and ending with 1,551.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Plaintiff

Date: 3/8/05

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

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No. 03-868-CD

PREACIPE

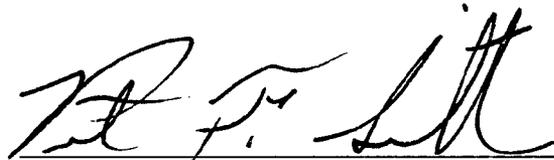
Clearfield County Prothonotary

Dear Sir:

As counsel for Defendants in the above captioned matter I withdraw the Preliminary  
Objections which I filed on their behalf on August 5, 2003.

Respectfully submitted,

Date: 3/9/05



Peter F. Smith  
Attorney for Defendants

FILED  
013:4904  
MAR 09 2005  
No CC  
Copy to CIA

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D., :  
Plaintiff :  
 : No. 03-868-CD  
vs. :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC. and :  
YI HOW KAO, M.D., :  
Defendants :

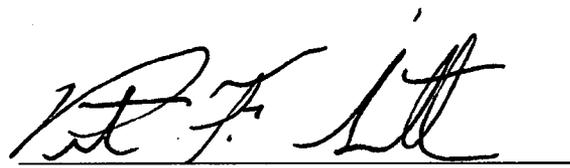
**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Defendants, certify that I sent a true and correct copies of the **SECOND SUPPLEMENTAL PRODUCTION OF DOCUMENTS NUMBERS 1,522 thru 1,551 along with WITHDRAWAL OF PRELIMINARY OBJECTIONS** as follows on Attorney Joseph W. Cavrich, Esquire by U.S. First Class Mail, Postage Prepaid on March 9, 2005 at the following address:

Joseph W. Cavrich, Esquire  
Urban & Cavrich, P.C.  
513 Allegheny Street  
Hollidaysburg, PA 16648

Respectfully submitted,

Date: 3/9/05



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

FILED <sup>10</sup> <sub>cc</sub>  
034961  
MAR 09 2005

William A. Shaw  
Prothonotary, Clerk of Courts

CA

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

ERIC PLOTNICK, M.D.,  
Plaintiff

No. 03-868-CD

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

PREACIPE

Clearfield County Prothonotary

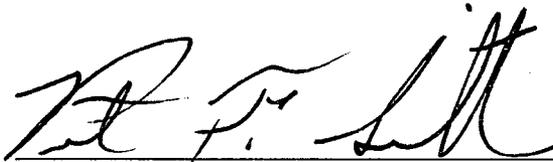
Dear Sir:

As counsel for Defendants in the above captioned matter I withdraw the Preliminary  
Objections which I filed on their behalf on August 5, 2003.

Respectfully submitted,

Date:

3/9/05



Peter F. Smith  
Attorney for Defendants

FILED

013:45801  
MAR 11 2005

EW  
NO CC

William A. Shaw  
Prothonotary/Clerk of Courts



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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

TYPE OF CASE: **CIVIL**

TYPE OF PLEADING:  
**DEFENDANTS' ANSWER, NEW  
MATTER & COUNTERCLAIMS  
DIRECTED TO THE SECOND  
AMENDED COMPLAINT**

Filed on Behalf of:  
**Defendants**

Counsel of Record for this Party:  
**Peter F. Smith**  
Supreme Court ID #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel of Record for Plaintiff:  
**Joseph W. Cavrich, Esquire**  
PA I.D. #52693  
URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

**JURY TRIAL DEMANDED**

**FILED** *2cc*  
*03-2005* *Atty Smith*  
**MAR 21 2005** *WR*

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D., :  
Plaintiff :  
 : No. 03-868-CD  
vs. :  
 :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D., :  
Defendants :  
 :

**NOTICE TO DEFEND**

To: Eric Plotnick, M.D.  
C/O Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

You are hereby notified to file a written response to the enclosed New Matter and Counterclaims within twenty (20) days from the service hereof or a judgment may be entered against you.

Date: March 21, 2005



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

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

ERIC PLOTNICK, M.D., :  
Plaintiff :  
 : No. 03-868-CD  
vs. :  
 :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D., :  
Defendants :  
 :  
 :

**ANSWER & NEW MATTER DIRECTED TO THE  
SECOND AMENDED COMPLAINT**

COMES NOW, The Defendants, by their attorney, Peter F. Smith, who answer the second amended complaint as follows:

1. Neither admitted nor denied because Defendants have no direct knowledge of Plaintiff's residence.
2. Admitted.
3. Admitted.
4. Denied as stated. Dr. Kao is the President of the Otolaryngology Group of Central Pennsylvania, Inc. The corporation does not have a Chief Executive Officer.
5. By stipulation of counsel filed with this Honorable Court on or about February 21, 2005, counsel for the parties agreed that Plaintiff would withdraw paragraphs 5, 6 and 67 through 89 of the Second Amended Complaint without prejudice. To the extent that these allegations may be reasserted, then the Defendants answer as follows: Denied. The Otolaryngology Group of Central Pennsylvania, Inc. was properly incorporated with the Commonwealth of Pennsylvania and has been maintained in compliance with its laws since the date of its incorporation on December 24, 1998.

Denied that the corporation has, "existed as a shell corporation created by Defendant Dr. Kao for the sole purpose of shielding Dr. Kao's personal assets from any judgments that may be entered against him in relation to the employment contract executed by Plaintiff." The corporate Defendant was in existence a full two years prior to Dr. Kao's first contact with the Plaintiff. It was organized and has been conducted for strictly legal purposes. The allegations of "illegal activities" or "abusing his availment of the corporate fiction" are specifically denied. The corporate form was adopted as a vehicle for the administration and expansion of an otolaryngology medical practice in central Pennsylvania. Dr. Kao, as the corporation's sole shareholder, is legitimately entitled to all benefits accorded by Pennsylvania's corporation law and the Commonwealth of Pennsylvania, not the least of which is limited liability.

- a) The corporate expenses are legitimate obligations of the corporation, including but not limited to, compensation or draws to or by its principal employee Dr. Kao.
  - b) Denied. The corporate Defendant has conducted regular meetings and kept corporate meeting minutes;
  - c) The corporation adopted by-laws and has followed them;
  - d) No substantial intermingling of Dr. Kao's personal affairs and the affairs of the Otolaryngology Group of Central Pennsylvania, Inc. has occurred;
  - e) The Otolaryngology Group of Central Pennsylvania, Inc. has provided Dr. Kao with a legitimate means of advancing and protecting his professional aspirations.
6. Denied for the reasons set forth in answer 5 above.
  7. Denied as stated. The parties did enter a document entitled "Principles of Agreement" which represented the initial terms and conditions of Plaintiff's employment, but the parties modified those principles by subsequent agreements, both written and verbal, and by their

usage.

8. Admitted that Dr. Kao prepared the document attached to the complaint as Exhibit A but denied that that document constituted the parties' sole and unmodified agreement throughout the entire term of their relationship.

9. Admitted that Plaintiff's list a) through e) is not exclusive as to the particulars of the parties' contractual relationship, and specifically:

- a) Admitted.
- b) Admitted but further averred that bonus was founded "*collections*" and upon a base compensation of \$150,000.00 *throughout* the term of Plaintiff's employment.
- c) Admitted.
- d) Admitted that the "Principles of Agreement" list those three instances of cause. However, Exhibit A was supplemented by the formal Employment Contract which the parties entered dated February 1, 2000 and which is attached to the complaint as Exhibit B.
- e) Denied as stated. The gist of that provision in the "Principles of Agreement" was four months' prior notice in the event that the Defendant did not intend to renew or extend the Employment Contract. No prior notice was required in the event of termination for cause or in the event of Plaintiff's breach or repudiation of his Employment Contract.

10. Admitted that the parties executed an Employment Contract for Medical Services dated February 2, 2000. Further averred that the parties subsequently modified that agreement along with the earlier "Principles of Agreement" by their subsequent amendments, both verbal and written, and their usage.

11. Admitted except in the instance of termination for cause or breach as described in paragraph 9(e) above.

It is further admitted that Plaintiff commenced work in mid-January of 2000 and then immediately took two weeks vacation.

12. Admitted that Plaintiff's list a) through e) is not exclusive as to the particulars of the parties' contractual relationship, and specifically:

- a) Admitted.
- b) Denied because the language of the Employment Contract misstates the actual agreement of the parties. As admitted in paragraph 9 of the Second Amended Complaint, Plaintiff's production bonus was 50% of gross billings *actually collected* over \$300,000.00 during the term of his employment. Defendants paid this bonus to Plaintiff as required by the parties' agreement, and Plaintiff accepted those payments until he subsequently breached his agreement with Defendants. This provision is correctly stated in the "Principles of Agreement" which makes reference to "...50% of collections..."
- c) Admitted.
- d) Admitted.
- e) Admitted.

13. Admitted but further averred that Plaintiff failed to abide by the terms and conditions of the parties' contract. Specifically, he breached the requirement to use his "best efforts" imposed by Article II. He also breached Article IX which required him to, "... abide by all applicable canons of professional ethics..." Dr. Plotnick also breached subparagraphs 7 and 8 of Article XVI of the Employment Contract as enumerated in paragraph 12(e) of the complaint. Additionally, Plaintiff's breaches in this regard jeopardized his staff privileges at the Clearfield Hospital and Centre Community Hospital and, most importantly, jeopardized or compromised patients' health and safety.

14. Admitted that neither the "Principles of Agreement" nor Employment Contract expressly obligated the corporate Defendant to provide the Plaintiff with a vehicle. The balance of

this averment is denied as stated. Initially, the parties verbally amended their agreements to provide that the corporate Defendant would reimburse the Plaintiff for a reasonable rental of a vehicle to be used by Plaintiff to fulfill his professional obligations. Plaintiff was unable to finance the purchase of a vehicle because of his bankruptcy and negative credit history. Consequently, a vehicle was leased in the corporate Defendant's name and Defendant made the lease payments and reimbursed Plaintiff for mileage.

15. Denied to the extent that the alleged "verbal assurances" are inconsistent with the Defendants' answer in paragraph 14 above.

16. Denied as stated. Defendants made all lease payments commencing in February of 2000 through the end of May 2003 when Plaintiff's employment with the corporate Defendant ceased.

17. Admitted.

18. Denied as stated. Defendants admit that the Employment Contract was renewed for an additional year but under and according to the terms which they implemented in practice as represented in part by the "Principles of Agreement," the Employment Contract, their subsequent modifications and their usage. Specifically, the production bonus continued to be 50% of gross billings over \$300,000.00 *actually collected*.

19. Denied as stated. The parties did execute a written two year extension of their original agreement as comprised of the "Principles of Agreement," Employment Contract, subsequent amendments and their usage.

Also denied because paragraph 19 of the Second Amended Complaint does not properly explain the \$60,000 increase to Plaintiff's base salary. That increase does not represent an additional \$60,000 per year compensation, rather it was intended by the parties to represent an additional \$60,000 of bi-monthly payments to Dr. Plotnick as a non-refundable credit towards his annual production bonus. The intent of this provision was to provide Dr. Plotnick with additional security and increase his cash flow on a more level basis throughout the contract year.

20. Denied. The production bonus was correctly stated in the "Principles of

Agreement" and incorrectly stated in the Employment Contract. In point of fact, the corporate Defendant paid and Dr. Plotnick accepted a production bonus of 50% of the amounts *actually collected* over \$300,000.00 during his employment.

21. Admitted that the Plaintiff did express this concern, but any further implications are specifically denied because Defendants' computer billing program did age accounts receivable. Defendants further took reasonable steps to maintain adequate billing procedures. Defendants' employee responsible for billing was experiencing serious health problems at that time for which Defendant made reasonable accommodation pursuant to Pennsylvania law, federal law and basic human decency. Defendants retained Healthcare Billing Consultants, Inc. to assist in these matters in January of 2002, and Healthcare Billing Consultants, Inc. took entire responsibility for Defendants' billing in May of 2002.

22. Denied as legal conclusions and further denied because Defendants' billing practices were not negligent and/or substandard. Denied that Defendants failed and/or refused to follow generally accepted accounting principles, and denied that Defendants failed and/or refused to follow IRS reporting guidelines.

The allegations of negligent billing practice are irrelevant to these proceedings because they sound in tort and the Plaintiff has based this lawsuit upon contractual claims. As an employee of the Defendant corporation, the Plaintiff's remedies were limited to voicing his concern and tendering his resignation from employment.

23. Denied that Defendants' delinquent billings exceeded \$1,000,000.00 at any point relevant to this litigation. Plaintiff does not define "delinquent." It is not unusual for a medical practice with the size and volume of Defendants' to have outstanding billings in excess of \$1 million.

24. Plaintiff could be rude and difficult to work with, Defendants deny any legitimate connection between that behavior and their billing practices.

25. Denied. Plaintiff was paid all production bonuses due through the date of his final employment. Plaintiff is not entitled to any additional production bonuses for two reasons:

i) Plaintiff's employment was properly terminated on May 26, 2003. Since Plaintiff was entitled to a bonus as an employee only to amounts actually collected, and since Plaintiff was not employed after May 26, 2003, Plaintiff was not entitled to any compensation after that date, including the production bonus and other fringe benefits pursuant to the final paragraph of Article XVI of the Employment Contract, Exhibit B to the complaint.

ii) Article V.B. also makes the Plaintiff's entitlement to the production bonus contingent upon his providing a full year of service under the parties' agreement. This subsection states in part, "...physician shall also receive a production bonus **for each full year actually completed under this agreement...**"

26. Denied. It is general knowledge among those in the health care industry that an excess of 30% of a medical practice's gross billings will not be collected. The amount billed always exceeds the amount allowed by third party payors, and there is always an allowance for bad debt. That is why the parties' "Principles of Agreement" and their actual practice based Plaintiff's bonus on gross billings *actually collected* in excess of \$300,000.00. Consequently, it is denied that the Plaintiff has suffered any "immediate and irreparable financial hardship."

27. Denied as stated. The allegation of "partially compensate" is denied. The production bonus was intended to be based upon amounts actually collected and was in fact based upon amounts actually collected. The Plaintiff has been paid the production bonus due to him on all amounts actually collected by the Defendant corporation to May 26, 2003.

28. Admitted.

29. Denied as stated. Plaintiff received what he deserved under the parties' agreement and the circumstances of their relationship. The Defendants neither verbally, nor in writing, nor through their conduct ever admitted negligent billing practices and a substandard billing system.

30. While it is admitted that there was a period when these payments were interrupted because Dr. Kao learned that the Plaintiff had started looking for another job in November of 2002, Defendants subsequently made all payments of these items through the final date of Plaintiff's

employment.

31. Admitted.

32. Admitted and further averred that these events illustrate Dr. Kao's legitimate concerns and grounds for finding Plaintiff in breach as discussed in answer 13 above. Defendants further aver that Plaintiff's breaches of his Employment Contract were more numerous than the events discussed in Dr. Kao's January 29, 2003 letter.

33. Admitted.

34. Defendants admit receipt of Dr. Plotnick's January 31, 2003 correspondence, but they deny the assertions contained in it for the reasons set forth in answers 13 and 32 above.

35. Denied for the reasons set forth in paragraph 34.

36. Denied for the reasons set forth in paragraphs 34 and 35.

37. Admitted that Plaintiff received his regular salary due on February 15, 2003. Production bonuses accrued to May 26, 2003 have been paid. He is not entitled to any further compensation as explained in answer 25 above.

38. Admitted but further averred that those amounts have subsequently been paid to Dr. Plotnick. Dr. Kao further avers that this note was written to illustrate a point to Dr. Plotnick. That being, that the terms and conditions of their professional relation were not represented only by the Employment Contract, the two year extension or the "Principles Agreement" but by the combination of those items as modified by their additional verbal amendments and their conduct.

39. Admitted for the reasons and as modified by answer 38 above.

40. Admitted.

41. While it is known that Plaintiff accepted employment with another entity at another location, the exact date of that employment is not within the scope of Defendants' knowledge. Defendants specifically deny the allegation that they had breached the agreement with Dr. Plotnick. In point of fact, Defendants learned that Dr. Plotnick had already started looking for employment in the fall of 2002. Dr. Plotnick had no intention of fulfilling the term of his employment with the Otolaryngology Group of Central Pennsylvania, Inc.

42. Denied. Defendants were completely within their rights to terminate Plaintiff's employment. Therefore, Dr. Kao would never have made a statement to the contrary.

43. Defendants admit that Plaintiff has been paid all compensation and reimbursement due through May 26, 2003. Defendants deny that any production bonus payments were to be based on gross billings alone.

44. Admitted and further averred that the production bonus was based upon gross amounts *actually collected* in excess of \$300,000.00.

45. Denied. The production bonuses for contract year February 2002 through January 30, 2003 have been paid. Plaintiff is not entitled to any production bonus that would have been collected after January 30, 2003, because Plaintiff did not tender a full, final year of service.

**ERIC PLOTNICK, M.D., V.**

**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**

**COUNT I - BREACH OF CONTRACT**

46. Defendants incorporate herein by reference the preceding paragraphs 1 through 45 of this Answer as if they were set forth in full.

47. Denied. Plaintiff breached subparagraph 7 and 8 of Article XVI of the Employment Contract. Additionally, Plaintiff started looking for other employment in the fall of 2002 and had no intention of completing the full term of his employment with the Defendant corporation and would not have done so had his employment not been terminated by the Defendants.

48. Denied for the reasons set forth in paragraphs 13 and 47 of this Answer.

49. Denied. Dr. Kao made repeated attempts to encourage Plaintiff to improve the quality of his work and his attitude toward patients, staff and other physicians.

50. Denied. The Defendants had cause for terminating Plaintiff's employment as stated in paragraphs 13 and 47 above. Further denied because Dr. Kao has paid all production bonuses accrued to May 26, 2003 and is not contractually obligated to pay any subsequent production

bonuses on amounts *actually collected* in excess of \$300,000.00 subsequent to May 26, 2003.

51. Admitted.

52. Admitted.

53. Defendants admit that payment of these expenses and/or reimbursement thereof was delayed, but they were paid in full.

54. Denied to the extent that "justifiably relied to his detriment" constitutes a conclusion of law. However, the Defendants admit that, as one of several significant modifications to the written agreements between the parties, the Defendants also agreed to pay Plaintiff's automobile lease, automobile insurance and reimburse him for business mileage and cell phone expense.

55. Denied that the Defendants unilaterally terminated the Plaintiff's employment. Defendants had just cause as stated in paragraphs 13 and 47 above. Defendants therefore aver that it was the Plaintiff, not Defendants, who breached the parties' agreement.

56. Denied because "irreparably damaged" and "breach of contract" are conclusions of law and further denied for the following reasons:

- a) Plaintiff has been paid all production bonuses on amounts *actually collected* over \$300,000.00 through May 26, 2003.
- b) Denied. The Plaintiff breached the parties' agreement and his employment was justifiably terminated. Further denied because production bonuses were based on amounts actually collected, and since Plaintiff did not work during that final period, he is entitled to no compensation for it.
- c) Denied. Defendant corporation is obligated to pay the Plaintiff a production bonus based on amounts actually collected. To the extent that a bill was paid or written off as uncollectible after May 26, 2003, the date on which Plaintiff's employment ceased, no production bonus was due.
- d) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no wages are due after May 26, 2003.

- e) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no reasonable lease payments are due after May 26, 2003.
- f) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no reimbursement for cell phone expenses are due after May 26, 2003.
- g) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no reimbursement for gas is due after May 26, 2003.
- h) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no reimbursement for life insurance is due after May 26, 2003.
- i) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no payment of health insurance is due after May 26, 2003. Plaintiff was extended his rights under COBRA.
- j) Denied. The M-Care coverage has been paid.
- k) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no reimbursement for car insurance is due after May 26, 2003.
- l) Denied. No interest is due because all amounts owing to Dr. Plotnick have been paid in a timely fashion and any amount withheld is due to his own wrongful refusal to live up to his contractual commitments to Defendant and accept the payment of production bonus actually collected.
- m) Denied because Plaintiff's case is without merit.

WHEREFORE, Defendant prays this Honorable Court to enter judgment in its favor and against the Plaintiff.

**ERIC PLOTNICK, M.D., V.**

**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**

**COUNT II - PROMISSORY ESTOPPEL**

57. Defendants incorporate herein by reference the preceding paragraphs 1 through 56 of this Answer as if they were set forth in full.

58. Admitted because that was the parties' agreement.

59. Admitted.

60. Denied. The Defendants have concealed no material facts from Plaintiff, nor have they deceived him in any fashion.

61. Admitted to the extent that the parties had an agreement which the Plaintiff did partially perform.

62. Denied for the reasons set forth in paragraph 60.

63. Admitted and further averred that the base compensation, production bonus on amounts *actually collected* over \$300,000.00 and other fringe benefits extended by Defendant corporation to the Plaintiff were also a substantial inducement to him to accept employment by the corporate Defendant, but Plaintiff's entitlement to those forms of compensation was conditioned upon his continued employment.

64. Denied. The Defendants acted honestly and at all times in good faith toward the Plaintiff. Plaintiff has been paid all amounts due through May 26, 2003, and the Defendant corporation would have paid any amounts actually accruing after that date but for Plaintiff's discharge which was justified.

65. Denied as a conclusion of law and further denied for the facts set forth in paragraph 64 above.

66. Denied. Defendant corporation has paid all amounts actually due through May 26, 2003. Plaintiff is entitled to no compensation or fringe benefits after that date because he was justifiably, properly and legally discharged by the Defendant corporation.

WHEREFORE, Defendant prays that judgment be entered in its favor and against the Plaintiff.

**ERIC PLOTNICK, M.D., V. YIHOW KAO, M.D.**

**COUNT III - BREACH OF CONTRACT**

67. Defendant incorporates by reference the preceding paragraphs 1 through 66 of this Answer as if they were set forth in full.

68. Denied. Plaintiff breached subparagraph 7 and 8 of Article XVI of the Employment Contract. Additionally, Plaintiff started looking for other employment in the fall of 2002 and had no intention of completing the full term of his employment with the Defendant corporation and would not have done so had his employment not been terminated by the Defendants.

69. Denied for the reasons set forth in paragraphs 13 and 47 of this Answer.

70. Denied. Dr. Kao made repeated attempts to encourage Plaintiff to improve the quality of his work and his attitude toward patients, staff and other physicians.

71. Denied. The Defendant had cause for terminating Plaintiff's employment as stated in paragraphs 13 and 47 above. Further denied because Dr. Kao has paid all production bonuses accrued to May 26, 2003 and is not contractually obligated to pay any subsequent production bonuses on amounts *actually collected* in excess of \$300,000.00 subsequent to May 26, 2003.

72. Admitted.

73. Admitted.

74. Defendant admits that payment of these expenses and/or reimbursement thereof was delayed, but they have been paid in full.

75. Denied to the extent that "justifiably relied to his detriment" may constitute a conclusion of law. However, the Defendant admits that as one of several significant modifications to the written agreements between the parties, the Defendant also agreed to pay Plaintiff's automobile lease, automobile insurance and reimburse him for business mileage and cell phone

expense.

76. Denied that the Defendant unilaterally terminated the Plaintiff's employment. Defendant had just cause as stated in paragraphs 13 and 47 above. Defendant therefore avers that it was the Plaintiff, not Defendant, who breached the parties' agreement.

77. Denied for the reasons set forth in paragraph 5 of this Answer.

78. Denied because "irreparably damaged" and "breach of contract" are conclusions of law and further denied for the following reasons:

- a) Plaintiff has been paid all production bonuses on amounts actually received over \$300,000.00 through May 26, 2003.
- b) Denied. The Plaintiff breached the parties' agreement and his employment was justifiably terminated. Further denied because production bonuses were based on amounts actually collected, and since Plaintiff did not work during that final period, he is entitled to no compensation for it.
- c) Denied. Defendant is obligated to pay the Plaintiff a production bonus based on amounts actually collected. To the extent that a bill was paid or written off as uncollectible after May 26, 2003, the date on which Plaintiff's employment ceased, no production bonus was due.
- d) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no wages are due after May 26, 2003.
- e) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no reasonable lease payments are due after May 26, 2003.
- f) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no reimbursement for cell phone expenses are due after May 26, 2003.
- g) Denied. Plaintiff's employment was justifiably terminated according to the terms of

his agreements with the Defendant. Therefore, no reimbursement for gas is due after May 26, 2003.

- h) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no reimbursement for life insurance is due after May 26, 2003.
- i) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no payment of health insurance is due after May 26, 2003. Plaintiff was extended his rights under COBRA.
- j) Denied. The M-Care coverage has been paid. Billing for this coverage was delayed by a political squabble between the Governor of Pennsylvania and the legislature. Defendant paid the bill promptly once it was received.
- k) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no reimbursement for car insurance is due after May 26, 2003.
- l) Denied. No interest is due because all amounts owing to Dr. Plotnick have been paid in a timely fashion and any amount withheld is due to his own wrongful refusal to live up to his contractual commitments to Defendant and accept the payment of production bonus actually collected.
- m) Denied because Plaintiff's case is without merit.

WHEREFORE, Defendant prays this Honorable Court to enter judgment in his favor and against the Plaintiff.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**

**COUNT IV - PROMISSORY ESTOPPEL**

79. Defendants incorporate herein by reference the preceding paragraphs 1 through 78 of this Answer as if they were set forth in full.

80. Admitted because that was the parties' agreement.

81. Admitted.

82. Denied. The Defendant Dr. Kao has concealed no material facts from Plaintiff, nor has he deceived him in any fashion.

83. Admitted to the extent that the parties had an agreement which the Plaintiff did partially perform.

84. Denied for the reasons set forth in paragraph 82.

85. Admitted and further averred that the base compensation, production bonus on amounts *actually collected* over \$300,000.00 and other fringe benefits extended by Defendants to the Plaintiff were also a substantial inducement to him to accept employment by the corporate Defendant, but Plaintiff's entitlement to those forms of compensation was conditioned upon his continued employment.

86. Denied. The Defendants acted honestly and at all times in good faith toward the Plaintiff. Plaintiff has been paid all amounts due through May 26, 2003, and the Defendants would have paid any amounts actually accruing after that date but for Plaintiff's unreasonable and wrongful institution of this litigation.

87. Denied as a conclusion of law and further denied for the facts set forth in paragraph 86 above.

88. Denied for the reasons set forth in paragraph 5 of this Answer.

89. Denied. Defendants have paid all amounts actually due through May 26, 2003. Plaintiff is entitled to no compensation or fringe benefits after that date because he was justifiably, properly and legally discharged by the Defendants.

WHEREFORE, Defendants pray that judgment be entered in their favor and against the Plaintiff.

**ERIC PLOTNICK, M.D., V**

**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**

**COUNT V - VIOLATION OF WAGE PAYMENT AND COLLECTION LAW**

90. Defendants incorporate herein by reference the preceding paragraphs 1 through 89 of this Answer as if they were set forth in full.

91. Admitted.

92. Denied as a conclusion of law incorrectly stated, and further denied because "wages" does not include compensation in any form to which an employee is not properly entitled as is the case here because Plaintiff was justifiably, properly and legally discharged from his employment with Defendant corporation.

93. The implication that Defendants have failed to pay Plaintiff's production bonuses as asserted by this paragraph is denied. Plaintiff has, in fact, been paid for production bonuses on amounts *actually collected* in excess of \$300,000.00 through May 26, 2003 as required by the parties' agreement.

94. Denied. Plaintiff is not entitled to the amounts claimed in this action because he breached the parties' agreement and/or the claimed compensation is not within the scope of Plaintiff's agreement with the Defendant corporation. Therefore, any refusal by the Defendants to pay those demands is reasonable and not subject to the Wage Payment and Collection Law.

95. Denied as a conclusion of law and further denied upon the facts set forth in paragraphs 93 and 94 above.

96. Denied for the reasons set forth in paragraphs 93, 94 and 95 above.

WHEREFORE, Defendants pray this Honorable Court to deny Plaintiff's prayer for relief in Count V of the complaint.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**

**COUNT VI - VIOLATION OF WAGE PAYMENT AND COLLECTION LAW**

97. Defendants incorporate herein by reference the preceding paragraphs 1 through 96 of this Answer as if they were set forth in full.

98. Neither admitted nor denied as a conclusion of law to which no response is required.

99. Admitted.

100. Neither admitted nor denied because the averment constitutes a legal conclusion, but further averred that Dr. Kao is not liable because the Plaintiff has been paid in full.

101. Neither admitted nor denied because the averment constitutes a legal conclusion, but further averred that the Plaintiff has received all compensation actually due and payable. Plaintiff is not entitled to the other items of compensation which he seeks through this lawsuit.

102. Neither admitted nor denied because the averment constitutes a legal conclusion, but further averred that the Plaintiff has received all compensation actually due and payable. Plaintiff is not entitled to the other items of compensation which he seeks through this lawsuit.

103. Admitted that Section V of the Employment Contract establishes that requirement. Further averred that Defendants have complied with that provision in each contract year, and Defendants have complied with that provision for the partial contract year ending with the termination of Plaintiff's employment. Plaintiff has been paid for all production bonuses actually collected to May 26, 2003. Therefore, no additional balance is owing.

104. While it is admitted that Plaintiff has made such requests, it is denied that he is entitled to receive any additional compensation for the reasons set forth in paragraph 103 above.

105. Denied. Plaintiff is not entitled to additional compensation either under the parties' contractual arrangements or under the WPCL.

106. Denied. Plaintiff is not entitled to any additional compensation, and further averred that this litigation represents a good faith contest.

WHEREFORE, Defendants pray that Plaintiff's prayer for judgment including liquidated damages, attorney's fees, costs and such other relief as the Court deems proper be denied.

**NEW MATTER**

107. Defendants incorporate herein by reference the preceding paragraphs 1 through 106 of the foregoing Answer as if they were set forth in full.

108. Plaintiff accepted production bonuses based on amounts actually collected for the period commencing February 1, 2000 through May 26, 2003 without objection.

109. Plaintiff is therefore estopped from denying that his production bonus was in fact to be based upon "amounts actually collected."

110. As stated in the answers above, Plaintiff's entitlement to the production bonus was subject to a number of additional conditions:

i) The bonus was for 50% of amounts *actually collected* in excess of \$300,000.00; and,

ii) The production bonus was to be paid at the end of each full year actually completed under the parties' agreement.

111. Defendant corporation has paid to the Plaintiff all production bonus to which he was entitled on May 26, 2003 which was the last date of his employment with the Defendant corporation as pleaded and admitted in paragraph 41 of the complaint.

112. Since Plaintiff's employment was justifiably terminated on May 26, 2003, and since his production bonus was based on amounts actually collected, and due only at the end of each full year of employment actually completed, he is not entitled to any production bonus for amounts received after May 26, 2003.

113. To the extent that Plaintiff bases his claim for damages upon the Doctrine of Promissory Estoppel, his cause of action is equitable in nature.

114. Plaintiff is not entitled to damages because he comes to court with "unclean hands" because:

a) He had already started looking for other employment and had no intention of fulfilling the term of his employment with the Defendant corporation;

- b) He admits in paragraph 41 of the complaint that he actually accepted other employment with a practice in Snellville, Georgia on February 8, 2003;
- c) Plaintiff spent the next four months trying to set Dr. Kao up; and,
- d) Plaintiff's deviations from proper professional standards justified his discharge and, in fact, subjected the Defendants to claims by third parties.

115. Plaintiff's claim for damages is barred because he is believed to have obtained other employment which compensated him fully for the remainder of the term of his employment from June 1, 2003 through December 31, 2003, or in the alternative, if Plaintiff failed to obtain and/or maintain other appropriate employment, then his claim is barred because he failed to mitigate his damages.

#### **FIRST COUNTERCLAIM**

116. Defendants incorporate herein by reference the preceding paragraphs 1 through 115 of the foregoing Answer and New Matter as if they were set forth in full.

117. Article V.B. makes Plaintiff's entitlement to his production bonus contingent upon his providing a full year of service under the parties' agreement.

That section reads in pertinent part, "...physician shall also receive a production bonus for each full year actually completed under this agreement..."

118. Plaintiff's employment with the Defendant corporation was terminated on May 26, 2003 for cause as more fully recited in paragraph 13 above.

119. Therefore, Plaintiff did not complete that contract year of employment with the Defendant corporation.

120. In good faith, the Defendant corporation made bonus payments to the Defendant totaling \$50,355.48 during the period February 1, 2003 through May 30, 2003.

121. Plaintiff is not entitled to those bonus payments pursuant to the parties' contract.

122. Those bonus payments should either be refunded by Plaintiff to Defendant corporation or included as a set-off against any eventual liability found to be owing by either Defendant to Plaintiff.

123. Plaintiff was not entitled to those bonuses and he will be unjustly enriched if he is permitted to keep them.

WHEREFORE, Defendants pray this Honorable Court to enter judgment in the Defendant corporation's favor and against the Plaintiff in the amount of \$50,355.48 together with interest at the statutory rate from the dates on which the bonus payments were made together with costs.

### **SECOND COUNTERCLAIM**

124. Defendants incorporate herein by reference the preceding paragraphs 1 through 123 of the foregoing Answer, New Matter and First Counterclaim as if they were set forth in full.

125. Pursuant to the parties' agreement, the Defendant corporation paid a number of expenses on behalf of Plaintiff, to wit:

- a) Malpractice insurance
- b) Disability insurance
- c) Life insurance
- d) Pager
- e) Professional dues and registrations

126. These expenses were billed to and paid in advance by the corporate Defendant.

127. Plaintiff's employment with Defendant corporation was justifiably terminated for cause on May 26, 2003.

128. Plaintiff continued to receive these prepaid benefits subsequent to his final day of employment.

129. Plaintiff has been unjustly enriched at the expense and to the detriment of the corporate Defendant in regard to these prepaid benefits.

130. Therefore, the Plaintiff should reimburse the corporate Defendant for the prorated value of these benefits which he received subsequent to his final date of employment.

131. The benefits and prorated amounts for which reimbursement is sought follow:

a)	PMSLIC (medical malpractice) refund	\$1,296.00
b)	Unum Provident disability insurance	\$1,849.92
c)	Cincinnati life insurance	\$ 48.30
d)	Metro Call pager	\$ 175.13
e)	Prorated portion of AAC HNS dues	\$ 291.66
f)	Prorated portion of AAOA dues	\$ 189.58
g)	Prorated portion of DEA registration	\$ 166.25
h)	Prorated portion of American Board of Otolaryngology dues	\$ 37.90
i)	Excess mileage charge for Plaintiff's leased vehicle	\$2,551.20
j)	Insurance deductible for Plaintiff's accidents with leased vehicle	<del>\$2,000.00</del>
	TOTAL REIMBURSEMENT	\$8,605.94

132. Dr. Kao made written demand on Plaintiff for reimbursement in this amount, but Plaintiff has failed to pay. It is known that Dr. Plotnick did receive the PMSLIC refund and that he or his attorney is holding it in escrow.

133. A true and correct copy of Defendant's demand letter on Dr. Plotnick for reimbursement is attached to this Answer, New Matter and Counterclaims as Defendants' Exhibit A.

WHEREFORE, the Defendants pray this Honorable Court to enter judgment in their favor and against the Plaintiff in the amount of \$8,605.94 together with interest at the statutory rate and costs.

### **THIRD COUNTERCLAIM**

134. Defendants incorporate herein by reference the preceding paragraphs 1 through 133 of the foregoing Answer, New Matter, First Counterclaim and Second Counterclaim as if they were set forth in full.

135. Paragraph II of the parties' February 1, 2000 Employment Contract for medical services obligated the physician Plaintiff to devote his "full time and best efforts to the performance of his duties under this agreement."

136. Paragraph IX obligated the physician Plaintiff to "abide by all applicable canons of professional ethics, regulations governing the administration of hospitals where he has staff privileges, rules and regulations...and all rules and regulations promulgated by the United States government in the Commonwealth of Pennsylvania...all rules and regulations promulgated by other third party payors and all rules and regulations and policies as may from time to time be adopted by the Corporation."

137. Paragraph XVI Section 7 and 8 also required the physician Plaintiff to faithfully and diligently comply with the provisions of the parties' agreement and with all reasonable policies, standards and regulations established by the Corporation.

138. In addition to the contractual duties which Plaintiff owed to the Defendants, Pennsylvania law also imposes a duty upon employees to render loyal, diligent, faithful and obedient service to their employer.

139. In addition to the contractual duties which Plaintiff owed to the Defendants, Pennsylvania law also imposes a duty upon employees to perform services as agreed and with the degree of skill and care possessed and employed by others in the same profession and to discharge their duties with that degree of skill and care called for by the nature of the employment.

140. Physician Plaintiff represented himself to be a duly qualified and licensed otolaryngological specialist.

141. Physician Plaintiff accepted employment with the Defendant corporation on this basis and undertook to provide medical services in this specialty.

142. Physician Plaintiff breached these duties by deviating from these standards either negligently or intentionally in that he deviated from or failed to follow the requirements of his contract with Defendant corporation, proper medical standards, protocols and procedures causing actual physical injury and death to various patients.

143. The physician Plaintiff further breached these contractual and legal obligations owed to the Defendants by:

- a) failing to deliver competent and proper medical services to patients;
- b) failing to properly sign patients out;
- c) failing to maintain good professional relations with hospitals, other physicians, other physician groups, staff and third parties;
- d) failing to possess and/or exercise the degree of knowledge, care and skill ordinarily possessed and exercised in similar cases by physicians specializing in otolaryngology;
- e) failing to conform to the requisite standard of care under the circumstances;
- f) failing to follow-up his diagnoses and treatments of patients;
- g) failing to monitor the condition of patients after treatments including surgeries; and,
- h) failing to properly sign patients out to other physicians during periods of the physician Plaintiff's absence.

144. Physician Plaintiff's breaches caused patients, physicians and physician groups to cease or avoid using the Defendants for otolaryngological services to their financial detriment.

145. Physician Plaintiff's breaches caused additional work and stress for Defendant Dr. Kao and diverted him from his professional duties. Instead of treating patients, he was defending lawsuits.

146. Physician Plaintiff's breaches exposed both Defendants to third party liability for medical malpractice which has caused either financial loss either directly or indirectly through increased malpractice premiums in excess of \$10,000.00.

WHEREFORE, Defendants pray this Honorable Court to enter judgment in their favor and against the Plaintiff for an amount in excess of \$10,000.00 together interest at the statutory rate and costs.

Respectfully submitted,

Date: 3/21/05



Peter F. Smith, Esquire  
Attorney for Defendants  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

**VERIFICATION**

I verify that the statements made in this Answer, New Matter and Counterclaims are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.

Dated: \_\_\_\_\_

3-4-05

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

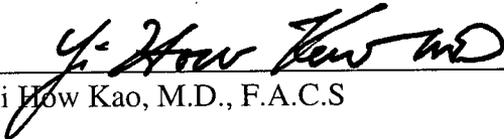


Yi How Kao, M.D., F.A.C.S  
President

**VERIFICATION**

I verify that the statements made in this Answer, New Matter and Counterclaims are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Dated: 3-4-05

  
\_\_\_\_\_  
Yi How Kao, M.D., F.A.C.S

## OTOLARYNGOLOGY GROUP OF CENTRAL PA

Y.H. Kao, M.D., F.A.C.S.

477 EAST BEAVER AVENUE, SUITE 150  
STATE COLLEGE, PENNSYLVANIA 16801  
Telephone (814) 231-7750  
Fax (814) 231-7752

MEDICAL ARTS BUILDING  
807 TURNPIKE AVENUE, SUITE 230  
CLEARFIELD, PENNSYLVANIA 16830  
Telephone (814) 768-5110  
Fax (814) 768-5113

May 27-03

Dr. Plotnick:

The Otolaryngology Group will pay PMSLIC directly for your malpractice insurance tail and M-Care fund, as it has always. You were instructed to direct PMSLIC to refund the corporation for any excess malpractice premium paid. However you acted otherwise on your own authority.

Please promptly reimburse the corporation immediately for:

- |                                                                              |            |
|------------------------------------------------------------------------------|------------|
| 1.) Any funds/PMSLIC refunded to you                                         | = 1,296.00 |
| 2.) Excess Unum Prudent disability insurance                                 | = 1849.92  |
| 3.) Excess Cincinnati life insurance                                         | = 48.30    |
| 4.) Metro Call pager from 1/02 to 1/02                                       | = 175.13   |
| 5.) Pro-rated portion of AAC HNS dues or 7/12 of \$500                       | = 291.66   |
| 6.) Pro-rated portion of AAOA dues or 7/12 of \$325                          | = 189.58   |
| 7.) Pro-rated portion of DEA registration for two years<br>in 19/24 of \$210 | = 166.25   |
| 8.) Pro-rated portion of Am. Board of Otolaryngology dues<br>or 7/12 of \$65 | = 37.90    |
|                                                                              | <hr/>      |
|                                                                              | 4054.74    |

I look forward to your prompt payment.

Sincerely,  
Y.H. Kao

0253

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF SERVICE  
OF DISCOVERY RESPONSE**

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrigh, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
513 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A TRUE  
AND CORRECT COPY OF THE WITHIN  
NOTICE WAS SERVED UPON ALL COUNSEL  
OF RECORD VIA FIRST CLASS MAIL  
THIS 19<sup>TH</sup> DAY OF APRIL, 2005.

  
Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

FILED <sup>62</sup> *no cc*  
M/12:35 PM  
APR 20 2005  
William A. Shaw  
Prothonotary/Clerk of Courts



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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF SERVICE  
OF DISCOVERY RESPONSE**

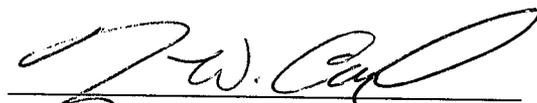
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
513 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A TRUE  
AND CORRECT COPY OF THE WITHIN  
NOTICE WAS SERVED UPON ALL COUNSEL  
OF RECORD VIA HAND DELIVERY  
THIS 21st DAY OF APRIL, 2005.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**  
d 12:27 6/1  
APR 21 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF SERVICE OF DISCOVERY RESPONSE**

**TO: PROTHONOTARY**

You are hereby notified that Plaintiff, Eric Plotnick, M.D., served a Second Supplemental Response to Defendants' Request for Production of Documents, via hand delivery, upon the persons listed below this 21<sup>st</sup> day of April, 2005:

Peter F. Smith, Esquire  
30 South Second Street  
Clearfield, PA 16830  
(Attorney for Defendants)

**URBAN & CAVRICH, P.C.**

By:

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

513 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898





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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

:  
:  
: No. 03-868-CD  
:  
:  
:  
:  
:  
:

**CERTIFICATE OF MERIT**  
**Under Pa.R.C.P. 1042.3**

I, Peter F. Smith, attorney for the Defendants in the above-captioned matter, certify that I have complied with the requirements of Pa.R.C.P. 1042.3. I have obtained a written statement from a qualified, licensed professional indicating a reasonable probability of deviation from the applicable professional standards of care. I further certify that many of the issues raised by the Defendants' third counterclaim are such obvious deviations from professional standards and breaches of due professional care that expert testimony is unnecessary.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

Date: May 13, 2005

**FILED** <sup>W</sup>  
12:44  
MAY 13 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,  
Plaintiff

No. 03-868-CD

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

FILED <sup>62</sup> No  
@ 2:44 PM CC  
MAY 13 2005

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent a true and correct copy of a **CERTIFICATE OF MERIT Under Pa.R.C.P. 1042.3** along with the underlying professional statement as required by Pa.R.C.P. 1042.3(1) to the Attorney for the Plaintiff by U.S. First Class Mail, Postage Prepaid at the following address:

Joseph W. Cavrigh, Esquire  
Urban & Cavrigh, P.C.  
513 Allegheny Street  
Hollidaysburg, PA 16648

Respectfully submitted,



Date: May 13, 2005

Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

CA

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

ERIC PLOTNICK, M.D.,

Plaintiff/Counterclaim-Defendant

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants/Counterclaim-Plaintiffs

No. 03-868 C.D.

RULE RETURNABLE

AND NOW, this 1<sup>st</sup> day of JUNE, 2005, a Rule is hereby  
granted to show cause why the Preliminary Objections filed on behalf of Plaintiff/Counterclaim-  
Defendant should not be granted.

This Rule is returnable on the 23 day of June, 2005, at  
11:00 a.m./~~pm~~ in Courtroom No. 1.

BY THE COURT,

Frederic J. Krumm  
J.

131  
4, 8,

FILED 1cc  
019:11 Bot Atty Cavrich  
JUN 02 2005 ©

William A. Shaw  
Prothonotary/Clerk of Courts

CA

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

ERIC PLOTNICK, M.D.,

Plaintiff/Counterclaim-Defendant

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants/Counterclaim-Plaintiffs

No. 03-868 C.D.

**PRELIMINARY OBJECTIONS  
TO COUNTERCLAIM**

Filed by Eric Plotnick, M.D.,  
Plaintiff/Counterclaim-Defendant

Counsel of Record:

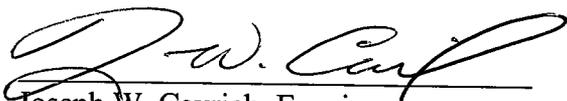
Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
513 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN SECOND AMENDED  
COMPLAINT WAS SERVED UPON  
ALL COUNSEL OF RECORD VIA REGULAR  
MAIL THIS 8<sup>TH</sup> DAY OF APRIL, 2005.

**FILED**

APR 11 2005  
m/1:40/w  
William A. Shaw  
Prothonotary  
no c/c

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff/Counterclaim-Defendant

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

ERIC PLOTNICK, M.D.,	:	
	:	
Plaintiff/Counterclaim-Defendant	:	
	:	No. 03-868 C.D.
vs.	:	
	:	
OTOLARYNGOLOGY GROUP OF	:	
CENTRAL PENNSYLVANIA, INC., and	:	
YI HOW KAO, M.D.,	:	
	:	
Defendants/Counterclaim-Plaintiffs	:	

**PRELIMINARY OBJECTIONS TO COUNTERCLAIM**

NOW COMES Plaintiff/Counterclaim-Defendant, Eric Plotnick, M.D., by his undersigned counsel, and files the following Preliminary Objections in the above case, in support thereof averring as follows:

1. Plaintiff/Counterclaim-Defendant, Eric Plotnick, M.D., filed a Second Amended Complaint in the above case in December of 2003.
2. The Complaint contains counts sounding in theories of breach of contract, promissory estoppel, and violation of the Pennsylvania Wage Payment and Collection Law.
3. Defendants/Counterclaim-Plaintiffs, Otolaryngology Group of Central Pennsylvania, Inc. and Yi How Kao, M.D., filed an Answer, New Matter, and Counterclaim to the Second Amended Complaint on or about March 21, 2005.
4. In the "Third Counterclaim", Counterclaim-Plaintiffs assert that the care, skill, or knowledge exercised or exhibited in Counterclaim-Defendant's treatment, practice or work fell outside acceptable professional standards and that such conduct was a cause in

bringing about harm to Counterclaim-Plaintiffs.

5. In essence, Counterclaim-Plaintiffs assert that Counterclaim-Defendant committed one or more acts of malpractice in the discharge of his professional duties, and that Counterclaim-Plaintiffs suffered harm as a result thereof.
6. The Third Counterclaim does not specify the acts of malpractice allegedly committed by Counterclaim-Defendant, nor does the Third Counterclaim identify the patients whose medical care was allegedly compromised by Counterclaim-Defendant's acts of professional negligence.
7. To the best of Counterclaim-Defendant's information, knowledge, and belief, counsel for Counterclaim-Plaintiffs has not yet filed a certificate of merit in regard to the Third Counterclaim, as required by Pennsylvania Rule of Civil Procedure 1042.3(a)(1).<sup>1</sup>
8. Rule 1019(a) of the Pennsylvania Rules of Civil Procedure requires that the Third Counterclaim filed by Counterclaim-Plaintiffs specify the material facts on which a cause of action or defense is based in concise and summary form.
9. Rule 1028 of the Pennsylvania Rules of Civil Procedure authorizes the filing of Preliminary Objections by Counterclaim-Defendant, in order to challenge the legal sufficiency of the Third Counterclaim.

#### **MOTION TO STRIKE**

10. Counterclaim-Defendant incorporates Paragraphs 1 through 9 of the within Preliminary Objections as if same were set forth at length herein.
11. Rule 1028(a)(2) authorizes the filing of Preliminary Objections based upon the failure of

---

<sup>1</sup> Counterclaim-Defendant notes that he may not yet seek a dismissal of the Third Counterclaim based upon the failure of counsel for Counterclaim-Plaintiffs to file a certificate of merit (as required by PA R.C.P. 1042.3), as a

a pleading to conform to law or rule of court or inclusion of scandalous or impertinent matter.

12. Counterclaim-Defendant asserts that Counterclaim-Plaintiffs' Third Counterclaim does not comply with Rule 1019(a) of the Pennsylvania Rules of Civil Procedure, in that the Third Counterclaim fails to assert facts sufficiently specific to place Counterclaim-Defendant on notice of the basis for Counterclaim-Plaintiffs' cause of action.
13. Specifically, Counterclaim-Defendant contends that if Counterclaim-Plaintiffs intend to litigate what amounts to one or more claims of medical malpractice against Counterclaim-Defendant, their pleading should be held to the same standard as that of any other Plaintiff who has assert a claim of professional negligence against a physician – namely, Counterclaim-Plaintiffs should be required to specify the specific act(s) of malpractice allegedly committed by Counterclaim-Defendant, and the specific patients involved.
14. Based upon the failure of the Third Counterclaim to comply with the pleading requirements of Rule 1019(a), Counterclaim-Defendant respectfully asks that this Honorable Court enter an order striking the Third Counterclaim, for failure conform to law or rule of court.

WHEREFORE, Plaintiff/Counterclaim-Defendant respectfully requests that his Preliminary Objections be sustained.

---

certificate of merit must be filed within sixty days of the filing of the Third Counterclaim.

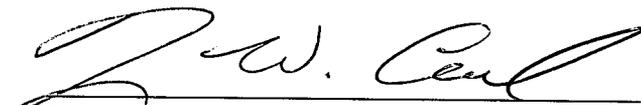
**MOTION FOR MORE SPECIFIC PLEADING**

15. Counterclaim-Defendant incorporates Paragraphs 1 through 14 of the within Preliminary Objections as if same were set forth at length herein.
16. Rule 1028(a)(3) of the Pennsylvania Rules of Civil Procedure authorizes a party to object to a pleading filed by another party based upon insufficient specificity in that pleading.
17. In the event that this Honorable Court denies Plaintiff/Counterclaim Defendants' Motion to Strike the Third Counterclaim filed by Defendants/Counterclaim-Plaintiffs, Plaintiff/Counterclaim-Defendant respectfully requests that this Honorable Court require Defendants/Counterclaim-Plaintiffs to file a more specific pleading, specifically setting forth the act(s) of malpractice allegedly committed by Counterclaim-Defendant, and the specific patients involved.

WHEREFORE, Plaintiff/Counterclaim-Defendant respectfully requests that his Preliminary Objections be sustained.

Respectfully submitted,

**URBAN & CAVRICH, P.C.**



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff/Counterclaim-Defendant

513 Allegheny Street  
Hollidaysburg, PA 16648  
(814) 695-7898



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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Defendants, certify that I handed a true and correct copies of the **THIRD SUPPLEMENTAL PRODUCTION OF DOCUMENTS NUMBERS 1,552 thru 1,556** as follows on Attorney Joseph W. Cavrich, Esquire on June 6, 2005 at the office of Peter F. Smith 30 South Second Street, Clearfield, Pennsylvania 16830:

Respectfully submitted,

Date:

6/6/05



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

FILED <sup>no cc</sup>  
0/10:1201  
JUN 06 2005

William A. Shaw  
Prothonotary/Clerk of Courts

CA

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

ERIC PLOTNICK, M.D. :  
VS. : NO. 03-868-CD  
OTOLARYNGOLOGY GROUP OF CENTRAL :  
PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D. :

O R D E R

NOW, this 23rd day of June, 2005, relative Plaintiff's Preliminary Objections to Counterclaim, it is the ORDER of this Court that Peter F. Smith, Esquire, attorney for the Defendants, submit a brief to the Court in no more than twenty (20) days from this date. Oral argument on the Plaintiff's Preliminary Objections to Counterclaim is hereby rescheduled for the 22nd day of July, 2005, at 10:30 a.m.

BY THE COURT,



President Judge

FILED  
JUN 24 2005

acc Atty:  
Carrick  
P. Smith

William A. Shaw  
Prothonotary/Clerk of Courts

GP

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**AFFIDAVIT OF SERVICE**

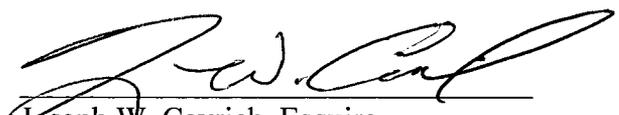
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrigh, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
513 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN AFFIDAVIT WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 27<sup>th</sup> DAY OF  
JUNE, 2005.



Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

**FILED** <sup>no cc</sup>  
m/10:46/BD  
JUN 28 2005 <sub>sb</sub>

William A. Shaw  
Prothonotary/Clerk of Courts



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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

*cp*  
**FILED** *no cc*  
*0/10:11/05*  
JUL 14 2005

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for the Defendants, certify that I handed a true and correct copies of the **FOURTH SUPPLEMENTAL PRODUCTION OF DOCUMENTS NUMBERS 1,552** thru **1,554** as follows on Attorney Joseph W. Cavrich, Esquire on June 6, 2005 at the office of Peter F. Smith 30 South Second Street, Clearfield, Pennsylvania 16830:

Respectfully submitted,

Date:

*7/13/05*



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595





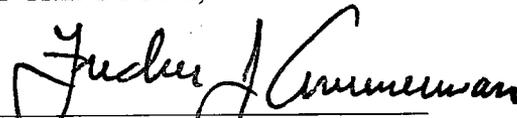
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

ERIC PLOTNICK, M.D., \*  
Plaintiff/Counterclaim-Defendant \*  
vs. \* NO. 03-868-CD  
\*  
OTOLARYNGOLOGY GROUP OF \*  
CENTRAL PENNSYLVANIA, INC., \*  
and YI HOW KAO, M.D., \*  
Defendants/Counterclaim-Plaintiffs \*

**ORDER**

NOW, this 9<sup>th</sup> day of August, 2005, upon consideration of the Preliminary Objections filed by Plaintiff/Counterclaim-Defendant, it is hereby ORDERED that the Preliminary Objections are sustained in part. Defendants are directed, within twenty (20) days of the date of this Order, to file under seal of this Court, a more specific Third Counterclaim, specifically setting forth the act(s) of professional negligence allegedly committed by Plaintiff, and the specific patients involved. In so doing, Defendants may redact any Protected Health Information (PHI), as defined by the Health Insurance Portability and Accountability Act (HIPAA), pertaining to the specific patients involved.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

FILED<sup>®</sup>  
013-20801  
AUG 09 2005  
icc  
Atty's:  
Cavrich  
P. Smith

William A. Shaw  
Prothonotary/Clerk of Courts

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

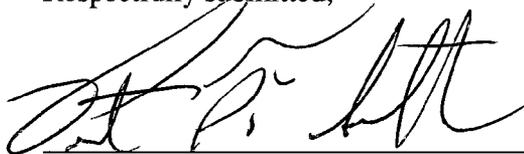
ERIC PLOTNICK, M.D., :  
Plaintiff :  
 :  
vs. : No. 03-868-CD  
 :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC. and :  
YI HOW KAO, M.D., :  
Defendants :

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent a true and correct copy of **DEFENDANTS' ANSWER, NEW MATTER & AMENDED COUNTERCLAIMS DIRECTED TO THE SECOND AMENDED COMPLAINT** to the Attorney for the Plaintiff by U.S. First Class Mail, Postage Prepaid at the following address:

Joseph W. Cavrach, Esquire  
Cavrach Law Offices, LLC  
P. O. Box 536  
Hollidaysburg, PA 16648

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

Date: 8/23/05

**FILED** *no cc*  
01:56:31  
AUG 24 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

TYPE OF CASE: **CIVIL**

TYPE OF PLEADING:  
**DEFENDANTS' ANSWER, NEW  
MATTER & AMENDED  
COUNTERCLAIMS  
DIRECTED TO THE SECOND  
AMENDED COMPLAINT**

Filed on Behalf of:  
**Defendants**

Counsel of Record for this Party:  
**Peter F. Smith**  
Supreme Court ID #34291  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Counsel of Record for Plaintiff:  
**Joseph W. Cavrigh, Esquire**  
PA I.D. #52693  
CAVRICH LAW OFFICES, LLC  
P.O. Box 536  
Hollidaysburg, PA 16648  
(814) 696-6576

**JURY TRIAL DEMANDED**

**FILED** 3cc  
0115607 Atty P. Smith  
AUG 24 2005 (m)

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D., :  
Plaintiff :  
 : No. 03-868-CD  
vs. :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D., :  
Defendants :  
 :

**NOTICE TO DEFEND**

To: Eric Plotnick, M.D.  
C/O Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

You are hereby notified to file a written response to the enclosed New Matter and Amended Counterclaims within twenty (20) days from the service hereof or a judgment may be entered against you.

Date:

8/24/05



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130  
30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

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

ERIC PLOTNICK, M.D., :  
Plaintiff :  
 : No. 03-868-CD  
vs. :  
 :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D., :  
Defendants :  
 :  
 :

**ANSWER & NEW MATTER DIRECTED TO THE  
SECOND AMENDED COMPLAINT**

COMES NOW, The Defendants, by their attorney, Peter F. Smith, who answer the second amended complaint as follows:

1. Neither admitted nor denied because Defendants have no direct knowledge of Plaintiff's residence.
2. Admitted.
3. Admitted.
4. Denied as stated. Dr. Kao is the President of the Otolaryngology Group of Central Pennsylvania, Inc. The corporation does not have a Chief Executive Officer.
5. By stipulation of counsel filed with this Honorable Court on or about February 21, 2005, counsel for the parties agreed that Plaintiff would withdraw paragraphs 5, 6 and 67 through 89 of the Second Amended Complaint without prejudice. To the extent that these allegations may be reasserted, then the Defendants answer as follows: Denied. The Otolaryngology Group of Central Pennsylvania, Inc. was properly incorporated with the Commonwealth of Pennsylvania and has been maintained in compliance with its laws since the date of its incorporation on December 24, 1998.

Denied that the corporation has, "existed as a shell corporation created by Defendant Dr. Kao for the sole purpose of shielding Dr. Kao's personal assets from any judgments that may be entered against him in relation to the employment contract executed by Plaintiff." The corporate Defendant was in existence a full two years prior to Dr. Kao's first contact with the Plaintiff. It was organized and has been conducted for strictly legal purposes. The allegations of "illegal activities" or "abusing his availment of the corporate fiction" are specifically denied. The corporate form was adopted as a vehicle for the administration and expansion of an otolaryngology medical practice in central Pennsylvania. Dr. Kao, as the corporation's sole shareholder, is legitimately entitled to all benefits accorded by Pennsylvania's corporation law and the Commonwealth of Pennsylvania, not the least of which is limited liability.

- a) The corporate expenses are legitimate obligations of the corporation, including but not limited to, compensation or draws to or by its principal employee Dr. Kao.
- b) Denied. The corporate Defendant has conducted regular meetings and kept corporate meeting minutes;
- c) The corporation adopted by-laws and has followed them;
- d) No substantial intermingling of Dr. Kao's personal affairs and the affairs of the Otolaryngology Group of Central Pennsylvania, Inc. has occurred;
- e) The Otolaryngology Group of Central Pennsylvania, Inc. has provided Dr. Kao with a legitimate means of advancing and protecting his professional aspirations.

6. Denied for the reasons set forth in answer 5 above.

7. Denied as stated. The parties did enter a document entitled "Principles of Agreement" which represented the initial terms and conditions of Plaintiff's employment, but the parties modified those principles by subsequent agreements, both written and verbal, and by their

usage.

8. Admitted that Dr. Kao prepared the document attached to the complaint as Exhibit A but denied that that document constituted the parties' sole and unmodified agreement throughout the entire term of their relationship.

9. Admitted that Plaintiff's list a) through e) is not exclusive as to the particulars of the parties' contractual relationship, and specifically:

- a) Admitted.
- b) Admitted but further averred that bonus was founded "*collections*" and upon a base compensation of \$150,000.00 *throughout* the term of Plaintiff's employment.
- c) Admitted.
- d) Admitted that the "Principles of Agreement" list those three instances of cause. However, Exhibit A was supplemented by the formal Employment Contract which the parties entered dated February 1, 2000 and which is attached to the complaint as Exhibit B.
- e) Denied as stated. The gist of that provision in the "Principles of Agreement" was four months' prior notice in the event that the Defendant did not intend to renew or extend the Employment Contract. No prior notice was required in the event of termination for cause or in the event of Plaintiff's breach or repudiation of his Employment Contract.

10. Admitted that the parties executed an Employment Contract for Medical Services dated February 2, 2000. Further averred that the parties subsequently modified that agreement along with the earlier "Principles of Agreement" by their subsequent amendments, both verbal and written, and their usage.

11. Admitted except in the instance of termination for cause or breach as described in paragraph 9(e) above.

It is further admitted that Plaintiff commenced work in mid-January of 2000 and then immediately took two weeks vacation.

12. Admitted that Plaintiff's list a) through e) is not exclusive as to the particulars of the parties' contractual relationship, and specifically:

- a) Admitted.
- b) Denied because the language of the Employment Contract misstates the actual agreement of the parties. As admitted in paragraph 9 of the Second Amended Complaint, Plaintiff's production bonus was 50% of gross billings *actually collected* over \$300,000.00 during the term of his employment. Defendants paid this bonus to Plaintiff as required by the parties' agreement, and Plaintiff accepted those payments until he subsequently breached his agreement with Defendants. This provision is correctly stated in the "Principles of Agreement" which makes reference to "...50% of collections..."
- c) Admitted.
- d) Admitted.
- e) Admitted.

13. Admitted but further averred that Plaintiff failed to abide by the terms and conditions of the parties' contract. Specifically, he breached the requirement to use his "best efforts" imposed by Article II. He also breached Article IX which required him to, "... abide by all applicable canons of professional ethics..." Dr. Plotnick also breached subparagraphs 7 and 8 of Article XVI of the Employment Contract as enumerated in paragraph 12(e) of the complaint. Additionally, Plaintiff's breaches in this regard jeopardized his staff privileges at the Clearfield Hospital and Centre Community Hospital and, most importantly, jeopardized or compromised patients' health and safety.

14. Admitted that neither the "Principles of Agreement" nor Employment Contract expressly obligated the corporate Defendant to provide the Plaintiff with a vehicle. The balance of

this averment is denied as stated. Initially, the parties verbally amended their agreements to provide that the corporate Defendant would reimburse the Plaintiff for a reasonable rental of a vehicle to be used by Plaintiff to fulfill his professional obligations. Plaintiff was unable to finance the purchase of a vehicle because of his bankruptcy and negative credit history. Consequently, a vehicle was leased in the corporate Defendant's name and Defendant made the lease payments and reimbursed Plaintiff for mileage.

15. Denied to the extent that the alleged "verbal assurances" are inconsistent with the Defendants' answer in paragraph 14 above.

16. Denied as stated. Defendants made all lease payments commencing in February of 2000 through the end of May 2003 when Plaintiff's employment with the corporate Defendant ceased.

17. Admitted.

18. Denied as stated. Defendants admit that the Employment Contract was renewed for an additional year but under and according to the terms which they implemented in practice as represented in part by the "Principles of Agreement," the Employment Contract, their subsequent modifications and their usage. Specifically, the production bonus continued to be 50% of gross billings over \$300,000.00 *actually collected*.

19. Denied as stated. The parties did execute a written two year extension of their original agreement as comprised of the "Principles of Agreement," Employment Contract, subsequent amendments and their usage.

Also denied because paragraph 19 of the Second Amended Complaint does not properly explain the \$60,000 increase to Plaintiff's base salary. That increase does not represent an additional \$60,000 per year compensation, rather it was intended by the parties to represent an additional \$60,000 of bi-monthly payments to Dr. Plotnick as a non-refundable credit towards his annual production bonus. The intent of this provision was to provide Dr. Plotnick with additional security and increase his cash flow on a more level basis throughout the contract year.

20. Denied. The production bonus was correctly stated in the "Principles of

Agreement" and incorrectly stated in the Employment Contract. In point of fact, the corporate Defendant paid and Dr. Plotnick accepted a production bonus of 50% of the amounts *actually collected* over \$300,000.00 during his employment.

21. Admitted that the Plaintiff did express this concern, but any further implications are specifically denied because Defendants' computer billing program did age accounts receivable. Defendants further took reasonable steps to maintain adequate billing procedures. Defendants' employee responsible for billing was experiencing serious health problems at that time for which Defendant made reasonable accommodation pursuant to Pennsylvania law, federal law and basic human decency. Defendants retained Healthcare Billing Consultants, Inc. to assist in these matters in January of 2002, and Healthcare Billing Consultants, Inc. took entire responsibility for Defendants' billing in May of 2002.

22. Denied as legal conclusions and further denied because Defendants' billing practices were not negligent and/or substandard. Denied that Defendants failed and/or refused to follow generally accepted accounting principles, and denied that Defendants failed and/or refused to follow IRS reporting guidelines.

The allegations of negligent billing practice are irrelevant to these proceedings because they sound in tort and the Plaintiff has based this lawsuit upon contractual claims. As an employee of the Defendant corporation, the Plaintiff's remedies were limited to voicing his concern and tendering his resignation from employment.

23. Denied that Defendants' delinquent billings exceeded \$1,000,000.00 at any point relevant to this litigation. Plaintiff does not define "delinquent." It is not unusual for a medical practice with the size and volume of Defendants' to have outstanding billings in excess of \$1 million.

24. Plaintiff could be rude and difficult to work with, Defendants deny any legitimate connection between that behavior and their billing practices.

25. Denied. Plaintiff was paid all production bonuses due through the date of his final employment. Plaintiff is not entitled to any additional production bonuses for two reasons:

i) Plaintiff's employment was properly terminated on May 26, 2003. Since Plaintiff was entitled to a bonus as an employee only to amounts actually collected, and since Plaintiff was not employed after May 26, 2003, Plaintiff was not entitled to any compensation after that date, including the production bonus and other fringe benefits pursuant to the final paragraph of Article XVI of the Employment Contract, Exhibit B to the complaint.

ii) Article V.B. also makes the Plaintiff's entitlement to the production bonus contingent upon his providing a full year of service under the parties' agreement. This subsection states in part, "...physician shall also receive a production bonus **for each full year actually completed under this agreement...**"

26. Denied. It is general knowledge among those in the health care industry that an excess of 30% of a medical practice's gross billings will not be collected. The amount billed always exceeds the amount allowed by third party payors, and there is always an allowance for bad debt. That is why the parties' "Principles of Agreement" and their actual practice based Plaintiff's bonus on gross billings *actually collected* in excess of \$300,000.00. Consequently, it is denied that the Plaintiff has suffered any "immediate and irreparable financial hardship."

27. Denied as stated. The allegation of "partially compensate" is denied. The production bonus was intended to be based upon amounts actually collected and was in fact based upon amounts actually collected. The Plaintiff has been paid the production bonus due to him on all amounts actually collected by the Defendant corporation to May 26, 2003.

28. Admitted.

29. Denied as stated. Plaintiff received what he deserved under the parties' agreement and the circumstances of their relationship. The Defendants neither verbally, nor in writing, nor through their conduct ever admitted negligent billing practices and a substandard billing system.

30. While it is admitted that there was a period when these payments were interrupted because Dr. Kao learned that the Plaintiff had started looking for another job in November of 2002, Defendants subsequently made all payments of these items through the final date of Plaintiff's

employment.

31. Admitted.

32. Admitted and further averred that these events illustrate Dr. Kao's legitimate concerns and grounds for finding Plaintiff in breach as discussed in answer 13 above. Defendants further aver that Plaintiff's breaches of his Employment Contract were more numerous than the events discussed in Dr. Kao's January 29, 2003 letter.

33. Admitted.

34. Defendants admit receipt of Dr. Plotnick's January 31, 2003 correspondence, but they deny the assertions contained in it for the reasons set forth in answers 13 and 32 above.

35. Denied for the reasons set forth in paragraph 34.

36. Denied for the reasons set forth in paragraphs 34 and 35.

37. Admitted that Plaintiff received his regular salary due on February 15, 2003. Production bonuses accrued to May 26, 2003 have been paid. He is not entitled to any further compensation as explained in answer 25 above.

38. Admitted but further averred that those amounts have subsequently been paid to Dr. Plotnick. Dr. Kao further avers that this note was written to illustrate a point to Dr. Plotnick. That being, that the terms and conditions of their professional relation were not represented only by the Employment Contract, the two year extension or the "Principles Agreement" but by the combination of those items as modified by their additional verbal amendments and their conduct.

39. Admitted for the reasons and as modified by answer 38 above.

40. Admitted.

41. While it is known that Plaintiff accepted employment with another entity at another location, the exact date of that employment is not within the scope of Defendants' knowledge. Defendants specifically deny the allegation that they had breached the agreement with Dr. Plotnick. In point of fact, Defendants learned that Dr. Plotnick had already started looking for employment in the fall of 2002. Dr. Plotnick had no intention of fulfilling the term of his employment with the Otolaryngology Group of Central Pennsylvania, Inc.

42. Denied. Defendants were completely within their rights to terminate Plaintiff's employment. Therefore, Dr. Kao would never have made a statement to the contrary.

43. Defendants admit that Plaintiff has been paid all compensation and reimbursement due through May 26, 2003. Defendants deny that any production bonus payments were to be based on gross billings alone.

44. Admitted and further averred that the production bonus was based upon gross amounts *actually collected* in excess of \$300,000.00.

45. Denied. The production bonuses for contract year February 2002 through January 30, 2003 have been paid. Plaintiff is not entitled to any production bonus that would have been collected after January 30, 2003, because Plaintiff did not tender a full, final year of service.

**ERIC PLOTNICK, M.D., V.**

**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**

**COUNT I - BREACH OF CONTRACT**

46. Defendants incorporate herein by reference the preceding paragraphs 1 through 45 of this Answer as if they were set forth in full.

47. Denied. Plaintiff breached subparagraph 7 and 8 of Article XVI of the Employment Contract. Additionally, Plaintiff started looking for other employment in the fall of 2002 and had no intention of completing the full term of his employment with the Defendant corporation and would not have done so had his employment not been terminated by the Defendants.

48. Denied for the reasons set forth in paragraphs 13 and 47 of this Answer.

49. Denied. Dr. Kao made repeated attempts to encourage Plaintiff to improve the quality of his work and his attitude toward patients, staff and other physicians.

50. Denied. The Defendants had cause for terminating Plaintiff's employment as stated in paragraphs 13 and 47 above. Further denied because Dr. Kao has paid all production bonuses accrued to May 26, 2003 and is not contractually obligated to pay any subsequent production

bonuses on amounts *actually collected* in excess of \$300,000.00 subsequent to May 26, 2003.

51. Admitted.

52. Admitted.

53. Defendants admit that payment of these expenses and/or reimbursement thereof was delayed, but they were paid in full.

54. Denied to the extent that "justifiably relied to his detriment" constitutes a conclusion of law. However, the Defendants admit that, as one of several significant modifications to the written agreements between the parties, the Defendants also agreed to pay Plaintiff's automobile lease, automobile insurance and reimburse him for business mileage and cell phone expense.

55. Denied that the Defendants unilaterally terminated the Plaintiff's employment. Defendants had just cause as stated in paragraphs 13 and 47 above. Defendants therefore aver that it was the Plaintiff, not Defendants, who breached the parties' agreement.

56. Denied because "irreparably damaged" and "breach of contract" are conclusions of law and further denied for the following reasons:

- a) Plaintiff has been paid all production bonuses on amounts *actually collected* over \$300,000.00 through May 26, 2003.
- b) Denied. The Plaintiff breached the parties' agreement and his employment was justifiably terminated. Further denied because production bonuses were based on amounts actually collected, and since Plaintiff did not work during that final period, he is entitled to no compensation for it.
- c) Denied. Defendant corporation is obligated to pay the Plaintiff a production bonus based on amounts actually collected. To the extent that a bill was paid or written off as uncollectible after May 26, 2003, the date on which Plaintiff's employment ceased, no production bonus was due.
- d) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no wages are due after May 26, 2003.

- e) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no reasonable lease payments are due after May 26, 2003.
- f) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no reimbursement for cell phone expenses are due after May 26, 2003.
- g) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no reimbursement for gas is due after May 26, 2003.
- h) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no reimbursement for life insurance is due after May 26, 2003.
- i) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no payment of health insurance is due after May 26, 2003. Plaintiff was extended his rights under COBRA.
- j) Denied. The M-Care coverage has been paid.
- k) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant corporation. Therefore, no reimbursement for car insurance is due after May 26, 2003.
- l) Denied. No interest is due because all amounts owing to Dr. Plotnick have been paid in a timely fashion and any amount withheld is due to his own wrongful refusal to live up to his contractual commitments to Defendant and accept the payment of production bonus actually collected.
- m) Denied because Plaintiff's case is without merit.

WHEREFORE, Defendant prays this Honorable Court to enter judgment in its favor and against the Plaintiff.

**ERIC PLOTNICK, M.D., V.**

**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**

**COUNT II - PROMISSORY ESTOPPEL**

57. Defendants incorporate herein by reference the preceding paragraphs 1 through 56 of this Answer as if they were set forth in full.

58. Admitted because that was the parties' agreement.

59. Admitted.

60. Denied. The Defendants have concealed no material facts from Plaintiff, nor have they deceived him in any fashion.

61. Admitted to the extent that the parties had an agreement which the Plaintiff did partially perform.

62. Denied for the reasons set forth in paragraph 60.

63. Admitted and further averred that the base compensation, production bonus on amounts *actually collected* over \$300,000.00 and other fringe benefits extended by Defendant corporation to the Plaintiff were also a substantial inducement to him to accept employment by the corporate Defendant, but Plaintiff's entitlement to those forms of compensation was conditioned upon his continued employment.

64. Denied. The Defendants acted honestly and at all times in good faith toward the Plaintiff. Plaintiff has been paid all amounts due through May 26, 2003, and the Defendant corporation would have paid any amounts actually accruing after that date but for Plaintiff's discharge which was justified.

65. Denied as a conclusion of law and further denied for the facts set forth in paragraph 64 above.

66. Denied. Defendant corporation has paid all amounts actually due through May 26, 2003. Plaintiff is entitled to no compensation or fringe benefits after that date because he was justifiably, properly and legally discharged by the Defendant corporation.

WHEREFORE, Defendant prays that judgment be entered in its favor and against the Plaintiff.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**

**COUNT III - BREACH OF CONTRACT**

67. Defendant incorporates by reference the preceding paragraphs 1 through 66 of this Answer as if they were set forth in full.

68. Denied. Plaintiff breached subparagraph 7 and 8 of Article XVI of the Employment Contract. Additionally, Plaintiff started looking for other employment in the fall of 2002 and had no intention of completing the full term of his employment with the Defendant corporation and would not have done so had his employment not been terminated by the Defendants.

69. Denied for the reasons set forth in paragraphs 13 and 47 of this Answer.

70. Denied. Dr. Kao made repeated attempts to encourage Plaintiff to improve the quality of his work and his attitude toward patients, staff and other physicians.

71. Denied. The Defendant had cause for terminating Plaintiff's employment as stated in paragraphs 13 and 47 above. Further denied because Dr. Kao has paid all production bonuses accrued to May 26, 2003 and is not contractually obligated to pay any subsequent production bonuses on amounts *actually collected* in excess of \$300,000.00 subsequent to May 26, 2003.

72. Admitted.

73. Admitted.

74. Defendant admits that payment of these expenses and/or reimbursement thereof was delayed, but they have been paid in full.

75. Denied to the extent that "justifiably relied to his detriment" may constitute a conclusion of law. However, the Defendant admits that as one of several significant modifications to the written agreements between the parties, the Defendant also agreed to pay Plaintiff's automobile lease, automobile insurance and reimburse him for business mileage and cell phone

expense.

76. Denied that the Defendant unilaterally terminated the Plaintiff's employment. Defendant had just cause as stated in paragraphs 13 and 47 above. Defendant therefore avers that it was the Plaintiff, not Defendant, who breached the parties' agreement.

77. Denied for the reasons set forth in paragraph 5 of this Answer.

78. Denied because "irreparably damaged" and "breach of contract" are conclusions of law and further denied for the following reasons:

- a) Plaintiff has been paid all production bonuses on amounts actually received over \$300,000.00 through May 26, 2003.
- b) Denied. The Plaintiff breached the parties' agreement and his employment was justifiably terminated. Further denied because production bonuses were based on amounts actually collected, and since Plaintiff did not work during that final period, he is entitled to no compensation for it.
- c) Denied. Defendant is obligated to pay the Plaintiff a production bonus based on amounts actually collected. To the extent that a bill was paid or written off as uncollectible after May 26, 2003, the date on which Plaintiff's employment ceased, no production bonus was due.
- d) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no wages are due after May 26, 2003.
- e) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no reasonable lease payments are due after May 26, 2003.
- f) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no reimbursement for cell phone expenses are due after May 26, 2003.
- g) Denied. Plaintiff's employment was justifiably terminated according to the terms of

his agreements with the Defendant. Therefore, no reimbursement for gas is due after May 26, 2003.

- h) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no reimbursement for life insurance is due after May 26, 2003.
- i) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no payment of health insurance is due after May 26, 2003. Plaintiff was extended his rights under COBRA.
- j) Denied. The M-Care coverage has been paid. Billing for this coverage was delayed by a political squabble between the Governor of Pennsylvania and the legislature. Defendant paid the bill promptly once it was received.
- k) Denied. Plaintiff's employment was justifiably terminated according to the terms of his agreements with the Defendant. Therefore, no reimbursement for car insurance is due after May 26, 2003.
- l) Denied. No interest is due because all amounts owing to Dr. Plotnick have been paid in a timely fashion and any amount withheld is due to his own wrongful refusal to live up to his contractual commitments to Defendant and accept the payment of production bonus actually collected.
- m) Denied because Plaintiff's case is without merit.

WHEREFORE, Defendant prays this Honorable Court to enter judgment in his favor and against the Plaintiff.

**ERIC PLOTNICK, M.D., V. YI HOW KAO, M.D.**

**COUNT IV - PROMISSORY ESTOPPEL**

79. Defendants incorporate herein by reference the preceding paragraphs 1 through 78 of this Answer as if they were set forth in full.

80. Admitted because that was the parties' agreement.

81. Admitted.

82. Denied. The Defendant Dr. Kao has concealed no material facts from Plaintiff, nor has he deceived him in any fashion.

83. Admitted to the extent that the parties had an agreement which the Plaintiff did partially perform.

84. Denied for the reasons set forth in paragraph 82.

85. Admitted and further averred that the base compensation, production bonus on amounts *actually collected* over \$300,000.00 and other fringe benefits extended by Defendants to the Plaintiff were also a substantial inducement to him to accept employment by the corporate Defendant, but Plaintiff's entitlement to those forms of compensation was conditioned upon his continued employment.

86. Denied. The Defendants acted honestly and at all times in good faith toward the Plaintiff. Plaintiff has been paid all amounts due through May 26, 2003, and the Defendants would have paid any amounts actually accruing after that date but for Plaintiff's unreasonable and wrongful institution of this litigation.

87. Denied as a conclusion of law and further denied for the facts set forth in paragraph 86 above.

88. Denied for the reasons set forth in paragraph 5 of this Answer.

89. Denied. Defendants have paid all amounts actually due through May 26, 2003. Plaintiff is entitled to no compensation or fringe benefits after that date because he was justifiably, properly and legally discharged by the Defendants.

WHEREFORE, Defendants pray that judgment be entered in their favor and against the Plaintiff.

**ERIC PLOTNICK, M.D., V**

**OTOLARYNGOLOGY GROUP OF CENTRAL PENNSYLVANIA, INC.**

**COUNT V - VIOLATION OF WAGE PAYMENT AND COLLECTION LAW**

90. Defendants incorporate herein by reference the preceding paragraphs 1 through 89 of this Answer as if they were set forth in full.

91. Admitted.

92. Denied as a conclusion of law incorrectly stated, and further denied because "wages" does not include compensation in any form to which an employee is not properly entitled as is the case here because Plaintiff was justifiably, properly and legally discharged from his employment with Defendant corporation.

93. The implication that Defendants have failed to pay Plaintiff's production bonuses as asserted by this paragraph is denied. Plaintiff has, in fact, been paid for production bonuses on amounts *actually collected* in excess of \$300,000.00 through May 26, 2003 as required by the parties' agreement.

94. Denied. Plaintiff is not entitled to the amounts claimed in this action because he breached the parties' agreement and/or the claimed compensation is not within the scope of Plaintiff's agreement with the Defendant corporation. Therefore, any refusal by the Defendants to pay those demands is reasonable and not subject to the Wage Payment and Collection Law.

95. Denied as a conclusion of law and further denied upon the facts set forth in paragraphs 93 and 94 above.

96. Denied for the reasons set forth in paragraphs 93, 94 and 95 above.

WHEREFORE, Defendants pray this Honorable Court to deny Plaintiff's prayer for relief in Count V of the complaint.

**ERIC PLOTNICK, M.D., V. YIHOW KAO, M.D.**

**COUNT VI - VIOLATION OF WAGE PAYMENT AND COLLECTION LAW**

97. Defendants incorporate herein by reference the preceding paragraphs 1 through 96 of this Answer as if they were set forth in full.

98. Neither admitted nor denied as a conclusion of law to which no response is required.

99. Admitted.

100. Neither admitted nor denied because the averment constitutes a legal conclusion, but further averred that Dr. Kao is not liable because the Plaintiff has been paid in full.

101. Neither admitted nor denied because the averment constitutes a legal conclusion, but further averred that the Plaintiff has received all compensation actually due and payable. Plaintiff is not entitled to the other items of compensation which he seeks through this lawsuit.

102. Neither admitted nor denied because the averment constitutes a legal conclusion, but further averred that the Plaintiff has received all compensation actually due and payable. Plaintiff is not entitled to the other items of compensation which he seeks through this lawsuit.

103. Admitted that Section V of the Employment Contract establishes that requirement. Further averred that Defendants have complied with that provision in each contract year, and Defendants have complied with that provision for the partial contract year ending with the termination of Plaintiff's employment. Plaintiff has been paid for all production bonuses actually collected to May 26, 2003. Therefore, no additional balance is owing.

104. While it is admitted that Plaintiff has made such requests, it is denied that he is entitled to receive any additional compensation for the reasons set forth in paragraph 103 above.

105. Denied. Plaintiff is not entitled to additional compensation either under the parties' contractual arrangements or under the WPCL.

106. Denied. Plaintiff is not entitled to any additional compensation, and further averred that this litigation represents a good faith contest.

WHEREFORE, Defendants pray that Plaintiff's prayer for judgment including liquidated damages, attorney's fees, costs and such other relief as the Court deems proper be denied.

**NEW MATTER**

107. Defendants incorporate herein by reference the preceding paragraphs 1 through 106 of the foregoing Answer as if they were set forth in full.

108. Plaintiff accepted production bonuses based on amounts actually collected for the period commencing February 1, 2000 through May 26, 2003 without objection.

109. Plaintiff is therefore estopped from denying that his production bonus was in fact to be based upon "amounts actually collected."

110. As stated in the answers above, Plaintiff's entitlement to the production bonus was subject to a number of additional conditions:

i) The bonus was for 50% of amounts *actually collected* in excess of \$300,000.00; and,

ii) The production bonus was to be paid at the end of each full year actually completed under the parties' agreement.

111. Defendant corporation has paid to the Plaintiff all production bonus to which he was entitled on May 26, 2003 which was the last date of his employment with the Defendant corporation as pleaded and admitted in paragraph 41 of the complaint.

112. Since Plaintiff's employment was justifiably terminated on May 26, 2003, and since his production bonus was based on amounts actually collected, and due only at the end of each full year of employment actually completed, he is not entitled to any production bonus for amounts received after May 26, 2003.

113. To the extent that Plaintiff bases his claim for damages upon the Doctrine of Promissory Estoppel, his cause of action is equitable in nature.

114. Plaintiff is not entitled to damages because he comes to court with "unclean hands" because:

a) He had already started looking for other employment and had no intention of fulfilling the term of his employment with the Defendant corporation;

- b) He admits in paragraph 41 of the complaint that he actually accepted other employment with a practice in Snellville, Georgia on February 8, 2003;
- c) Plaintiff spent the next four months trying to set Dr. Kao up; and,
- d) Plaintiff's deviations from proper professional standards justified his discharge and, in fact, subjected the Defendants to claims by third parties.

115. Plaintiff's claim for damages is barred because he is believed to have obtained other employment which compensated him fully for the remainder of the term of his employment from June 1, 2003 through December 31, 2003, or in the alternative, if Plaintiff failed to obtain and/or maintain other appropriate employment, then his claim is barred because he failed to mitigate his damages.

### **FIRST COUNTERCLAIM**

116. Defendants incorporate herein by reference the preceding paragraphs 1 through 115 of the foregoing Answer and New Matter as if they were set forth in full.

117. Article V.B. makes Plaintiff's entitlement to his production bonus contingent upon his providing a full year of service under the parties' agreement.

That section reads in pertinent part, "...physician shall also receive a production bonus for each full year actually completed under this agreement..."

118. Plaintiff's employment with the Defendant corporation was terminated on May 26, 2003 for cause as more fully recited in paragraph 13 above.

119. Therefore, Plaintiff did not complete that contract year of employment with the Defendant corporation.

120. In good faith, the Defendant corporation made bonus payments to the Defendant totaling \$50,355.48 during the period February 1, 2003 through May 30, 2003.

121. Plaintiff is not entitled to those bonus payments pursuant to the parties' contract.

122. Those bonus payments should either be refunded by Plaintiff to Defendant corporation or included as a set-off against any eventual liability found to be owing by either Defendant to Plaintiff.

123. Plaintiff was not entitled to those bonuses and he will be unjustly enriched if he is permitted to keep them.

WHEREFORE, Defendants pray this Honorable Court to enter judgment in the Defendant corporation's favor and against the Plaintiff in the amount of \$50,355.48 together with interest at the statutory rate from the dates on which the bonus payments were made together with costs.

### **SECOND COUNTERCLAIM**

124. Defendants incorporate herein by reference the preceding paragraphs 1 through 123 of the foregoing Answer, New Matter and First Counterclaim as if they were set forth in full.

125. Pursuant to the parties' agreement, the Defendant corporation paid a number of expenses on behalf of Plaintiff, to wit:

- a) Malpractice insurance
- b) Disability insurance
- c) Life insurance
- d) Pager
- e) Professional dues and registrations

126. These expenses were billed to and paid in advance by the corporate Defendant.

127. Plaintiff's employment with Defendant corporation was justifiably terminated for cause on May 26, 2003.

128. Plaintiff continued to receive these prepaid benefits subsequent to his final day of employment.

129. Plaintiff has been unjustly enriched at the expense and to the detriment of the corporate Defendant in regard to these prepaid benefits.

130. Therefore, the Plaintiff should reimburse the corporate Defendant for the prorated value of these benefits which he received subsequent to his final date of employment.

131. The benefits and prorated amounts for which reimbursement is sought follow:

a)	PMSLIC (medical malpractice) refund	\$1,296.00
b)	Unum Provident disability insurance	\$1,849.92
c)	Cincinnati life insurance	\$ 48.30
d)	Metro Call pager	\$ 175.13
e)	Prorated portion of AAC HNS dues	\$ 291.66
f)	Prorated portion of AAOA dues	\$ 189.58
g)	Prorated portion of DEA registration	\$ 166.25
h)	Prorated portion of American Board of Otolaryngology dues	\$ 37.90
i)	Excess mileage charge for Plaintiff's leased vehicle	\$2,551.20
j)	Insurance deductible for Plaintiff's accidents with leased vehicle	\$2,000.00
	<b>TOTAL REIMBURSEMENT</b>	<b>\$8,605.94</b>

132. Dr. Kao made written demand on Plaintiff for reimbursement in this amount, but Plaintiff has failed to pay. It is known that Dr. Plotnick did receive the PMSLIC refund and that he or his attorney is holding it in escrow.

133. A true and correct copy of Defendant's demand letter on Dr. Plotnick for reimbursement is attached to this Answer, New Matter and Counterclaims as Defendants' Exhibit A.

WHEREFORE, the Defendants pray this Honorable Court to enter judgment in their favor and against the Plaintiff in the amount of \$8,605.94 together with interest at the statutory rate and costs.

**AMENDED**

**THIRD COUNTERCLAIM**

134. Defendants incorporate herein by reference the preceding paragraphs 1 through 133 of the foregoing Answer, New Matter, First Counterclaim and Second Counterclaim as if they were set forth in full.

135. Paragraph II of the parties' February 1, 2000 Employment Contract for medical services obligated the physician Plaintiff to devote his "full time and best efforts to the performance of his duties under this agreement."

136. Paragraph IX obligated the physician Plaintiff to "abide by all applicable canons of professional ethics, regulations governing the administration of hospitals where he has staff privileges, rules and regulations...and all rules and regulations promulgated by the United States government in the Commonwealth of Pennsylvania...all rules and regulations promulgated by other third party payors and all rules and regulations and policies as may from time to time be adopted by the Corporation."

137. Paragraph XVI Section 7 and 8 also required the physician Plaintiff to faithfully and diligently comply with the provisions of the parties' agreement and with all reasonable policies, standards and regulations established by the Corporation.

138. In addition to the contractual duties which Plaintiff owed to the Defendants, Pennsylvania law also imposes a duty upon employees to render loyal, diligent, faithful and obedient service to their employer.

139. In addition to the contractual duties which Plaintiff owed to the Defendants, Pennsylvania law also imposes a duty upon employees to perform services as agreed and with the degree of skill and care possessed and employed by others in the same profession and to discharge their duties with that degree of skill and care called for by the nature of the employment.

140. Physician Plaintiff represented himself to be a duly qualified and licensed otolaryngological specialist.

141. Physician Plaintiff accepted employment with the Defendant corporation on this basis and undertook to provide medical services in this specialty.

142. Physician Plaintiff breached these duties by deviating from these standards either negligently or intentionally in that he deviated from or failed to follow the requirements of his contract with Defendant corporation, proper medical standards, protocols and procedures causing or threatening to cause physical injury and/or death to various patients, as is illustrated with more particularity in paragraphs 144, 145 and 146.

143. The physician Plaintiff further breached these contractual and legal obligations owed to the Defendants by:

- a) failing to deliver competent and proper medical services to patients;
- b) failing to properly sign patients out;
- c) failing to maintain good professional relations with hospitals, other physicians, other physician groups, staff and third parties;
- d) failing to possess and/or exercise the degree of knowledge, care and skill ordinarily possessed and exercised in similar cases by physicians specializing in otolaryngology;
- e) failing to conform to the requisite standard of care under the circumstances;
- f) failing to follow-up his diagnoses and treatments of patients;
- g) failing to monitor the condition of patients after treatments including surgeries; and,
- h) failing to properly sign patients out to other physicians during periods of the physician Plaintiff's absence.

144. On October 8, 2002, Plaintiff performed endoscopic sinus surgery on Patient A at the Clearfield Hospital.

- a) In his operation notes, Plaintiff noted a "5 mm bony defect of the posterior ethmoid roof of the skull base with a 2 mm dura tear."
- b) This indicates that Plaintiff either inadvertently or recklessly penetrated

Patient A's dura with a surgical instrument and/or improper technique.

- c) This dura tear placed Patient A in imminent danger of meningitis, a severe and often fatal disease.
- d) Instead of acknowledging his mistake and admitting the patient for proper follow-up in the hospital, Plaintiff discharged him.
- e) Patient presented at the emergency room with a severe headache and fever on October 12, 2002. Dr. Kao readmitted the patient because of impending meningitis, removed the nasal packing which Dr. Plotnick had inserted and started IV antibiotics.
- f) The Plaintiff either knew or should have known the risk to which he exposed Patient A because of the dura tear.
- g) The Plaintiff knew or should have known that the patient should have remained in the hospital for treatment and close observation.

145. Dr. Plotnick performed adenotonsillectomies on two children who are siblings, Patient B and Patient C, on November 25, 2002 at the Centre Community Surgical Center.

- a) Patients B and C were admitted to the Centre Community Hospital on November 26, 2002 for nausea, vomiting and bleeding caused by the surgery which Dr. Plotnick performed on them on November 25, 2002.
- b) Instead of signing Patients B and C out to Dr. Kao for continued treatment and observation, as he had been instructed to do on numerous occasions by Dr. Kao and as required by medical protocol, Dr. Plotnick discharged the patients by phone without evaluating them while en route to Atlanta for a long weekend with his girlfriend.
- c) Dr. Plotnick either knew or should have known that Patients B and C required continued hospitalization.
- d) Dr. Plotnick either knew or should have known that he could not and should not attempt to evaluate the condition of Patients B and C over the phone.

- e) Dr. Plotnick recklessly and intentionally placed his travel plans and own convenience above the health, well-being, safety and treatment of Patients B and C.

146. Dr. Plotnick performed uvulopalatopharyngoplasty and radio frequency volume reduction of the tongue base on Patient D at the Clearfield Hospital on January 14, 2003.

- a) Patient D developed significant swelling of the throat obstructing the airway as a result of this surgery.
- b) Instead of signing the patient out to Dr. Kao, another otolaryngological expert, as Dr. Kao had specifically instructed Dr. Plotnick on numerous occasions and as required by medical protocol, Dr. Plotnick transferred the patient to the care of Dr. Vetrano, an internist, who did not customarily manage airway difficulties.
- c) On January 15, 2003, Dr. Vetrano called Dr. Kao to perform an emergency evaluation of Patient D.
- d) Dr. Kao intervened and prevented the patient from developing more serious, if not total, airway obstruction which could have resulted in brain damage and/or death.
- e) Dr. Plotnick either knew or should have known that Dr. Vetrano was not properly qualified to follow-up the patient's care.
- f) Dr. Plotnick either knew or should have known that Patient D should properly have been signed out to Dr. Kao, another duly qualified otolaryngological expert of the Defendant corporation.
- g) Dr. Plotnick either knew or should have known the life-threatening consequences of his deviations from proper professional protocol and proper medical follow-up.

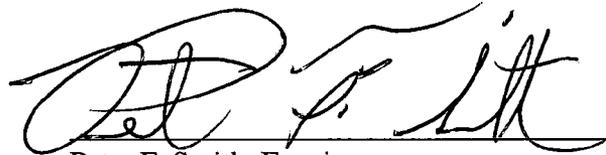
147. Physician Plaintiff's breaches caused patients, physicians and physician groups to cease or avoid using the Defendants for otolaryngological services to their financial detriment.

148. Physician Plaintiff's breaches caused additional work and stress for Defendant Dr. Kao and diverted him from his professional duties. Instead of treating patients, he was defending lawsuits.

149. Physician Plaintiff's breaches exposed both Defendants to third party liability for medical malpractice which has caused either financial loss either directly or indirectly through increased malpractice premiums in excess of \$10,000.00.

WHEREFORE, Defendants pray this Honorable Court to enter judgment in their favor and against the Plaintiff for an amount in excess of \$10,000.00 together interest at the statutory rate and costs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter F. Smith", written over a horizontal line.

Peter F. Smith, Esquire  
Attorney for Defendants  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Date: 8/19/05

**VERIFICATION**

I verify that the statements made in this Answer, New Matter and Amended Counterclaims are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.

Dated: 8/23/05

By:   
Yi How Kao, M.D., F.A.C.S  
President

**VERIFICATION**

I verify that the statements made in this Answer, New Matter and Amended Counterclaims are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Dated: 8/23/05

  
\_\_\_\_\_  
Yi How Kao, M.D., F.A.C.S

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

**ORDER**

**FILED**

SEP 15 2005

0/10:30  
William A. Shaw

Prothonotary/Clerk of Courts

2 CENT TO ATT

STIPULATION

SEAL TO

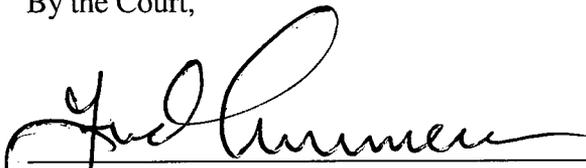
IN

SAFE CV-A.

AND NOW this 14 day of September, 2005, upon Stipulation of Counsel for the parties to this action also dated August 31, 2005, it is;

Ordered that this Stipulation be kept completely confidential and in a sealed envelope, by the Prothonotary in a secure location in his office and that said envelope only be opened by subsequent Order of this Court or order of other court of competent jurisdiction.

By the Court,

  
\_\_\_\_\_  
Judge

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**PLAINTIFF'S REPLY TO  
DEFENDANTS' NEW MATTER  
AND ANSWER AND NEW  
MATTER TO DEFENDANTS'  
AMENDED COUNTERCLAIMS**

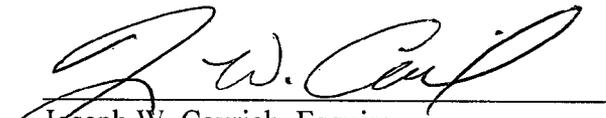
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

CAVRICH LAW OFFICES, LLC  
P.O. Box 536  
Hollidaysburg, PA 16648  
(814) 696-6576

I HEREBY CERTIFY THAT A TRUE  
AND CORRECT COPY OF THE WITHIN  
PLEADING WAS SERVED UPON COUNSEL  
FOR DEFENDANTS VIA FIRST CLASS  
MAIL THIS 21<sup>st</sup> DAY OF SEPTEMBER, 2005.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED** <sup>NO</sup>cc  
m/10.5781  
SEP 22 2005

William A. Shaw  
Prothonotary/Clerk of Courts



(2/1/00 – 1/31/01) and contract year two (2/1/01 – 1/31/02). An annually increasing percentage of the corporation's allergy revenue from shots and serum vials actually collected during each respective corresponding calendar year was credited to the Plaintiff's collections total for bonus calculation purposes. This is documented in Plaintiff's bonus calculation letters to Defendants and the respective corresponding production bonus checks paid to Plaintiff. Each bonus check paid by Defendants represented a combined sum for past due production bonuses owed for contract years one and two, as stated in the aforementioned Plaintiff's bonus calculation letters to Defendants. These past due production bonus installments are based on the sum of: 1) actual collections for all medical services Plaintiff rendered on dates of service of each respective contract year separately and 2) the appropriate percentage of the corporation's allergy revenue actually collected and credited to Plaintiff for the respective corresponding calendar year in excess of \$300,000.00. Plaintiff has not been paid any bonus based on the sum of: 1) actual collections for all medical services Plaintiff rendered on dates of service of contract year three (2/1/02 – 1/31/03) and 2) the appropriate percentage of the corporation's allergy revenue actually collected and credited to Plaintiff for the respective corresponding calendar year in excess of \$300,000.00, despite having completed contract year three. Plaintiff is contractually, and by the precedent established by Defendants, entitled to production bonus compensation of 50% of the sum of actual collections for 1) all medical services he rendered on dates of service of that contract year and 2) the appropriate percentage of the corporation's allergy revenue collected for the respective corresponding calendar year in excess of \$300,000.00. Defendants made no effort to contractually pay Plaintiff his bonus and therefore breached the contract. Strict proof to the contrary is demanded at trial.

3. The averments of Paragraph 109 of Defendants' New Matter constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be judicially determined that a response is necessary, the averments of Paragraph 109 of Defendants' New Matter are denied and strict proof thereof is demanded at trial. By way of further response, Plaintiff incorporates by reference thereto his reply to Paragraph 108 of Defendants' New Matter, as if same were set forth at length herein.

4. The averments of Paragraph 110 of Defendants' New Matter are admitted in part and denied in part. Plaintiff admits that, while his contract stated that his production bonus was to be based upon Plaintiff's gross billings in excess of \$300,000, Plaintiff, in fact, accepted production bonuses that were calculated on Plaintiff's collections in excess of \$300,000. Plaintiff specifically denies that a prerequisite for the receipt of Plaintiff's production bonus was Plaintiff's completion of a full contract year. To the contrary, Defendants agreed to pay, and in fact did pay, production bonuses to Plaintiff prior to the expiration of a full year completed by Plaintiff. Strict proof to the contrary is demanded at trial.

5. The averments of Paragraph 111 of Defendants' New Matter constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be judicially determined that a response is necessary, the averments of Paragraph 111 of Defendants' New Matter are denied and strict proof thereof is demanded at trial. By way of further response, Plaintiff incorporates by reference thereto his reply to Paragraph 108 of Defendants' New Matter, as if same were set forth at length herein.

6. The averments of Paragraph 112 of Defendants' New Matter constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to

which it may be judicially determined that a response is necessary, the averments of Paragraph 112 of Defendants' New Matter are denied and strict proof thereof is demanded at trial. By way of further response, Plaintiff incorporates by reference thereto his reply to Paragraph 108 of Defendants' New Matter, as if same were set forth at length herein.

7. The averments of Paragraph 113 of Defendants' New Matter constitute conclusions of law to which no response is required on the part of Plaintiff.

8. The averments of Paragraph 114 of Defendants' New Matter constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be judicially determined that a response is necessary, the averments of Paragraph 114 of Defendants' New Matter are denied, and strict proof thereof is demanded at trial. Plaintiff specifically denies that he had no intention of fulfilling the term of his employment with the Defendant corporation. To the contrary, Plaintiff had every intention of fulfilling his employment contract, but was forced to secure alternate employment when Defendants wrongfully terminated Plaintiff's contract. Plaintiff does not comprehend the meaning of Defendants' assertion that Plaintiff spent four months "trying to set Dr. Kao up", but nevertheless Plaintiff denies same and demands strict proof thereof at trial. By way of further response, Plaintiff states that there is no provision in the Plaintiff's original employment contract, or extension thereof, that precluded Plaintiff from looking for alternate employment. In fact, Defendants at one point encouraged Plaintiff to do so. Upon learning that Plaintiff had researched alternate employment opportunities, Defendants began withholding Plaintiff's past due production bonuses and reimbursement of Plaintiff's professional expenses. Defendants forced Plaintiff to secure new employment when Defendants informed Plaintiff that they would

not be renewing Plaintiff's contract at its expiration on 1/31/04. Researching job opportunities did not preclude Plaintiff from completing his full contract term with Defendants, nor was it a breach of Plaintiff's employment contract. Plaintiff further denies that he deviated from proper professional standards, that his discharge was justified, or that his medical practice subjected Defendants to claims by third parties, as more fully set forth in Defendants' Amended Counterclaims. To the contrary, at all times material hereto, Plaintiff's professional conduct and practice has been ethical, and consistent with the appropriate standard of care.

9. The averments of Paragraph 115 of Defendants' New Matter constitute conclusions of law to which no response is required. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 115 are denied and strict proof thereof demanded at trial.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants.

**PLAINTIFF'S ANSWER AND NEW MATTER  
TO DEFENDANTS' COUNTERCLAIMS**

NOW COMES Plaintiff, Eric Plotnick, M.D., by his undersigned counsel, and files the following Answer and New Matter to the Counterclaims asserted by Defendants in the above case, in support thereof averring as follows:

**FIRST COUNTERCLAIM**

10. Plaintiff incorporates by reference thereto Paragraphs 1 through 9 of the within Reply to New Matter and Answer and New Matter to Counterclaims, as if same were set forth at length herein.

11. The averments of Paragraph 116 of Defendants' Counterclaim require no response on the part of Plaintiff.

12. The averments of Paragraph 117 of Defendants' First Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 117 are admitted in part and denied in part. Plaintiff admits that Defendants have provided a verbatim recitation of Article V.B. of Plaintiff's contract. Plaintiff specifically denies that his production bonus was contingent upon Plaintiff providing a full contract year of service under the parties' agreement. By way of further response, Plaintiff incorporates his reply to Paragraphs 108 and 110 of Defendants' New Matter as if same were set forth at length herein.

13. The averments of Paragraph 118 of Defendants' First Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 118 are admitted in part and denied in part. Plaintiff admits that his contract was terminated on May 26, 2003. Plaintiff specifically denies that his employment was terminated "for cause". To the contrary, Plaintiff asserts that Defendants had no basis for termination of Plaintiff's contract, and strict proof thereof is demanded at trial.

14. In response to Paragraph 119 of Defendants' First Counterclaim, Plaintiff admits that he did not complete the 2/1/03 – 1/31/04 contract year (contract year four), due to Defendants' wrongful termination of Plaintiff's contract. Plaintiff did, however, complete the 2/1/02 – 1/31/03 contract year (contract year three).

15. The averments of Paragraph 120 of Defendants' First Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 120 are

denied. Plaintiff specifically denies that Defendants made bonus payments to the Plaintiff totaling \$50,355.48 during the period of February 1, 2003 through May 30, 2003. Plaintiff further specifically denies that said payments were made in "good faith", or that the bonus payments made by Defendants fully compensated Plaintiff for the production bonuses owed. Plaintiff avers that Defendants made past due bonus payments to Plaintiff from February 1, 2003 through May 30, 2003 totaling \$15,188.82. Strict proof to the contrary is demanded at trial.

16. The averments of Paragraph 121 of Defendants' First Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 121 are denied, and strict proof thereof demanded at trial.

17. The averments of Paragraph 122 of Defendants' First Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 122 are denied, and strict proof thereof demanded at trial.

18. The averments of Paragraph 123 of Defendants' First Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 123 are denied, and strict proof thereof demanded at trial.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants.

### **SECOND COUNTERCLAIM**

19. Plaintiff incorporates by reference thereto Paragraphs 1 through 18 of the within Reply to New Matter and Answer and New Matter to Counterclaims, as if same were set forth at

length herein.

20. The averments of Paragraph 124 of Defendants' Second Counterclaim require no response on the part of Plaintiff.

21. The averments of Paragraph 125 of Defendants' Second Counterclaim are admitted.

22. The averments of Paragraph 126 of Defendants' Second Counterclaim are denied. Plaintiff specifically denies that the expenses referenced in Paragraph 125 were billed to and paid in advance by the corporate Defendant. To the contrary, these expenses were paid at the time the insurance premiums, quarterly or annual payments were actually due and invoices were contemporaneously submitted to Defendants by Plaintiff.

23. The averments of Paragraph 127 of Defendants' Second Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 127 are denied, and strict proof thereof demanded at trial. By way of further response, Plaintiff incorporates by reference thereto the averments of Paragraphs 47-56 and 68-78 of Plaintiff's Second Amended Complaint as if same were set forth at length herein.

24. The averments of Paragraph 128 of Defendants' Second Counterclaim are admitted.

25. The averments of Paragraph 129 of Defendants' Second Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 129 are denied, and strict proof thereof demanded at trial.

26. The averments of Paragraph 130 of Defendants' Second Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 130 are denied, and strict proof thereof demanded at trial.

27. Plaintiff is without knowledge, information, or belief as to the truth of the averments set forth in Paragraph 131 of Defendants' Second Counterclaim. Said averments are therefore deemed denied and strict proof thereof demanded at trial.

28. The averments of Paragraph 132 of Defendants' Second Counterclaim are admitted in part and denied in part. Plaintiff admits that Dr. Kao made written demand on Plaintiff for reimbursement of the amounts set forth in Paragraph 131 of the Second Counterclaim, and that Plaintiff refused to pay said amount. Plaintiff further admits that he received the PMSLIC refund. Plaintiff specifically denies that the PMSLIC refund is being held in escrow. To the contrary, Plaintiff's attorney has released the escrowed PMSLIC refund to Defendants' attorney. Strict proof to the contrary is demanded at trial.

29. The averments of Paragraph 133 of Defendants' Second Counterclaim are denied.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants.

### **THIRD COUNTERCLAIM**

30. Plaintiff incorporates by reference thereto Paragraphs 1 through 29 of the within Reply to New Matter and Answer and New Matter to Defendants' counterclaims, as if same were set forth at length herein.

31. The averments of Paragraph 134 of Defendants' Third Counterclaim require no response on the part of Plaintiff.

32. The averments of Paragraph 135 of the Third Counterclaim are admitted.

33. The averments of Paragraph 136 of the Third Counterclaim are admitted.

34. The averments of Paragraph 137 of the Third Counterclaim are admitted.

35. The averments of Paragraph 138 constitute conclusions of law to which no response is required on the part of Plaintiff.

36. The averments of Paragraph 139 of the Third Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff.

37. The averments of Paragraph 140 of the Third Counterclaim are admitted.

38. The averments of Paragraph 141 of the Third Counterclaim are admitted.

39. The averments of Paragraph 142 of the Third Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 142 are denied and strict proof thereof demanded. By way of further response, Plaintiff incorporates his responses to Paragraphs 144, 145, and 146 of Defendants' Third Counterclaim, as if same were set forth at length herein.

40. The averments of Paragraph 143 of the Third Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 143 are denied and strict proof thereof demanded. By way of response to the specific sub-paragraphs of Paragraph 143, Plaintiff states the following:

- a) Plaintiff denies that he failed to deliver competent and proper medical services to his patients. To the contrary, at all times material hereto, Plaintiff delivered competent and proper medical services to his patients, and complied with all requisite standards of care;

- b) Plaintiff denies that he failed to properly sign patients out. To the contrary, Plaintiff contends that there is no professional standard governing the “proper” sign-out of patients. The “signing out” of patients is within a physician’s professional medical judgment, and may vary from physician to physician;
- c) Plaintiff denies that he failed to maintain good professional relations with hospitals, other physicians, other physician groups, staff and third parties. To the contrary, at all times material hereto, Plaintiff consistently maintained good professional relations with all hospitals, other physicians, other physician groups, staff and third parties;
- d) Plaintiff denies that he failed to possess and/or exercise the degree of knowledge, care, and skill ordinarily possessed and exercised in similar cases by physicians specializing in otolaryngology. To the contrary, at all times material hereto Plaintiff delivered competent and proper medical services to his patients, and complied with all requisite standards of care;
- e) Plaintiff denies that he failed to conform to the requisite standards of care under the circumstances. To the contrary, at all times material hereto Plaintiff delivered competent and proper medical services to his patients, and complied with all requisite standards of care;
- f) Plaintiff denies that he failed to follow-up his diagnoses and treatment of patients. To the contrary, at all times material hereto Plaintiff delivered competent and proper medical services to his patients, and complied with all requisite standards of care;
- g) Plaintiff denies that he failed to monitor the condition of patients after treatments, including surgeries. To the contrary, at all times material hereto Plaintiff delivered competent and proper medical services to his patients, and complied with all requisite standards of care;
- h) Plaintiff denies that he failed to properly sign patients out to other physicians during periods of the physician Plaintiff’s absence. To the contrary, Plaintiff contends that there is no professional standard governing the “proper” sign-out of patients. The “signing out” of patients is within a physician’s professional medical judgment, and may vary from physician to physician. Plaintiff appropriately signed out patients when necessary at all times material hereto.

41. The averments of Paragraph 144 of the Third Counterclaim are admitted in part and denied in part. Plaintiff admits that he performed endoscopic sinus surgery on Patient A at the Clearfield Hospital on October 8, 2002. With respect to each specific sub-paragraph of

Paragraph 144, Plaintiff states the following:

- a) Plaintiff admits the averments of this sub-paragraph;
- b) Plaintiff specifically denies that he either inadvertently or recklessly penetrated Patient A's dura with a surgical instrument and/or improper technique. To the contrary, Plaintiff performed proper surgical technique at all times during the operation. The patient's chronic sinus disease may have been responsible for bone erosion ("bony defect") that the Plaintiff properly identified during the operation. Nevertheless, occurrence of an iatrogenic bony defect and dura tear is a well documented and accepted risk and complication of endoscopic sinus surgery of which this patient was duly informed prior to surgery;
- c) Plaintiff specifically denies that Patient A was ever in imminent danger of meningitis. To the contrary, Patient A was in no imminent danger of meningitis. He received pre-operative and post-operative therapeutic and prophylactic antibiotics;
- d) Plaintiff specifically denies that he made any "mistakes" that he needed to acknowledge, or that admission of Patient A to the hospital for follow-up was necessary. To the contrary, the bony defect and dural tear were readily acknowledged in the text of the operative report. These were recognized immediately by the Plaintiff and surgically repaired consistent with the standard of care. The patient was placed on antibiotics post-operatively and had a normal post-operative CT scan of the head and sinuses. He was observed for several hours and had frequent post-operative neurological checks, with no demonstrated sequelae. Thus, he did not meet the criteria for admission to the hospital. He was given appropriate instructions to contact the Plaintiff or seek medical attention at the closest emergency room if he developed specific symptoms;
- e) Plaintiff is without knowledge, information, or belief sufficient to admit or deny the averments of this sub-paragraph. As such, said averments are deemed denied and strict proof thereof demanded at trial;
- f) Plaintiff specifically denies that Patient A was exposed to any abnormal risks related to the complications from Patient A's surgery. To the contrary, at all times material hereto Plaintiff delivered competent and proper medical services to Patient A, and complied with all requisite standards of care;
- g) Plaintiff specifically denies that he knew, or should have know, that Patient A should have remained in the hospital for treatment and close observation. By way of further response, Plaintiff incorporates by reference thereto his response to Paragraph 144(d) of the Third Counterclaim as if same were set forth at length herein.

42. The averments of Paragraph 145 of the Third Counterclaim are admitted in part and denied in part. Plaintiff admits that he performed adenotonsillectomies on two children who are siblings (Patients B and C) on November 25, 2002 at the Centre Community Surgical Center.

With respect to each specific sub-paragraph of Paragraph 145, Plaintiff states the following:

- a) The averments of this sub-paragraph are admitted in part and denied in part. Plaintiff admits that Patient C was admitted to Centre Community hospital on November 26, 2002, for a single brief self-limited bleeding episode, nausea, and vomiting. Plaintiff further avers that patient C was discharged that same day. Plaintiff believes that both Patient B and Patient C were admitted to the hospital on November 27, 2002 for dehydration. Plaintiff specifically denies that Patient B was admitted to the hospital on November 26, 2002. Plaintiff further specifically denies that Patient B was admitted to the hospital for nausea, vomiting, or bleeding. Strict proof to the contrary is demanded at trial;
- b) Plaintiff admits that he did not sign Patients B and C out to Dr. Kao when said patients were initially discharged from Plaintiff's care following the surgeries performed on November 25, 2002, as there was no need for the patients to be signed out following surgery and initial discharge. Plaintiff further states that he was not involved in the care of either Patient B or Patient C when they presented to the hospital on November 27, 2002. As for Patient C's admission to the hospital on November 26, 2002, Plaintiff denies that he discharged Patient C without evaluating him. Plaintiff further avers that he performed an in-person evaluation of Patient C on the morning of his discharge and that Patient C, having met the Plaintiff's discharge criteria later that afternoon, was sent home following confirmation provided by telephone to Plaintiff by the hospital's staff nurse. By way of further response, Plaintiff avers that at all times material hereto Plaintiff delivered competent and proper medical services to Patients B and C, and complied with all requisite standards of care;
- c) Plaintiff denies that he knew or should have known that Patients B and C required continued hospitalization. By way of further response, Plaintiff incorporates by reference thereto his Answer to Paragraph 145(b) of Defendants' Third Counterclaim, as if same were set forth at length herein.
- d) Plaintiff denies that he evaluated Patient B over the phone. By way of further response, Plaintiff incorporates his Answers to Paragraphs 145(b) and 145(c) of the Third Counterclaim, as if same were set forth at length herein;
- e) Plaintiff denies that he recklessly and intentionally placed his travel plans and own convenience above the health, well being, safety and treatment of Patients B and C.

By way of further response, Plaintiff incorporates his Answers to Paragraphs 145(b), 145(c), and 145(d) of the Third Counterclaim, as if same were set forth at length herein;

43. The averments of Paragraph 146 of the Third Counterclaim are admitted in part and denied in part. Plaintiff admits that he performed uvulopalatopharyngoplasty and radio frequency volume reduction of the tongue base on Patient D at the Clearfield Hospital on January 14, 2003. With respect to each specific sub-paragraph of Paragraph 146, Plaintiff states the following:

- a) Plaintiff specifically denies that Patient D developed significant swelling of the throat obstructing the airway as a result of this surgery. To the contrary, Plaintiff asserts that although Patient D had some post-operative sublingual swelling, he had no airway obstruction or compromise, significant oxygen desaturation, required no airway intubation and ventilator support, and was not transferred to either the Intensive Care Unit or a Progressive Care step-down unit for closer observation. At all times material hereto Plaintiff delivered competent and proper medical services to Patient D, and complied with all requisite standards of care;
- b) Plaintiff specifically denies that he needed to sign the patient out to Dr. Kao, that Dr. Kao had specifically instructed Plaintiff to sign the patient out to him. Plaintiff admits that the care of Patient D was transferred to Dr. Vetrano, an internist. Plaintiff further avers that it was planned well in advance of Patient D's surgery by Dr. Vetrano, that the patient would be admitted to Dr. Vetrano's service post-operatively for management of Patient D's medical problems in the peri-operative period. At all times material hereto Plaintiff delivered competent and proper medical services to Patient D, and complied with all requisite standards of care;
- c) Plaintiff is without knowledge, information, or belief sufficient to admit or deny the averments of this sub-paragraph. As such, said averments are deemed denied and strict proof thereof demanded at trial;
- d) Plaintiff is without knowledge, information, or belief sufficient to admit or deny the averments of this sub-paragraph. As such, said averments are deemed denied and strict proof thereof is demanded at trial;
- e) Plaintiff denies that he knew or should have known that Dr. Vetrano was not properly qualified to follow-up Patient D's care. By way of further response, Plaintiff incorporates by reference thereto his Answer to Paragraphs 146(a) and 146(b) as if same were set forth at length herein;

- f) Plaintiff denies that he knew or should have known that Patient D should have been signed out to Dr. Kao. By way of further response, Plaintiff incorporates by reference thereto his Answer to Paragraphs 146(a) and 146(b) as if same were set forth at length herein;
- g) Plaintiff denied that he deviated from proper professional protocol and proper medical follow-up with respect to his treatment of Patient D, or that Patient D's life was ever threatened. By way of further response, Plaintiff incorporates by reference thereto his Answer to Paragraphs 146(a) and 146(b) as if same were set forth at length herein.

44. The averments of Paragraph 147 of the Third Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 147 are denied and strict proof thereof is demanded at trial.

45. The averments of Paragraph 148 of the Third Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 148 are denied and strict proof thereof demanded. By way of further response, Plaintiff avers that no medical malpractice claims or lawsuits have been filed against Plaintiff or Defendants regarding Patients A, B, C or D.

46. The averments of Paragraph 149 of the Third Counterclaim constitute conclusions of law to which no response is required on the part of Plaintiff. To the extent to which it may be determined that a response is necessary, the averments of Paragraph 149 are denied and strict proof thereof is demanded at trial.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants.

**PLAINTIFF'S NEW MATTER TO DEFENDANTS' COUNTERCLAIMS**

NOW COMES Plaintiff, Eric Plotnick, M.D., by his undersigned counsel, and asserts the following New Matter to Defendants' Counterclaims in the above case, in support thereof averring as follows:

47. Plaintiff incorporates by reference thereto Paragraphs 1 through 46 of the within Reply to Defendants' New Matter and Answer and New Matter to Defendants' Counterclaims as if same were set forth at length herein.

48. Plaintiff employment contract was wrongfully terminated for the reasons set forth in Plaintiff's Second Amended Complaint, and Plaintiff thus was entitled to continue to receive the benefits specified in Paragraph 125 of Defendants' Second Counterclaim through January of 2004.

49. Defendants were contractually obligated to pay Plaintiff's medical malpractice tail coverage.

50. Defendants were reimbursed the unused pro-rated portion of Plaintiff's medical malpractice premium refunded to Plaintiff upon Plaintiff's written notification to PMSLIC of his desire to terminate his medical malpractice policy. This refund (\$1296.00) was initially held in Plaintiff's attorney's escrow account until Plaintiff received requisite proof that Defendants paid Plaintiff's medical malpractice tail coverage (at which point the escrow funds were released).

51. Defendants attempted to illegally and clandestinely terminate Plaintiff's Life and Disability insurance policies without Plaintiff's knowledge or consent by calling the local insurance agency's (Frost & Conn) broker, Felix Boake, and demanding termination of Plaintiff's policies.

52. No medical malpractice claims or lawsuits have been filed against Defendants (nor against the Plaintiff for that matter) regarding Patients A, B, C or D. As more than two years have passed since the most recently treated patient (Patient D), no cause of action for negligence may lie with respect to Plaintiff's treatment of said patients.

53. Defendants do not have standing to assert causes of action with respect to Plaintiff's medical treatment of Patients A, B, C or D.

54. Defendants are estopped from denying that Plaintiff was entitled to the production bonuses referenced in Paragraph 120 of Defendants' First Counterclaim.

55. Defendants are estopped from denying that Plaintiff was entitled to receive the benefits referenced in Paragraph 131 of Defendants' Second Counterclaim.

56. Plaintiff pleads any and all applicable statutes of limitation as an affirmative defense.

57. There is no causal relationship between the medical treatment provided by Plaintiff to Patients A, B, C, and D, and the damages alleged in Paragraphs 147, 148, and 149 of Defendants' Third Counterclaim.

WHEREFORE, Plaintiff demands judgment in his favor and against Defendants.

Respectfully submitted,

**CAVRICH LAW OFFICES, LLC**

By   
Attorneys for Plaintiffs  
Joseph W. Cavrich, Esquire  
P.O. Box 536  
Hollidaysburg, PA 16648  
(814) 696-6576

**VERIFICATION**

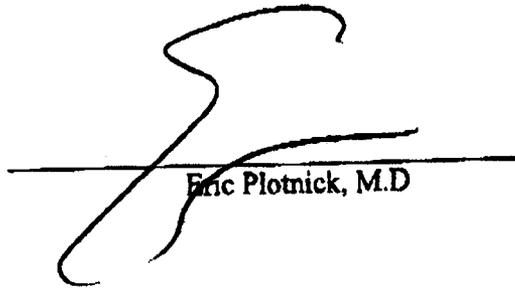
I, Eric Plotnick, M.D., hereby state:

1. I verify that the within PLAINTIFF'S REPLY TO DEFENDANTS' NEW MATTER AND ANWER AND NEW MATTER TO DEFENDANTS' COUNTERCLAIMS is true and correct based on my personal knowledge and information; and

2. I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsifications to authorities.

Dated:

9/18/05



Eric Plotnick, M.D

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

TYPE OF CASE: **CIVIL**

TYPE OF PLEADING:  
**DEFENDANTS' ANSWER TO  
PLAINTIFF'S NEW MATTER**

Filed on Behalf of:

**Defendants**

Counsel of Record for this Party:

**Peter F. Smith, Esquire**

Supreme Court ID #34291

30 South Second Street

P. O. Box 130

Clearfield, PA 16830

(814) 765-5595

Counsel of Record for Plaintiff:

**Joseph W. Cavrigh, Esquire**

PA I.D. #52693

CAVRICH LAW OFFICES, LLC

P.O. Box 536

Hollidaysburg, PA 16648

(814) 696-6576

**JURY TRIAL DEMANDED**

**FILED** <sup>icc</sup>  
010:3801 Amy  
OCT 07 2005 (R)

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D., :  
Plaintiff :  
 :  
vs. : No. 03-868-CD  
 :  
 :  
OTOLARYNGOLOGY GROUP OF :  
CENTRAL PENNSYLVANIA, INC., and :  
YI HOW KAO, M.D., :  
Defendants :  
 :

**DEFENDANTS' ANSWER TO PLAINTIFF'S NEW MATTER**

COMES NOW, the Defendants, by their attorney, Peter F. Smith, who answer the New Matter as follows:

47. Paragraphs 1 through 149 of Defendants' Answer, New Matter and Amended Counterclaims are incorporated herein by reference as though set forth in full.

48. Denied. Defendants were fully within their rights and properly terminated Plaintiff's employment for cause as more particularly stated in paragraph 13 of the Answer.

49. Admitted.

50. Admitted.

51. Denied because Defendants do not understand how any of their conduct could be construed as "illegal" or "clandestine," and strict proof thereof is demanded at trial.

52. Admitted in part insofar as no claims have yet been filed by Patients A, B, C or D, but claims brought on a theory of contract would still be within the four year statute of limitations. The implication of this New Matter is further denied to the extent that even if no malpractice claims are actually asserted by any of these patients, the Defendants have still been injured by Plaintiff's conduct described in the Third Counterclaim and as specifically averred in paragraphs 147 and 148.

53. Denied as a conclusion of law and further denied because this averment misconstrues the basis of Defendants' Third Counterclaim which is asserted against the Plaintiff for his breach of the parties' employment contract.

54. Denied as a conclusion of law and further denied because Plaintiff is not entitled either by law or equity to retain production bonuses to which he is not, in fact, entitled.

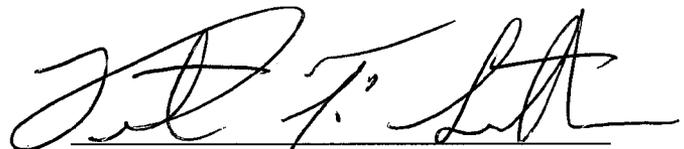
55. Denied as a conclusion of law and further denied because Plaintiff would be unjustly enriched to the detriment of the Defendants unless he is required to reimburse them for benefits which he received but did not earn.

56. Denied. The Defendants have asserted their counterclaims against the Plaintiff within all applicable statutes of limitations.

57. Denied as a legal conclusion and further denied because the causal relationship between the Plaintiff's professional derelictions and the negative impact upon the Defendants is apparent to any objective observer.

WHEREFORE, Defendants pray this Honorable Court to enter judgment in their favor and against the Plaintiff for an amount in excess of \$10,000 together with interest at the statutory rate and costs.

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendants  
30 South Second Street  
P. O. Box 130  
Clearfield, PA 16830  
(814) 765-5595

Date: 10/6/05

**VERIFICATION**

I verify that the statements made in this Answer to Plaintiff's New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.

Dated: Oct 3 - 05

By: Yi How Kao  
Yi How Kao, M.D., F.A.C.S  
President

**VERIFICATION**

I verify that the statements made in this Answer to Plaintiff's New Matter are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

Dated: Oct 3. 05

Y. How Kao M.D.  
Y. How Kao, M.D., F.A.C.S

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

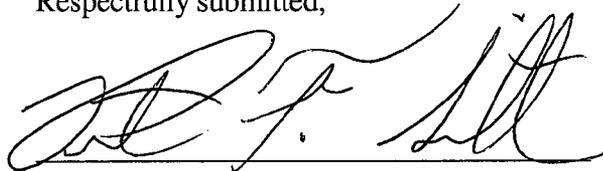
No. 03-868-CD

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent a true and correct copy of **DEFENDANTS' ANSWER TO PLAINTIFF'S NEW MATTER** to the Attorney for the Plaintiff by U.S. First Class Mail, Postage Prepaid at the following address:

Joseph W. Cavrich, Esquire  
Cavrich Law Offices, LLC  
P. O. Box 536  
Hollidaysburg, PA 16648

Respectfully submitted,



Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595

Date:

10/6/05

**FILED**

OCT 07 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF SERVICE  
OF DISCOVERY**

Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrigh, Esquire  
PA I.D. #52693

CAVRICH LAW OFFICES, LLC  
P.O. Box 536  
Hollidaysburg, PA 16648  
(814) 696-6576

I HEREBY CERTIFY THAT A TRUE  
AND CORRECT COPY OF THE WITHIN  
NOTICE WAS SERVED UPON ALL COUNSEL  
OF RECORD VIA FIRST-CLASS MAIL  
THIS 4<sup>th</sup> DAY OF NOVEMBER, 2005.



Joseph W. Cavrigh, Esquire  
Attorney for Plaintiff

**FILED** <sup>10 cc</sup>  
M/10:05AM  
NOV 07 2005 <sup>LSF</sup>

William A. Shaw  
Prothonotary/Clerk of Courts



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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

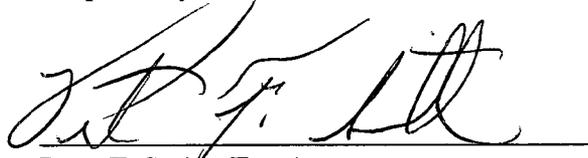
**FILED** *no cc*  
*of 10:56 AM*  
DEC 08 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent **DEFENDANTS' ANSWERS TO PLAINTIFF'S NOVEMBER 4, 2005 INTERROGATORIES and DEFENDANTS' RESPONSE TO PLAINTIFF'S NOVEMBER 4, 2005 REQUEST FOR PRODUCTION OF DOCUMENTS** to the Attorney for the Plaintiff by U.S. First Class Mail, Postage Prepaid at the following address:

Joseph W. Cavrich, Esquire  
Cavrich Law Offices, LLC  
P. O. Box 536  
Hollidaysburg, PA 16648

Respectfully submitted,



Date: December 6, 2005

Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595





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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

NOTICE OF DEPOSITION

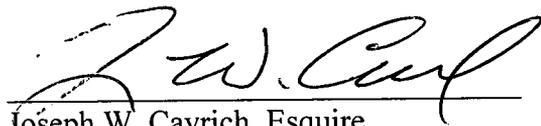
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

CAVRICH LAW OFFICES, LLC  
P.O. Box 113315  
Pittsburgh, PA 15241  
(412) 833-6075

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 13<sup>TH</sup> DAY OF  
JULY, 2006.



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

JUL 17 2006

m / 8:30 / w

William A. Shaw

Prothonotary/Clerk of Courts

no c/c



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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

NOTICE OF DEPOSITION

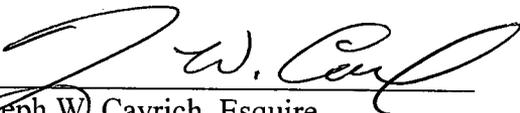
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

CAVRICH LAW OFFICES, LLC  
P.O. Box 113315  
Pittsburgh, PA 15241  
(412) 833-6075

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 13<sup>th</sup> DAY OF  
JULY, 2006.

  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

JUL 17 2006  
m/8:30 am  
William A. Shaw  
Prothonotary/Clerk of Courts  
no C/L



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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

NOTICE OF DEPOSITION

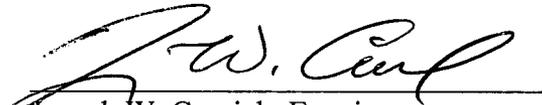
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

CAVRICH LAW OFFICES, LLC  
P.O. Box 113315  
Pittsburgh, PA 15241  
(412) 833-6075

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 13<sup>th</sup> DAY OF  
JULY, 2006.



Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

JUL 17 2006

2:18:30  
William A. Shaw  
Prothonotary/Clerk of Courts  
WAC

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF DEPOSITION**

TO: Peter F. Smith, Esquire  
30 South Second Street  
Clearfield, PA 16830

Please take notice that the deposition of **Evelyn Witters** shall be taken upon oral examination by an official Court Reporter at the offices of Sargent's Court Reporting Service, Inc., 106 North Second Street, Clearfield, PA 16830, on the 27<sup>th</sup> day of July, 2006, beginning at 2:00 PM.

The scope of said deposition testimony will include inquiry into all facts and all other matters relevant to the issues raised in the above case.

You are invited to attend and participate.

**CAVRICH LAW OFFICES, LLC**

  
Attorney for Plaintiff  
**JOSEPH W. CAVRICH, ESQUIRE**  
Pa. I.D. #52693  
P.O. Box 113315  
Pittsburgh, PA 15241  
412-833-6075

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

NOTICE OF DEPOSITION

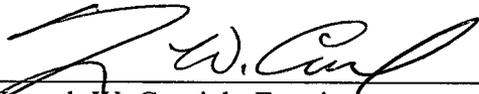
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

CAVRICH LAW OFFICES, LLC  
P.O. Box 113315  
Pittsburgh, PA 15241  
(412) 833-6075

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN NOTICE WAS  
SERVED UPON ALL COUNSEL  
OF RECORD THIS 13<sup>th</sup> DAY OF  
JULY, 2006.

  
\_\_\_\_\_  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**FILED**

JUL 17 2006

11/8:30/2  
William A. Shaw (LM)  
Prothonotary/Clerk of Courts

no c/c

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**NOTICE OF DEPOSITION**

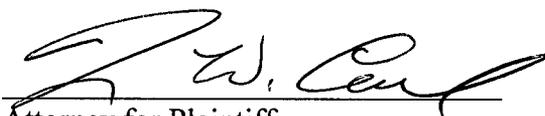
TO: Peter F. Smith, Esquire  
30 South Second Street  
Clearfield, PA 16830

Please take notice that the deposition of **Carole Karchner** shall be taken upon oral examination by an official Court Reporter at the offices of Sargent's Court Reporting Service, Inc., 106 North Second Street, Clearfield, PA 16830, on the 27<sup>th</sup> day of July, 2006, beginning at 9:00 AM.

The scope of said deposition testimony will include inquiry into all facts and all other matters relevant to the issues raised in the above case.

You are invited to attend and participate.

**CAVRICH LAW OFFICES, LLC**



Attorney for Plaintiff

**JOSEPH W. CAVRICH, ESQUIRE**

Pa. I.D. #52693

P.O. Box 113315

Pittsburgh, PA 15241

412-833-6075

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC. and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

**FILED** *no cc*  
*0110:4061*  
JUL 24 2006  
*see 4*  
William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

I, Peter F. Smith, attorney for Defendants, certify that I sent Defendants' **FIFTH SUPPLEMENTAL PRODUCTION OF DOCUMENTS** to the Attorney for the Plaintiff by U.S.

First Class Mail, Postage Prepaid at the following address on July 21, 2006:

Joseph W. Cavrich, Esquire  
Cavrich Law Offices, LLC  
P. O. Box 113315  
Pittsburgh, PA 15241

Respectfully submitted,



Date: July 21, 2006

Peter F. Smith, Esquire  
Attorney for Defendants  
P. O. Box 130, 30 South Second Street  
Clearfield, PA 16830  
(814) 765-5595



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

ERIC PLOTNICK, M.D.,  
Plaintiff,

v.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendant.

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\*  
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\*  
\*

No. 03-868-CD

**PRAECIPE FOR ENTRY OF APPEARANCE**

Please enter my appearance on behalf of the Plaintiff,  
Eric Plotnick, M.D., in the above-captioned case.

NADDEO & LEWIS, LLC

By James A. Naddeo  
James A. Naddeo  
Attorney for Plaintiff

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

ERIC PLOTNICK, M.D.,  
Plaintiff,

v.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendant.

\*  
\*  
\*  
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\*  
\*

No. 03-868-CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Praecipe to Enter Appearance was served on the following and in the following manner on the 8<sup>th</sup> day of December, 2010:

First-Class Mail, Postage Prepaid

Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By James A. Naddeo  
James A. Naddeo  
Attorney for Plaintiff



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

ERIC PLOTNICK, M.D.,  
Plaintiff,

v.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendant.

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

No. 03-868-CD

**PRAECIPE TO SETTLE AND DISCONTINUE**

TO THE PROTHONOTARY:

Dear Sir:

Please mark the above-captioned case settled and  
discontinued.

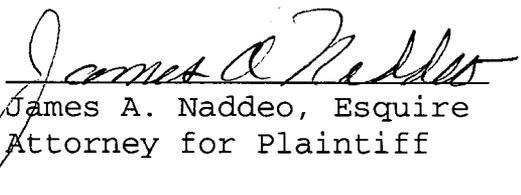
BY:



Peter F. Smith, Esquire  
Attorney for Defendants

NADDEO & LEWIS, LLC

BY:



James A. Naddeo, Esquire  
Attorney for Plaintiff

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

ERIC PLOTNICK, M.D.,  
Plaintiff,

v.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendant.

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

No. 03-868-CD

CERTIFICATE OF SERVICE

I, James A. Naddeo, Esquire, do hereby certify that a certified copy of the Praecipe to Settle and Discontinue was served on the following and in the following manner on the 9<sup>th</sup> day of December, 2010:

First-Class Mail, Postage Prepaid

Peter F. Smith, Esquire  
30 South Second Street  
P.O. Box 130  
Clearfield, PA 16830

NADDEO & LEWIS, LLC

By James A. Naddeo  
James A. Naddeo  
Attorney for Plaintiff

⑫ 8-13-04-1100

**URBAN & CAVRICH** P.C.  
ATTORNEYS AT LAW

July 15, 2004

The Honorable John K. Reilly, Jr.  
Court of Common Pleas of Clearfield County  
230 E. Market Street  
Clearfield, PA 16830

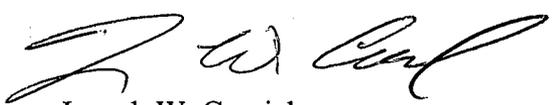
RE: Plotnick v. Otolaryngology Group of Central PA et al.  
No. 03-868 C.D., Court of Common Pleas of Clearfield County, PA  
**Our File No.: LIT 117**

Dear Judge Reilly:

As requested, enclosed herewith please find a copy of Plaintiff's Bill of Costs related to the Motion for Sanctions that was presented earlier this week.

Thank you for your attention to this matter.

Very truly yours,

  
Joseph W. Cavrich

JWC/eb  
enclosure

cc: Peter Smith, Esquire (w/enc.)  
Dr. Plotnick (w/enc.)

File - 8-13  
1100

**Urban & Cavrich, P.C.**  
 503 Allegheny Street  
 Hollidaysburg, PA 16648

**Invoice**

DATE	INVOICE #
7/14/2004	2252
BILLING PERIOD	
5/1/04-7/14/04	

**BILL TO**

Eric Plotnick, MD  
 1141 Manning Farms Court  
 Dunwoody, GA 30338

**MATTER**  
 Plotnick v. Kao et al

DATE	DESCRIPTION	HOURS	RATE	AMOUNT
5/6/2004	Prepare Motion for Sanctions and Affidavit of Service; Prepare letter to Prothonotary re: Motion for Sanctions and Affidavit of Service	1.2	125.00	150.00
6/25/2004	Prepare Affidavit of Service; Prepare letter to Prothonotary re: Affidavit of Service; Prepare letter to Atty Smith re: rule returnable	0.3	125.00	37.50
7/13/2004	Round trip travel to present Motion for Sanctions	3.0	62.50	187.50
7/13/2004	Prepare for and attend hearing re: Motion for Sanctions	1.0	125.00	125.00
Net 15	<b>DUE DATE: 7/29/2004</b>		<b>Total</b>	\$500.00

PETER F. SMITH  
ATTORNEY  
30 SOUTH SECOND STREET  
P.O. BOX 130  
CLEARFIELD, PENNSYLVANIA 16830

(814) 765-5595  
FAX (814) 765-6662

E-mail  
pfsatty@uplink.net

July 27, 2004

HAND DELIVER

Honorable John K. Reilly, Jr.  
C/O Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830

Re: Plotnick v. Otolaryngology Group of Central PA et al.  
No. 03-868-CD

Dear Judge Reilly:

I reviewed the bill which Mr. Cavrich submitted in support of his Motion for Sanctions. Fred Neisweinder also recapitulated the oral argument for me. Please accept my apology for not being there personally.

My colleague Mr. Cavrich is a fine lawyer. His preparation and argument of any type of motion is probably worth \$500.00 if that motion is necessary. Dr. Plotnick is lucky to have him. But on a practitioner's level, he likely spent 15 minutes dictating the motion, another 10 proofreading and signing it, and a final 15 minutes to prepare for the argument. I take no issue with his road time.

If this bill is to be paid, it will be my responsibility not that of my client.

Having said that, I submit that the responsibility for this bill is Dr. Plotnick's because this financial "wound" is self-inflicted. My statement goes beyond the obvious fact that he and Mr. Cavrich did receive the information which they sought.

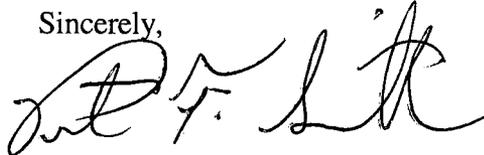
Plaintiff continues to pursue his attempt to pierce the corporate veil. This has delayed this litigation by over one year and resulted in the production of documents in excess of 1,500 pages, a full-days' deposition of Dr. Kao and his spouse and many, many hours of my time billed to the Defendants.

The court should keep in mind that I had to review each and every item on each and every page of the 1,500 plus documents produced before I forwarded them to my colleague Mr. Cavrich. This effort has not produced any meaningful evidence supporting Dr. Plotnick's claim to pierce the corporate veil.

Honorable John K. Reilly, Jr.  
July 27, 2004  
Page Two

Therefore, I submit that this pointless exercise which Dr. Plotnick has inflicted on all of us is sanction enough. The Motion should be dismissed, Defendants' preliminary objections to the corporate veil issue sustained and the real dispute between the parties can then be addressed.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter F. Smith". The signature is written in a cursive style with a large initial "P" and a distinct "S".

Peter F. Smith

cc: Joseph W. Cavrich, Esquire

 **URBAN & CAVRICH** P.C.  
ATTORNEYS AT LAW

July 29, 2004

The Honorable John K. Reilly, Jr.  
Court of Common Pleas of Clearfield County  
230 E. Market Street  
Clearfield, PA 16830

RE: Plotnick v. Otolaryngology Group of Central PA et al.  
No. 03-868 C.D., Court of Common Pleas of Clearfield County, PA  
**Our File No.: LIT 117**

Dear Judge Reilly:

I am in receipt of a copy of correspondence recently sent you by Attorney Smith in regard to the above matter. I do recall that the Court afforded Attorney Smith an opportunity to question the time entries on the bill that was submitted in regard to Plaintiff's Motion for Sanctions. While Attorney Smith does so in the second paragraph of his letter, I believe that the remainder his gratuitous comments go well beyond that requested by the Court.

While I prefer not to engage in the assignment of blame for the delays in this lawsuit, I simply cannot allow counsel's comments to stand unopposed. It is simply a mischaracterization for counsel to suggest that Dr. Plotnick has delayed this litigation by over one year by attempting to pierce Defendants' corporate veil. My client has had to address Defendants' Preliminary Objections to the Complaint, Defendants' Preliminary Objections to the Amended Complaint, and a baseless objection by Defendants to Plaintiff's Motion to File a Second Amended Complaint (to add a claim under Pennsylvania's Wage Payment and Collection Law).

Because of Dr. Kao's failure to file timely and complete responses to Plaintiff's discovery requests, Plaintiff had to file a Motion to Compel Discovery. A Motion for Sanctions followed when Dr. Kao failed to comply with this Court's Order regarding the previously filed Motion to Compel. As I explained to the Court during oral argument, I then discovered during Mrs. Kao's deposition that certain of the documents that were produced by Defendants after Plaintiff's Motion for Sanctions was filed (which Dr. Kao claimed to not have in prior discovery responses) were, in fact, in Dr. Kao's possession all along.

My client firmly believes that the filing of the Motion for Sanctions was *the* sole motivating factor for Dr. Kao's compliance with this Court's Order of February 25, 2004. For counsel to suggest that the filing of the Motion was unnecessary, and the cost to Plaintiff "self inflicted" (given Dr. Kao's past efforts to avoid full disclosure in discovery responses), is wholly without merit. Without addressing specific evidentiary matters herein, I can further assure

The Honorable John K. Reilly, Jr.

July 29, 2004

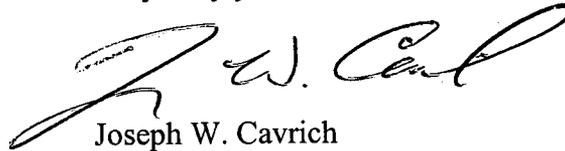
Page 2

the Court that Plaintiff firmly believes that he has had a good faith basis to pursue his attempts to pierce Defendants' corporate veil.

As for Attorney Smith's speculation regarding the time that I spent preparing and filing the Motion for Sanctions and Affidavits of Service, and for attending oral argument, my response is simple. My bill accurately reflects my time spent on these matters.

Thank you for your time and attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. W. Cavrich". The signature is written in a cursive style with a large initial "J" and "W".

Joseph W. Cavrich

JWC/eb

cc: Peter Smith, Esquire

PETER F. SMITH  
ATTORNEY  
30 SOUTH SECOND STREET  
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CLEARFIELD, PENNSYLVANIA 16830

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E-mail  
pfsatty@uplink.net

March 1, 2004

HAND DELIVER  
Honorable John K. Reilly, Jr.  
Clearfield County Courthouse  
Clearfield, PA 16830

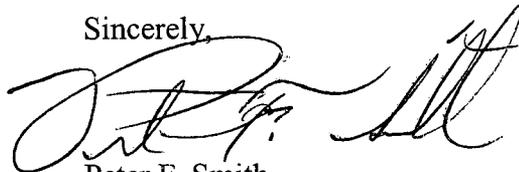
Re: Plotnick vs. Otolaryngology Group of Central Pennsylvania, Inc. et al.  
No. 03-868-CD

Dear Judge Reilly:

I reviewed the Court's February 25 Order concerning discovery in the above-captioned matter. I believe that the reference to Request for Production No. 13 should actually refer to Request No. 12. Number 13 concerns the Kaos' personal credit card accounts. Number 12 refers to the corporate account.

I called Dr. Plotnick's counsel Attorney Cavrach this morning. I discussed this matter with him. He and I agreed that I would obtain statements for the corporate credit card for the preceding five years.

Sincerely,



Peter F. Smith

PFS/hab

cc: Dr. Yi How Kao

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

ERIC PLOTNICK, M.D.

-vs-

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC.  
and YI HOW KAO, M.D.

:  
:  
:  
:  
:  
:  
:

No. 03 - 868 - CD

**ORDER**

NOW, this 17<sup>th</sup> day of November, 2003, upon consideration of Plaintiff's Motion for Leave to File Amended Complaint to include a claim under the Pennsylvania Wage Payment and Collection Law (43 P.S. §260 et seq.), the Court being satisfied that he is within the applicable statute of limitations, it is the ORDER of this Court that said Motion be and is hereby granted. Said Amended Complaint to be filed within twenty (20) days from date hereof.

By the Court,

---

President Judge

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

ERIC PLOTNICK, M.D.,  
Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,  
Defendants

No. 03-868-CD

**RECEIVED**

**OCT 22 2003**

**COURT ADMINISTRATOR'S  
OFFICE**

**DEFENDANTS' BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS**

The Otolaryngology Group of Central Pennsylvania, Inc. is a closely held Pennsylvania professional corporation. It was formed by Dr. Yi How Kao, an ear, nose and throat specialist. He is the sole shareholder, director and officer.

Although the complaint rambles through 72 paragraphs, the dispute between the parties can be easily summarized. Dr. Plotnick was employed by the corporation for approximately two years. He complains that he was not fully paid under the parties' agreements. He also alleges that the corporation did not have proper grounds to terminate his employment with it.

The complaint seeks to join Dr. Kao in his personal capacity by piercing the corporate veil in paragraph 5. These preliminary objections were filed to the original complaint and renewed after the amended complaint was filed.

Dr. Kao submits that paragraph 5 is both legally and factually insufficient to establish grounds for piercing the corporate veil. Dr. Kao should be dismissed as a Defendant, and the action can proceed against the corporate employer.

## **ARGUMENT**

**ISSUE: SHOULD A CLAIM SEEKING TO PIERCE THE CORPORATE VEIL WHICH DOES NOT SPECIFY THE ALLEGED ILLEGAL ACTIVITIES OR ABUSE OF THE CORPORATE ENTITY AND IMMUNITY BE DISMISSED?**

**ANSWER: YES**

### **A. Standard of Review**

When considering preliminary objections in the nature of a demurrer pursuant to Pa.R.C.P. 1028(4), the court must accept all material facts set forth in the complaint as true, as well as all reasonable inference deducible from those facts. Sevin v. Kelshaw, 611 A.2d 1232, 1235 (Pa. Super. 1992). The court must not accept as true any conclusions of law. *Id.* In deciding preliminary objections in the nature of a demurrer, the court must consider whether, on the facts stated, the law says with certainty that no recovery is possible. *Id.*

To state a legally sufficient claim, the plaintiff must, at a minimum, allege the material facts on which the cause of action is based. Pa.R.C.P. 1019(a). If the plaintiff's complaint does not indicate on its face that his claim can be sustained and that the law will permit recovery, the demurrer should be granted. Gekas v. Shapp, 364 A.2d 691, 693 (Pa. 1976). Though plaintiff need not plead evidence, he "must plead sufficient allegations of fact that make out a case." Kasbee v. Bump, 75 Pa.D. & C.2d 274, 275 (C.P. Mercer County 1975). See also Santiago v. Pennsylvania Nat'l Mut. Cas. Ins. Co., 613 A.2d 1235, 1238 (Pa. Super. 1992).

If a complaint does not aver facts which would provide recovery under the law, then a defendant's preliminary objections in the nature of a demurrer pursuant to Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure will be sustained. Vattimo v. Lower Bucks Hospital, Inc.,

465 A.2d 1231, 1232 (Pa. 1983); Accord Allstate Ins. Co. v. Fioravanti, 299 A.2d 585, 587 (Pa. 1973).

Every fact necessary to show that the plaintiff is entitled to the relief sought must be pleaded in the complaint, since neither implied allegations nor proof of matters not alleged can be made the basis for ... relief, since a specific wrong will not be remedied unless averred. The plaintiff must allege the facts constituting the defendant's alleged wrong.

14 Pa. Standard Practice.2d § 80.18 (1996).

## **B. Discussion**

Lumax Industries, Inc. v. Aultman, 669 A.2d 893 (Pa. 1994), sets forth the standard which determines when the limited liability which the corporate form offers should be disregarded and its shareholders held liable:

We note at the outset that there is a strong presumption in Pennsylvania against piercing the corporate veil. Wedner v. Unemployment Board, 449 Pa. 460, 464, 296 A.2d 792, 794 (1972). "(A)ny court must start from the general rule that the corporate entity should be recognized and upheld, unless specific, unusual circumstances call for an exception ... Care should be taken on all occasions to avoid making the entire theory of corporate entity useless." Zubik v. Zubik, 384 F.2d 267, 273 (3d Cir. 1967). Also, the general rule is that a corporation shall be regarded as an independent entity even if its stock is owned entirely by one person. College Watercolor Group, Inc. v. William H. Newbauer, Inc., 468 Pa. 103, 117, 360 A.2d 200, 207 (1976).

*Id.*, at 894.

Dr. Plotnick does include five sub-paragraphs under paragraph 5. Although their language echoes some of the foregoing principals, they are generic. They appear to have been taken straight from the case law instead of from the details of Dr. Plotnick's relationship with the defendant corporation.

These allegations do not rise to the level of illegality, injustice or fraud. Dr. Plotnick is cognizant of this high standard as acknowledged by the initial allegation in paragraph 5 of illegal activities and abuse, but he fails to substantiate those allegations with factual averments.

Subparagraph 5.a alleges that, “ ... corporate expenses give the appearance of being unrelated to the business of the corporation.” Appearances are not facts. Therefore, this averment lends no support to Dr. Plotnick’s position.

Assuming that the corporation has not conducted meetings as averred in paragraph 5.b, no rule makes this omission illegal, nor is it an abuse. The corporation has but one shareholder who is also the only officer and director. Dr. Kao knows his practice. Anytime he thinks about it and makes a decision concerning it constitutes a meeting. It is common knowledge that a majority of closely held corporations -- even those with more than one shareholder -- do not to conduct regular meetings. The Business Corporation Law does not make this an absolute requirement (see 15 Pa.C.S.A. §§ 1701-1708) but rather grants aggrieved shareholders the right to demand a meeting. 15 Pa.C.S.A. § 1755(a). That would be ridiculous for a corporation with one shareholder. The Court should also recall that the holding in Commonwealth v. Vienna Health Prods., Inc., *supra.*, expressly states that there is nothing illegal or improper about a corporation with a single shareholder.

Dr. Plotnick is not a shareholder in Otolaryngology Group of Central Pennsylvania, Inc., nor is he a director or officer. He has no legal right to attend, participate in or even demand corporate meetings. The complaint fails to explain how the absence of corporate meetings would prejudice him.

Sub-paragraph 5.c alleges that the, “Otolaryngology Group of Central Pennsylvania, Inc. has failed to abide by its by-laws, if enacted.” It does not specify which by-law, although Plaintiff’s

counsel was given an opportunity to inspect the corporate minute book prior to amending the complaint.

The “substantial intermingling of affairs” averred by subparagraph 5.d also falls short of the mark. This statement is general and fails to provide specifics, nor does it explain why this intermingling would be illegal, abusive or unjust with specific regard to Dr. Plotnick’s claim. The complaint states that Dr. Kao has been actively involved in the daily operations and medical practice of the corporation. Most of his waking hours and energies are dedicated to its success. It is only natural and not illegal that he would carry his professional life into his personal life and that his family, friends and outside interests would come in contact with his professional affairs.

The final sub-paragraph is similar to the one which precedes it. It states that Dr. Kao has used the corporation to “... further his personal interests.” Of course he has, and nothing is wrong with that.

The single most important benefit which incorporation offers is the limited liability extended to corporate shareholders. It would be absurd to state or imply that the incorporation of a professional practice for this purpose is per se illegal or abusive. Chapter 29 of the Business Corporation Law 15 Pa. C.S.A. Section 2901 et seq., makes professional corporations entirely lawful. Once again, Dr. Plotnick has failed to aver why incorporation in this instance is illegal, abusive or works an injustice against him. That Dr. Kao’s personal and professional interests coincide with those of his corporation is not illegal, abusive or unjust. “Although a parent and a wholly owned subsidiary do share common goals, they are still recognized as separate and distinct entities.” Shared Communications, Servs. of 1800-80 JFK Blvd., Inc. v. Bell Atlantic Props., Inc., 629 A.2d 570, 573 (Pa.Super.Ct.1997).

Dr. Plotnick does not state in his complaint the single most compelling reason why the

corporate veil could be pierced. He does not aver that the corporation is undercapitalized, nor does he aver that Dr. Kao is depleting its assets to the prejudice of Dr. Plotnick if he would obtain judgment in this suit. To his credit, Dr. Plotnick knows that these averments would be untrue. Dr. Plotnick's compensation package described by the complaint and the corporate revenues upon which that compensation was based show that the corporation is very prosperous and has adequate cash flow to maintain its operations and pay its obligations.

The Court may be inclined to allow Plaintiff to amend the complaint. However, the Court should note that the complaint's deficiencies were pointed out to the Plaintiff by the first preliminary objections. Plaintiff has already amended the complaint once in response to these objections and still has failed to allege sufficient facts to support a claim to pierce the corporate veil. Therefore, paragraph 5 and Counts III and IV of the complaint should be stricken. This will streamline the pleadings and expedite the ultimate resolution of this dispute.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter F. Smith", written over a horizontal line.

Peter F. Smith  
Attorney for Defendants

Date: October 22, 2003

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**PLAINTIFF'S BRIEF  
IN OPPOSITION TO  
PRELIMINARY OBJECTIONS**

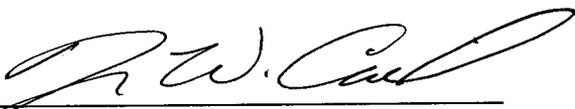
Filed on behalf of Plaintiff

Counsel of Record:

Joseph W. Cavrich, Esquire  
PA I.D. #52693

URBAN & CAVRICH, P.C.  
P.O. Box 508  
503 Allegheny St.  
Hollidaysburg, PA 16648  
(814) 695-7898

I HEREBY CERTIFY THAT A  
TRUE AND CORRECT COPY OF  
THE WITHIN AMENDED COMPLAINT  
WAS SERVED UPON ALL COUNSEL  
OF RECORD THIS 5<sup>th</sup> DAY OF  
NOVEMBER, 2003.

  
\_\_\_\_\_  
Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

**RECEIVED**

**NOV 06 2003**

**COURT ADMINISTRATOR'S  
OFFICE**

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

ERIC PLOTNICK, M.D.,

Plaintiff

vs.

OTOLARYNGOLOGY GROUP OF  
CENTRAL PENNSYLVANIA, INC., and  
YI HOW KAO, M.D.,

Defendants,

No. 03-868 C.D.

**PLAINTIFF'S BRIEF IN OPPOSITION TO PRELIMINARY OBJECTIONS**

NOW COMES Plaintiff, Eric Plotnick, M.D., and files the following Brief in Opposition to the Preliminary Objections filed by Defendants, Otolaryngology Group of Central Pennsylvania, Inc., and Yi How Kao, M.D. (hereinafter "Dr. Kao"):

**FACTS/PROCEDURAL HISTORY**

Defendants have filed Preliminary Objections to Plaintiff's Amended Complaint. The Preliminary Objections are not specific with respect to which of the specific sub-sections of Pa.R.C.P. 1028 the Defendants intended to rely upon in support of their contention that Paragraph 5 and Counts III and IV of Plaintiff's Amended Complaint should be stricken. However, Defendants cite only Pa.R.C.P.(a)(4) (demurrer) in their Brief in Support of Preliminary Objections. As such, Plaintiff will confine his argument to whether the Amended Complaint sets forth a legally sufficient cause of action, such that the grant of a demurrer by this Honorable Court would be improper.

## ARGUMENT

Defendants correctly cite the case of Lumax Industries, Inc. v. Altman, 543 Pa. 38, 669 A.2d 893 (1995) as the seminal case for this Honorable Court's consideration of Defendants' demurrer. However, Plaintiff contends that the Lumax decision, as well as several other Pennsylvania appellate cases, clearly support Plaintiff's contention that sufficient facts have been alleged by Plaintiff in the Amended Complaint for Plaintiff to proceed with his efforts to pierce Defendants' corporate veil.

In Lumax, the Pennsylvania Supreme Court held that a demurrer may only be sustained where the Complaint is clearly insufficient to establish the pleader's right to relief. For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, and every inference deducible from those facts. A demurrer should only be sustained in cases that clearly and without doubt fail to state a claim for which relief may be granted. If the facts as pleaded state a claim for which relief may be granted under any theory of law, then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. Lumax, 669 A.2d 894-95.

The only allegations that had been pled in the Lumax case in support of Plaintiff's attempt to pierce the Defendant's corporate veil were the following:

*"13. At all times material hereto, Defendant, Mary Carol Aultman was acting on behalf of herself, unjustly seeking corporate protection.*

*14. At all times material hereto, Defendant, Mary Carol Aultman was the only person actively involved in the day-to-day operations of MCA, Inc."*

In the Pennsylvania Supreme Court's opinion, the allegations set forth above constituted

conclusions of law. The Court stated that, for Plaintiff's Complaint to have been legally sufficient, Plaintiff must have stated what Defendant allegedly *did* that would bring her actions within the parameters of a cause of action based on a theory of piercing the corporate veil. Id. at 895.

Plaintiff contends that the allegations contained in Paragraph 5 of his Amended Complaint are in no way analogous to the bald legal conclusions contained in the Lumax case, and that the Amended Complaint clearly sets forth what Defendants allegedly *did* that bring their actions within the parameters of a cause of action based on a theory of piercing Defendants' corporate veil. Decisions from other appellate courts in Pennsylvania support Plaintiff's contention. Specifically, in Village at Camelback v. Carr, 371 Pa.Super. 452, 538 A.2d 528, *aff'd*, \_\_\_\_ Pa. \_\_\_\_, 572 A.2d 1 (1990), the Pennsylvania Superior Court upheld the legal sufficiency of a Complaint which contained allegations that were strikingly similar to the allegations of the Plaintiff's Amended Complaint in this case. Specifically, the Plaintiff in Village at Camelback asserted the following facts:

- " (a) the corporations were insufficiently capitalized at the outset;*
- (b) there was an intermingling of funds between and among the corporations as well as with personal assets of Defendant Carr;*
- (c) other officers and directors, if any, of the corporations were not functioning;*
- (d) the corporations failed to observe corporate formalities;*
- (e) the corporations did not pay dividends in the regular and ordinary course of their business; and*
- (f) in conducting the business affairs of the corporations Defendant . . . consistently held himself out as individually conducting such affairs without use of the corporate names and without identifying that his actions were taken as an officer or employee of the corporation."*

The Superior Court, upon review of these allegations, held that the allegations, when read as a whole, sufficiently pled the ultimate facts necessary to pierce the corporate veil and assess liability against the owner of the corporation for the actions of the corporation. The court further held that Plaintiff pled the precise factors that have compelled numerous other courts to pierce the corporate veil. The Court stated:

“Although such generalized pleading is not favored in that it does not provide in detail the material facts supporting the pleaded ultimate facts, this is not a deficiency that warrants the extreme sanction of dismissal on a demurrer . . . We cannot say with certainty that this complaint is facially devoid of merit with regard to piercing the corporate veil and, therefore, cannot sustain [Defendant’s] demurrer on this ground.” Village at Camelback, 538 A.2d at 535.

Cited in the Village at Camelback decision was an earlier Pennsylvania Commonwealth Court decision, Com., Dept. of Environmental v. Peggs Run Coal, 55 Pa. Commw. 312, 423 A.2d 765 (1980). In the Peggs Run Coal case, the Court also refused to grant a demurrer to a Complaint where Plaintiff had alleged a failure to adhere to corporate formalities, substantial intertwining of personal and corporate affairs, undercapitalization, and the furthering of personal interests. Peggs Run Coal, 423 A.2d 768-69.

In Com. By Preate v. Events Intern., Inc., 137 Pa. Commw. 271, 585 A.2d 1146 (1991), the only allegation related to the individual Defendants’ liability was that “the [individual] Defendants controlled and dominated the [corporate] Defendants to such an extent that they acted as their alter egos or instrumentalities in perpetuating the acts complained of.” Again, the court held that the allegations of fraud and intermingling alone were sufficient to state a claim against the individual Defendants. Com. By Preate,

585 A.2d at 1149-50.

The Pennsylvania Supreme Court's recitation in Lumax of language from its earlier decision in Frey et al. v. Dougherty et al., 286 Pa. 45, 132 A. 717, 718 (1926), is particularly instructive in the instant action. Specifically, the Court in Lumax held:

“ While it is not necessary to set forth in a pleading *the evidences by which facts are to be proved*, it is essential that such facts as the pleader depends upon to show the liability sought to be enforced shall be averred . . .” Lumax, 669 A.2d at 895 (emphasis added).

This is *precisely* what the Defendants are asking this Court to require of Plaintiff in the instant action – namely, to set forth in the Amended Complaint the evidences by which Plaintiff intends to prove the fact that: 1) Otolaryngology Group of Central, Pennsylvania, Inc. has no regular corporate meetings nor kept corporate meeting minutes; 2) Otolaryngology Group of Central, Pennsylvania, Inc. has failed to abide by its by-laws, if enacted; 3) There has been and continues to be a substantial intermingling of the affairs of Dr. Kao and the Otolaryngology Group of Central, Pennsylvania, Inc.; and 4) Dr. Kao has used his control of the Otolaryngology Group of Central, Pennsylvania, Inc., and the assets of the Otolaryngology Group of Central, Pennsylvania, Inc. to further his personal interests.

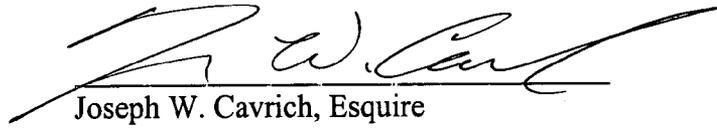
The evidences by which Plaintiff intends to prove his case against Defendants will necessarily need to be disclosed during discovery in this case. To the extent to which Defendants believe, at the close of discovery, that Plaintiffs have produced no evidence of record to support the piercing of Defendant's corporate veil, Defendants at that time can attempt to have Dr. Kao dismissed by way of summary judgment. To dismiss Dr. Kao at this stage of the proceedings is entirely premature.

**CONCLUSION**

Based upon the foregoing, Plaintiff respectfully requests that this Honorable Court deny Defendants' Preliminary Objections.

Respectfully submitted,

**URBAN & CAVRICH, P.C.**

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

Joseph W. Cavrich, Esquire  
Attorney for Plaintiff

508 Allegheny Street  
P.O. Box 503  
Hollidaysburg, PA 16648  
(814) 695-7898