

04-57-CD
BRIDGET NELEN, et al. vs. THE DUBOIS REGIONAL MEDICAL CENTER, et al.

Bridget Nelen et al vs. DuBois Region. Et al
2004-57-CD

Civil Other

Date		Judge
1/13/2004	X Filing: Writ of Summons Paid by: Eckert Seamans Receipt number: 1872094 Dated: 01/13/2004 Amount: \$85.00 (Cash) Writ of Summons issued to Sheriff	No Judge
2/2/2004	X Praeipie For Entry of Appearance, filed by Atty. Punttil, Jr. Please enter our appearance on behalf of defendant Henry G. Dela Torre, M.D.	No Judge
	X Praeipie for Rule to File Complaint, filed by Atty. Punttil, Jr. 1 cert. to Atty. with Rule to File Complaint.	No Judge
2/4/2004	X Praeipie For Appearance On Behalf Of DuBois Regional Medical Center. filed by, s/David R. Johnson, Esquire Certificate of Service no cc	No Judge
	X Praeipie For Rule For Complaint. filed by, s/David R. Johnson, Esq. Certificate of Service. 1 cc w/Rule to Atty	No Judge
2/9/2004	X Praeipie For Appearance On Behalf Of Phoung T. Wirths, D.O., Defendant. filed by, s/David R. Johnson, Esquire no cc	No Judge
2/13/2004	X Affidavit of Service of Rule for Complaint filed by Atty. Johnson, No cc.	No Judge
2/20/2004	X Complaint. filed by, s/W. Patric Boyer, Esq. Verification s/Bridget Nelen s/Donald Nelen Certificate of Service no cc	No Judge
	X Certificate of Merit as to Defendant, Henry G. Dela Torre, M.D. filed by, s/W. Patric Boyer, Esq. Certificate of Service	No Judge
	X Certificate of Merit as to Defendant, Phoung T. Wirths, D.O. filed by, s/W. Patric Boyer, Esq. Certificate of Service no cc	No Judge
	X Certificate of Merit as to The DuBois Regional Medical Center. filed by, s/W. Patric Boyer, Esq. Certificate of Service no cc	No Judge
	X Certificate of Merit as to Penn Township Rural Health Clinic. filed by, s/W. Patric Boyer, Esquire Certificate of Service no cc	No Judge
3/1/2004	X Preliminary Objections To Plaintiffs' Complaint. filed by, s/Ronald M. Punttil, Jr., Esquire Certificate of Service 2 cc Atty Punttil	No Judge
3/24/2004	X Amended Complaint. filed by, s/W. Patric Boyer, Esquire Verification s/W. Patric Boyer, Esquire Certificate of Service no cc	No Judge
3/25/2004	X ORDER, NOW, this 25th day of March, 2004, re: Attorney Punttil's Preliminary Objections, Rule issued upon the parties. Argument is scheduled the 26th day of April, 2004, at 10:30 a.m.; in Courtroom No. 1. by the Court, s/FJA, P.J. 4 cc Atty Punttil w/memo re: service of Rule	Fredric Joseph Ammerman
4/2/2004	✓ Preliminary Objections to Plaintiffs' Amended Complaint, filed by s/Ronald M. Punttil, Jr., Esq. Two CC Attorney Punttil	Fredric Joseph Ammerman
4/8/2004	X Preliminary Objections, Brief In Support and Order Of Court. filed by, s/Thomas B. Anderson, Esquire 1 cc to Atty	Fredric Joseph Ammerman
4/14/2004	X Sheriff Return: Now Jan. 19, 2004 Served Summons on DuBois Regional Medical Center, Henry G. Delatorre, M.D., Penn Township Rural Health Clinic, Phoung T. Wirts, D.O. Jan. 27, 2004 served summons on Dela Torre Medical Clinic at employment. Costs: \$125.00	Fredric Joseph Ammerman
4/16/2004	X Supplement to Amended Complaint, filed by s/W. Patric Boyer No CC	Fredric Joseph Ammerman
4/23/2004	X ORDER, NOW, this 23rd day of April, 2004, Rule issued upon the parties. Argument scheduled for the 26th day of April, 2004 at 10:30 a.m. in Courtroom No. 1. by the Court, s/FJA, P.J. 3 cc C/A all parties notified by phone	Fredric Joseph Ammerman

Civil Other

Date		Judge
4/26/2004	<input checked="" type="checkbox"/> ORDER, NOW, this 23rd day of April, 2004, re: Rule issued upon parties. Argument is scheduled for the 26th day of April, 2004 at 10:30 a.m., in Courtroom No. 1. by the Court, s/FJA, P.J. 3 cc to C/A, all parties notified by phone.	Fredric Joseph Ammerman
5/5/2004	<input checked="" type="checkbox"/> ORDER, AND NOW, this 5th day of May, 2004, re: Submission of Briefs and the Hearing of Oral Arguments on Plaintiffs Preliminary Objections. by the Court, s/FJA, P.J. 1 cc Atty Boyer, 2 cc Atty Anderson, 1 cc Atty, 1 cc Punttil	Fredric Joseph Ammerman
6/18/2004	<input checked="" type="checkbox"/> Answer and New Matter, filed by s/David R. Johnson, Esq. No CC	Fredric Joseph Ammerman
6/24/2004	<input checked="" type="checkbox"/> Answer and New Matter filed to Plaintiffs' Amended Complaint, on behalf of Henry G. Dela Torre, M.D., filed by Atty. . no Cert.	Fredric Joseph Ammerman
6/28/2004	<input checked="" type="checkbox"/> Answer and New Matter, filed by s/David R. Johnson, Esq. on behalf of Phoung T. Wirths, D.O. No CC	Fredric Joseph Ammerman
7/26/2004	<input checked="" type="checkbox"/> Reply to Dr. Wirths' New Matter. Filed by s/W. Patric Boyer. No cc.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Reply to DuBois Regional's New Matter. Filed by s/W. Patric Boyer. No cc.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Reply to Dr. Dela Torres' New Matter. Filed by s/W. Patric Boyer. No cc.	Fredric Joseph Ammerman
10/13/2004	<input checked="" type="checkbox"/> Notice of Service of Answers to Interrogatories Directed to Henry G. Dela Torre, M.D., on behalf of Henry G. Dela Torre, M.D., served upon W. Patric Boyer, Esquire by 1st class mail, Certificate of Service , David R. Johnson, Esquire and W. Patric Boyer. Filed by s/Ronald M. Punttil, Jr., Esquire. No CC	Fredric Joseph Ammerman
4/8/2005	<input checked="" type="checkbox"/> Notice of Service Of First Set of Interrogatories and First Request For Production of Documents Directed to Plaintiff, filed by s Ronald M. Punttil, Jr., Esquire. No CC	Fredric Joseph Ammerman
4/15/2005	<input checked="" type="checkbox"/> Plaintiff's Notice of Service of supplemental Interrogatories Directed to Henry G. Dela Torre, M.D., on the 12th of April, 2005, to Ronald M. Punttil, Jr., Esquire, and David R. Johnson, Esquire. Filed by s/ W. Patric Boyer, Esquire. No CC	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Plaintiff's Notice of Service of supplemental Interrogatories Directed to Phoung T. Wirths, D.O., on the 12th of April, 2005, to Ronald M. Punttil, Jr., Esquire, and David R. Johnson, Esquire. Filed by s/ W. Patric Boyer, Esquire. No CC	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Plaintiff's Notice of Service of supplemental Interrogatories Directed to The DuBois Regional Medical Center, on the 12th of April, 2005, to Ronald M. Punttil, Jr., Esquire, and David R. Johnson, Esquire. Filed by s/ W. Patric Boyer, Esquire. No CC	Fredric Joseph Ammerman
8/25/2005	<input checked="" type="checkbox"/> Request For Expert Reports Pursuant to PA. R.C.P. 1042.29 Directed to Phoung T. Wirths, D.O., filed by s/ W. Patric Boyer, Esquire. No CC	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Request For Expert Reports Pursuant to PA. R.C.P. 1042.29 Deredcted to Henry G. Dela Torre, M.D., filed by s/ W. Patric Boyer, Esquire. No CC	Fredric Joseph Ammerman
2/24/2006	<input checked="" type="checkbox"/> Plaintiffs' Motion to Compel Production of Expert Reports Pursuant to Pa.R.C.P. 1042.29, filed by s/Sam H. Jessee, Esquire. 2CC Atty. Jessee	Fredric Joseph Ammerman
2/28/2006	<input checked="" type="checkbox"/> Order of Court, NOW, this 27th day of Feb., 2006, Ordered that Def. Henry G. Delatorre, M.D. shall produce the expert reports requested by plaintiffs Pursuant to Pa. R.C.P. 1042.29 within Thirty days of the entry of this Order. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Jessee	Fredric Joseph Ammerman
3/16/2006	<input checked="" type="checkbox"/> Plaintiffs' Motion to Compel Production of Expert Reports Pursuant to Pa. R.C.P. 1042.29, filed by s/ Sam H. Jessee, Esquire. No CC	Fredric Joseph Ammerman

Civil Other

Date		Judge
3/16/2006	<input checked="" type="checkbox"/> Scheduling Order, NOW, this 13th day of March, 2006 Ordered that Plaintiff's Motion to Compel Production of Expert Report of Defendant Henry G. Delatorre, M.D. is scheduled for presentation and argument on the 17th day of April, 2006 at 10:00 a.m. in the Courtroom of the Honorable Fredric J. Ammerman. The Order of Feb. 27, 2006 is hereby vacated. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC Atty. Jessee	Fredric Joseph Ammerman
4/17/2006	<input checked="" type="checkbox"/> Order, NOW, this 17th day of April, 2006, it is Ordered that Def. Henry G. Delatorre, M.D. shall produce the expert reports requested by Plaintiffs pursuant to Pa.R.C.P. 1042.29 within 45 days of the entry of this Order. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty. Jessee For Service	Fredric Joseph Ammerman
4/27/2006	<input checked="" type="checkbox"/> Affidavit of Service filed. That a true and copy of the Order of Court dated April 17, 2006 was served upon David T. Johnson Esq., and Ronald M. Puntil Jr Esq., filed by s/ Philip J. Binotte Jr Esq. No CC.	Fredric Joseph Ammerman
12/1/2006	<input checked="" type="checkbox"/> Plaintiffs' Motion For Sanctions Against Defendant Henry G. Dela Torre, M.D. Pursuant to Pa.R.Civ.P. 1042.31(b). Filed by s/ Edward C. Flynn, Esquire. No CC	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Certificate of Readiness for Jury Trial, filed by s/ Edward C. Flynn, Esquire. 4CC Atty. Flynn	Fredric Joseph Ammerman
12/6/2006	<input checked="" type="checkbox"/> Scheduling Order, AND NOW, this 5th day of December 2006, it is HEREBY, ORDERED, ADJUDGED AND DECREED that plaintiff's Motion for Sanctions Against Defendant, Henry G. Delatorre M.D. pursuant to PA. R.Civ.P. 1042.31 (b) is scheduled for presentation and argument on the 2nd day of January 2007 at 10:00 a.m. in the courtroom of the Honorable Fredric J. Ammerman. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 6CC Atty Flynn.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Plaintiffs' Petition for Settlement Conference Pursuant to LR Rule 212.5, filed by s/Edward C. Flynn, Esq. No CC	Fredric Joseph Ammerman
12/8/2006	<input checked="" type="checkbox"/> Scheduling Order, filed 4 Cert. to Atty. Flynn Dec. 7, 2006, Scheduling Conference will take place on the 11th day of January, 2007.	Fredric Joseph Ammerman
12/26/2006	<input checked="" type="checkbox"/> Defendant's Response to Plaintiffs' Request For Production of Expert Reports, filed by s/ Ronald M. Puntil, Jr., Esquire. 1CC to Atty.	Fredric Joseph Ammerman
1/3/2007	<input checked="" type="checkbox"/> Plaintiffs' Praeipe to Withdrw Motion for Sanctions, filed by s/Livia F. Langton, Esq. No CC	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Defendant's Reply to Plaintiffs' Motion for Sanctions, filed by Atty. Puntil, Jr. 1 Cert. to Atty.	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Order AND NOW, this 2nd day January 2007, it is the ORDER of this Court that the Pre-Trial Conference in the above matter shall be held on the 24th day of January 2007 at 11:00 a.m. in Chambers. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: W. Boyer, E. Flynn, L. Langton, D. Johnson, R. Puntil and 1CC Penn Rwp. Rural Health Clinic @ RR 1 Box 45A, Route 879, Grampian, PA 16838	Fredric Joseph Ammerman

Civil Other

Date		Judge
1/26/2007	<input checked="" type="checkbox"/> Order, NOW, this 24th day of Jan., 2007, following Pre-Trial Conference, Ordered: Jury Selection will be Feb. 1, 2007 at 9:00 a.m. in Courtroom 1. Jury Trial is scheduled for April 16, 17, 18, 19 and 20 at 9:00 a.m. in Courtroom 1. (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Boyer, Flynn, Langton D. Johnson R. Puntl 1CC Penn. @ RR1 Box 45 A. Rte 379, Grampian, PA 16838	Fredric Joseph Ammerman
3/5/2007	<input checked="" type="checkbox"/> Motion In Limine to Preclude Proposed Expert Report And Testimony of Plaintiffs' Expert, Jack Shocker, M.D., filed by s/ Brad R. Korinski, Esquire. 3CC Atty.	Fredric Joseph Ammerman
3/6/2007	<input checked="" type="checkbox"/> Order, NOW, on this 6th day of March, 2007, it is Ordered that oral argument on defendant's Motion In Limine to preclude proposed expert of plaintiffs' expert, Jack Shocker, M.D., is scheduled for the 29th day of March, 2007, at 10:00 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Korinski	Fredric Joseph Ammerman
3/19/2007	<input checked="" type="checkbox"/> Order, filed AND NOW, this 19th day of March, 2007, ORDER of the Court that oral argument on all outstanding Petitions and Motions in Limine have been scheduled for March 29, 2007. The scheduling provisions of this Order shall supercede those set forth in the Courts Order of January 24 2007. Cert. to Atty's. Boyer, Flynn, Langton and D. Johnson.	Fredric Joseph Ammerman
3/28/2007	<input checked="" type="checkbox"/> Plaintiffs' Opposition to Defendants' Motion in Limine to Preclude Proposed Expert Report And Testimony of Plaintiffs' Expert, Jack Schocker, M.D. No CC	Fredric Joseph Ammerman
	<input checked="" type="checkbox"/> Order, NOW, this 28th day of March, 2007, Ordered that the oral argument on Defendant's Motion in Limine to Preclude Testimony is rescheduled from March 29, 2007 at 10:00 a.m. to March 30, 2007 at 8:30 a.m. in Courtroom 315 of the Allegheny County Courthouse before Judge John K. Reilly, Jr., Specially Presiding. This matter will be held in conjunction with the previously scheduled Settlement Conference. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. Judge Ammerman's Office faxed order to Atty. Puntl - Atty. will notify all interested parties 1CC Attys: Boyer, Flynn, Langton, Johnson, Puntl; Penn Twp. Rural Health Clinic - RR1, Box 45 A, Route 879, Grampian, PA 16838	Fredric Joseph Ammerman
4/4/2007	<input checked="" type="checkbox"/> Order, NOW, this 4th day of april, 2007, Ordered that argument on Motion for Continuance will be held on the 11th day of April, 2007 at 10:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1 Order faxed to Attys by Doris: E. Flynn R. Puntl D. Johnson 4/4/07 1CC Mailed to: Attys. Flynn, Puntl, D. Johnson Penn Twp. Rural Health Clinic RR 1, Box 45 A Route 879 Grampian, PA 16838	Fredric Joseph Ammerman
4/5/2007	<input checked="" type="checkbox"/> Plaintiffs' Opposition to Defendant's Motion For Continuance, filed by s/ Edward C. Flynn, Esquire. No CC	Fredric Joseph Ammerman

Date: 4/12/2007

Clearfield County Court of Common Pleas

User: LMILLER

Time: 09:07 AM

ROA Report

Page 5 of 5

Case: 2004-00057-CD

Current Judge: Fredric Joseph Ammerman

Civil Other

Date		Judge
4/11/2007	X Motion For Continuance, filed by s/ Ronald M. Puntil Jr Esq. 1CC Atty., X Order AND NOW, this 11th day of April 2007, following argument, as will X appear of record, relative Defendant Henry G. Dela Torre's Motion for Continuance of Jury Trial scheduled to commence on April 16, 2007, it is the ORDER of this Court that the Motion for Continuance be and is hereby denied. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. Cert copies to Attys: Flynn, Johnson and Puntil Jr. and Judge Reilly.	Fredric Joseph Ammerman Fredric Joseph Ammerman

4-16-07 Notice to Attend, Testify and Produce

No. 04-57-CD

BRIDGET NELEN, formerly Bridget
Wilson, and **DONALD NELEN**, her husband

W. PATRICK BOYER, ESQ.
Ecjert, Seamans, Cherin & Mellot,
LLC, 1001 Corporate Dr. Ste. 200
Canonsburg, PA 15317

vs.

DUBOIS REGIONAL MEDICAL CENTER;

DAVID R. JOHNSON, ESQ.
Thomson, Rhodes & Cowie, Two
Chatham Center, 10th Flr., PGH
15219-3499
R.R. #1, Box 45A, Rte. 879
Grampian, 16838

PENN TOWNSHIP RURAL HEALTH CLINIC;

DELA TORRE MEDICAL CLINIC;
HENRY G. DELA TORRE, M.D. and

RONALD M. PUNTIL, JR., ESQ.
Israel, Wood, Puntil & Grimm, P.C.
Ste. 501, Grant Bldg., PGH 15219

PHOUNG T. WIRTHS, D.O. as to both

DAVID R. JOHNSON, ESQ.
see above

individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA
TORRE MEDICAL CLINIC

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004- 57-co

Plaintiffs,

**PRAECIPE TO ISSUE WRIT OF
SUMMONS**

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

FILED

JAN 13 2004

013:2014
William A. Shaw
Prothonotary

NO CERT COPY
5 SUMMONS TO
SHAW

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

Plaintiff,

CIVIL DIVISION

NO. 2004-_____

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

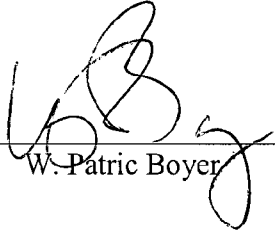
PRAECIPE TO ISSUE WRIT OF SUMMONS

DIRECTIONS TO THE PROTHONOTARY:

Please issues a Writ of Summons relative to the above-captioned matter.

ECKERT SEAMANS CHERIN & MELLOTT LLC

Date: 11/3/04

By: 
W. Patric Boyer

FILED

JAN 13 2004

William A. Shaw
Prothonotary

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

SUMMONS

**Bridget Nelen, formerly
Bridget Wilson and
Donald Nelen, her husband,
Plaintiffs**

Vs.

NO.: 2004-00057-CD

**DuBois Regional Medical Center
Penn Township Rural Health Clinic
Dela Torre Medical Clinic
Henry G. Dela Torre, M.D. and
Phoung T. Wirths, D.O. as to both
individually and t/d/b/a Penn Township Rural
Health Clinic, and/or Dela Torre Medical Clinic
Defendants**

**TO: DUBOIS REGIONAL MEDICAL CENTER
PENN TOWNSHIP RURAL HEALTH CLINIC
DELA TORRE MEDICAL CLINIC
HENRY G. DELA TORRE, M.D.
PHOUNG T. WIRTHS, D.O.**

To the above named Defendant(s) you are hereby notified that the above named Plaintiff(s) has/have commenced a Civil Action against you.

Date: 01/14/2004

William A. Shaw
Prothonotary

Issuing Attorney:
W. Patric Boyer
Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

CIVIL DIVISION:

No. 2004-00057-CD

Code: 007

Type of Pleading:

PRAECIPE FOR APPEARANCE

Filed on behalf of:

HENRY G. DELA TORRE, M.D.

Defendant

Counsel of Record for this Party

Ronald M. Puntil, Jr., Esquire
PA I.D. #42146

ISRAEL, WOOD, PUNTIL
& GRIMM, P.C.
Firm I.D. #788
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

(412) 391-1114

JURY TRIAL DEMANDED

FILED

FEB 02 2004
M/3:00 PM
William A. Shaw
Prothonotary/Clerk of Courts
1 CENT TO ATT

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

CIVIL DIVISION:

Plaintiffs,

No. 2004-00057-CD

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

PRAECIPE FOR APPEARANCE

TO: Prothonotary

Please enter our appearance on behalf of defendant **HENRY G. DELA TORRE,**
M.D., a Defendant in connection with the above-captioned matter.

ISRAEL, WOOD, PUNTIL & GRIMM, P.C.

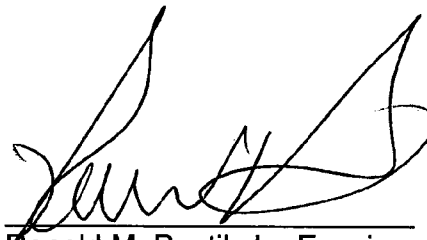
By: 

Ronald M. Puntil, Jr., Esquire
Attorneys for Defendant Henry G.
Dela Torre, M.D.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Praecipe for Appearance** was forwarded to the following counsel of record, via first class mail, postage prepaid on the 28th day of January, 2004:

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellot, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317
Counsel for Plaintiffs



Ronald M. Puntil, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

CIVIL DIVISION:

No. 2004-00057-CD

Code: 007

Type of Pleading:

**PRAECIPE FOR RULE TO FILE
COMPLAINT**

Filed on behalf of:

HENRY G. DELA TORRE, M.D.

Defendant

Counsel of Record for this Party

Ronald M. Puntl, Jr., Esquire
PA I.D. #42146

ISRAEL, WOOD, PUNTIL
& GRIMM, P.C.

Firm I.D. #788
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

JURY TRIAL DEMANDED

(412) 391-1114

FILED

FEB 02 2004

m/3:00/

William A. Shaw

Prothonotary/Clerk of Courts

*1 cert w/ Rule to
ATTY*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

CIVIL DIVISION:

Plaintiffs,

No. 2004-00057-CD

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

PRAECIPE FOR RULE TO FILE COMPLAINT

TO: Prothonotary

Please issue a Rule upon Plaintiffs to file a Complaint in the above matter within
the next twenty (20) days, otherwise judgment of non pros to be entered.

ISRAEL, WOOD PUNTIL & GRIMM, P.C.

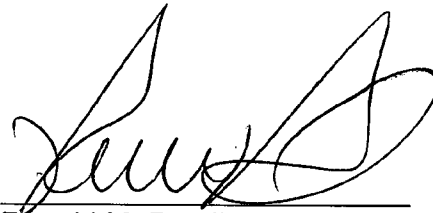
By: 

Ronald M. Punttil, Jr., Esquire
Attorneys for Defendant Henry G.
Dela Torre, M.D.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Praecipe for Rule to File Complaint** was forwarded to the following counsel of record, via first class mail, postage prepaid on the 28th day of January, 2004:

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellot, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317
Counsel for Plaintiffs

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

Ronald M. Puntil, Jr., Esquire

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

Bridget Nelen
Donald Nelen

Vs.

Case No. 2004-00057-CD

DuBois Regional Medical Center
Penn Township Rural Health Clinic
Dela Torre Medical Clinic
Henry G. Dela Torre, M.D.
Phoung T. Wirths, D.O., as to both individually
and t/d/b/a Penn Township Rural Health
Clinic and/or Dela Torre Medical Clinic

RULE TO FILE COMPLAINT

TO: Bridget Nelen, formerly Bridget Wilson, and Donald Nelen, her husband:

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: February 2, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No. 2004-00057-CD

PRAECIPE FOR APPEARANCE

Code:

Filed on behalf of DuBois Regional Medical
Center, one of the defendants

Counsel of Record for this Party:

David R. Johnson, Esquire
PA I.D. #26409

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

(412) 232-3400

FILED

FEB 04 2004

William A. Shaw
Prothonotary

PRAECIPE FOR APPEARANCE

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter our appearance on behalf of DuBois Regional Medical Center, one of the defendants.

JURY TRIAL DEMANDED.

THOMSON, RHODES & COWIE, P.C.

By David R. Johnson / TGR
David R. Johnson, Esquire
Attorneys for DuBois Regional Medical
Center, one of the defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PRAECIPE FOR APPEARANCE has been served upon the following counsel of record on this 2nd day of February, 2004, by the United States Postal Service, first class mail, postage prepaid:

W. Patric Boyer, Esquire
Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317

James A. Wood, Esquire
Israel, Wood, Puntl & Grimm, P.C.
Grant Building, Suite 501
310 Grant Street
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

By David R. Johnson /TBA
David R. Johnson, Esquire
Attorneys for DuBois Regional Medical
Center, one of the defendants

FILED

W 1:50 PM NDC

FEB 04 2004

KEY

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No. 2004-00057-CD

PRAECIPE FOR RULE FOR COMPLAINT

Code:

Filed on behalf of DuBois Regional Medical
Center, one of the defendants

Counsel of Record for this Party:

David R. Johnson, Esquire
PA I.D. #26409

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

(412) 232-3400

FILED

FEB 04 2004

William A. Shaw
Prothonotary

PRAECIPE FOR RULE FOR COMPLAINT

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly issue a rule on plaintiffs to file their Complaint within twenty days.

THOMSON, RHODES & COWIE, P.C.

By David R. Johnson/TBC
David R. Johnson, Esquire
Attorneys for DuBois Regional Medical
Center, one of the defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PRAECIPE FOR RULE FOR COMPLAINT has been served upon the following counsel of record on this 2nd day of February, 2004, by the United States Postal Service, first class mail, postage prepaid:

W. Patric Boyer, Esquire
Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317

James A. Wood, Esquire
Israel, Wood, Puntil & Grimm, P.C.
Grant Building, Suite 501
310 Grant Street
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

By David R. Johnson / TBA
David R. Johnson, Esquire
Attorneys for DuBois Regional Medical
Center, one of the defendants

FILED

1/15/04 1:50 PM

FEB 04 2004

[Signature]

William A. Shaw / *cc w/Hand to [Signature]*
Prothonotary

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

Bridget Nelen
Donald Nelen

Vs.
DuBois Regional Medical Center
Penn Township Rural Health Clinic
Dela Torre Medical Clinic
Henry G. Dela Torre, M.D.
Phoung T. Wirths, D.O.

Case No. 2004-00057-CD

RULE TO FILE COMPLAINT

TO: Bridget Nelen, formerly Bridget Wilson and Donald Nelen, her husband

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.

William A. Shaw, Prothonotary

Dated: February 04, 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No. 2004-00057-CD

PRAECIPE FOR APPEARANCE

Code:

Filed on behalf of Phoung T. Wirths, D.O., one
of the defendants

Counsel of Record for this Party:

David R. Johnson, Esquire
PA I.D. #26409

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

(412) 232-3400

FILED

FEB 09 2004

William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE FOR APPEARANCE

TO: WILLIAM A. SHAW, PROTHONOTARY

Kindly enter our appearance on behalf of Phoung T. Wirths, D.O., one of the defendants.

JURY TRIAL DEMANDED.

THOMSON, RHODES & COWIE, P.C.

By David R. Johnson / TBW
David R. Johnson, Esquire
Attorneys for Phount T. Wirths, D.O.,
one of the defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PRAECIPE FOR APPEARANCE has been served upon the following counsel of record on this 5th day of February, 2004, by the United States Postal Service, first class mail, postage prepaid:

W. Patric Boyer, Esquire
Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317

James A. Wood, Esquire
Israel, Wood, Puntil & Grimm, P.C.
Grant Building, Suite 501
310 Grant Street
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.

By David R. Johnson/TBC
David R. Johnson, Esquire
Attorneys for Phoung T. Wirths, D.O.,
one of the defendants.

FILED
M/1:36 PM
FEB 09 2004
No
cc
G
K

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No. 2004-00057-CD

AFFIDAVIT OF SERVICE OF RULE FOR
COMPLAINT

Code:

Filed on behalf of DuBois Regional Medical
Center and Phoung T. Wirths, D.O., two of the
defendants

Counsel of Record for These Parties:

David R. Johnson, Esquire
PA I.D. #26409

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

(412) 232-3400

FILED


FEB 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

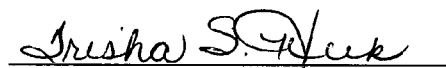
Before me, the undersigned authority, personally appeared David R. Johnson, Esquire, who, being duly sworn, deposes and says that a true and correct copy of the Rule to File a Complaint in the above-captioned case was served upon plaintiff's counsel, W. Patric Boyer, Esquire, Eckert, Seamans, Cherin & Mellott, LLC, 1001 Corporate Drive, Suite 200, Canonsburg, PA 15317, by certified mail, return receipt requested, and that the same was received on his behalf on 2/6/04 as shown by the return receipt attached hereto.

Respectfully submitted,

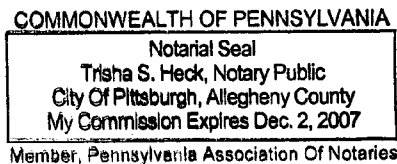


David R. Johnson, Esquire

Sworn to and subscribed before me
this 11th day of February, 2004.



Notary Public



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

Bridget Nelen
Donald Nelen

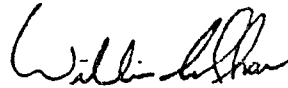
Vs.
DuBois Regional Medical Center
Penn Township Rural Health Clinic
Dela Torre Medical Clinic
Henry G. Dela Torre, M.D.
Phoung T. Wirths, D.O.

Case No. 2004-00057-CD

RULE TO FILE COMPLAINT

TO: Bridget Nelen, formerly Bridget Wilson and Donald Nelen, her husband

YOU ARE HEREBY RULED to file a Complaint in the above-captioned matter within twenty (20) days from service hereof, or a judgment of non pros may be entered against you.



William A. Shaw, Prothonotary

Dated: February 04, 2004

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

W. Patric Boyer, Esq.
Eckert Seamans
1001 Corporate Drive
Suite 200
Canonsburg, PA 15317

2. Article Number

(Transfer from service label)

COMPLETE THIS SECTION ON DELIVERY

A. Signature

x *Carly Foye*

☐ Agent☐ Addressee

B. Received by (Printed Name)

Carly Foye

C. Date of Delivery

2/6/04

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7002 3150 0000 8705 5773

CERTIFICATION OF SERVICE

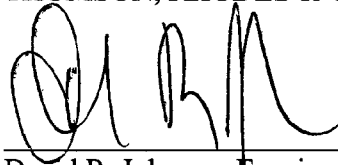
I hereby certify that a true and correct copy of the within AFFIDAVIT OF SERVICE OF RULE FOR COMPLAINT has been served upon the following counsel of record and same placed in the U.S. mails on this 14th day of Feb., 2004:

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellott, LLC
1001 Corporate Drive
Suite 200
Canonsburg, PA 15317

Ronald M. Punttil, Esquire
Israel, Wood, Punttil & Grimm, P.C.
501 Grant Building
Pittsburgh, PA 15219

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

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

David R. Johnson, Esquire
Attorneys for DuBois Regional Medical
Center and Phoung T. Wirths, D.O., two of
the defendants.

FILED
MAY 15 2004
FEB 13 2004
WILLIAM A. SHAW
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

COMPLAINT
(Professional Liability - Health Care)

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Defendants.

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

FILED

JURY TRIAL DEMANDED

FEB 20 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

TO THE DEFENDANTS:

NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.

IF YOU DO NOT HAVE A LAWYER, CONTACT:

Office of Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
814/ 765-2641 (Ext. 5982)

ECKERT SEAMANS, CHERIN & MELLOTT

By: 

W. Patrick Boyer

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

COMPLAINT

AND NOW, this 20 day of February, 2004, comes the
Plaintiffs, by their attorneys, Eckert Seamans Cherin & Mellott and files this, their Complaint,
and in support thereof allege as follows:

1. The Plaintiff, Bridget Nelen, formerly Bridget Wilson, is an adult individual who
has, as her local address, 4008 Splash Dam Road, Grampian, Clearfield County, Pennsylvania
16838.

2. The Plaintiff, Donald Nelen, husband of Bridget Nelen, is an adult individual who has, as his local address, 4008 Splash Dam Road, Grampian, Clearfield County, Pennsylvania 16838.

3. The Defendant, DuBois Regional Medical Center (hereinafter referred to as "DRMC"), is a licensed professional (Pa. R.C.P. 1042.1) and a Pennsylvania non-profit corporation that provides medical services with offices in Clearfield County at 100 Hospital Avenue, DuBois, Pennsylvania 15801. The Plaintiffs are asserting a professional liability claim against this Defendant.

4. The Defendant, The Penn Township Rural Health Clinic (hereinafter referred to as "Penn Clinic"), is a licensed professional (Pa. R.C.P. 1042.1) and a medical facility operated, owned and controlled by the DRMC with offices in Clearfield County at RR #1, Box 45A, Route 879, Grampian, Pennsylvania 16838. The Plaintiffs are asserting a professional liability claim against this Defendant.

5. The Defendant, Henry G. Dela Torre, M.D. (hereinafter referred to as "Dr. Dela Torre"), is a licensed professional (Pa. R.C.P. 1042.1) and an adult individual with offices in Clearfield County at RR #1, Box 45A, Route 879, Grampian, Clearfield County, Pennsylvania 16838. The Plaintiffs are asserting a professional liability claim against this Defendant.

6. The Defendant, Phoung T. Wirths (hereinafter referred to as "Dr. Wirths"), is a licensed professional (Pa. R.C.P. 1042.1) and an adult individual with offices in Clearfield County at RR #1, Box 45A, Route 879, Grampian, Pennsylvania 16838. The Plaintiffs are asserting a professional liability claim against this Defendant.

7. At all times material hereto, Dr. Dela Torre and Dr. Wirths, both licensed in the Commonwealth of Pennsylvania as medical practitioners, were acting both individually and as

agents, servants and/or employees of the DRMC and/or the Penn Clinic and within the scope of such employment.

8. On August 18 and September 1, 2000, Bridget Nelen, then Bridget Wilson, a twenty-five (25) year smoker, presented herself to Dr. Wirths at the Penn Clinic in Grampian complaining of a variety of symptoms to include tremors, coughing, urinary frequency and fatigue.

9. On September 1, 2000, Dr. Wirths offered an assessment of "Parkinson's disease versus a benign tumor".

10. Bridget was next seen by Dr. Wirths on November 1, 2000 complaining of neck and back pain, stomach discomfort and vomiting. Due to the stomach discomfort, abdominal and chest x-rays were ordered and taken by the Clearfield Hospital Imaging Department.

11. The x-ray films (chest view) resulted in a report offering the following assessment and impression:

"There is a density projected over the right middle lobe which is abutting the fissure on the lateral view. This may represent a so-called round pneumonia, however, other pathology including pulmonary mass should be considered. Follow-up studies are recommend. Very probable round pneumonia in the right middle lobe. Follow-up studies are recommended after medical treatment. C.T. study of the chest maybe useful at a later date." (Emphasis supplied.)

12. On November 14, 2000, Bridget was seen in "follow-up" at the Penn Clinic by Dr. Dela Torre with regard to her stomach symptomology and to review her x-ray studies. In furtherance of his evaluation, Dr. Dela Torre reviewed Bridget's history.

13. However, in spite of Bridget's history as a smoker and the recommendations on the above stated x-ray report, no aggressive treatment or further consultation was actively pursued.

14. Bridget continued to see Dr. Dela Torre and Dr. Wirths on various occasions and for various conditions from December 14, 2000 until May 1, 2002.

15. On various occasions during this timeframe, Bridget presented with tremors, headaches, coughing, constipation, respiratory problems, indigestion and heart burn, emotional problems and fatigue.

16. At no time during any of these visits, was the x-ray report showing a “density” or “pulmonary mass” discussed with Bridget nor was any follow-up action taken with regards to same.

17. In fact, Dr. Dela Torre’s “assessments” during this period included only migraines, depression, viral syndrome, hormonal imbalance, personality disorder, constipation, respiratory problems, tremors, fever and a urinary tract infection.

18. In early November 2002, Bridget, still complaining of the symptomology indicated above, returned to the Clearfield Hospital for a second set of chest and abdominal x-ray. The resulting x-ray report revealed that the aforestated density or pulmonary mass was now a “large mass” in the right middle lobe.

19. In response to this finding, Bridget was referred to Jack Schocker, M.D., of the Altoona Hospital, to review the x-ray report and to evaluate her current condition.

20. Dr. Schocker first saw Bridget on November 11, 2002 and at that time offered a diagnosis of “squamous cell carcinoma” of the lung and immediately discussed same with Bridget.

21. As a result of this diagnosis and prior to the surgical removal of the mass, Bridget was subjected to an intensive course of radiation therapy to reduce the tumor’s size.

22. On January 23, 2003, a total right pneumonectomy (removal of the lung) was performed. After the surgery, Bridget followed a normal course toward recovery.
23. In June of 2003, after complaining of “blurred vision”, a CT scan of the brain was performed which showed a “mass lesion in the left frontal lobe”.
24. In July 2003, Bridget underwent a craniotomy with a decompression of the tumor mass.
25. The observations during surgery and testing relative thereto, resulted in a report confirming a metastasis of the lung cancer to the brain.
26. Bridget then underwent radiation therapy which ended on September 10, 2003. Since that date, the Plaintiff-Wife has continued treatment with regard to the various issues with her condition listed as “stable.”
27. Presently, Bridget has a ten percent (10%) chance of survival.
28. Had treatment began in November 2000 or soon thereafter, Bridget would have had an eighty percent (80%) chance of survival.
29. At all times material hereto, the DRMC and the Penn Clinic held themselves out to the public as being staffed with competent and qualified health care professionals who are knowledgeable in the current and accepted standards of care with regard to the offering of medical services.
30. At all times material hereto, the Defendants, jointly and individually, owed a duty to the Plaintiffs to provide medical and supervisory services in a reasonable and appropriate manner consistent with that standard of care required of all similarly situated “licensed practitioners” and consistent with the needs of the patient.

COUNT I
PLAINTIFFS VS. DR. DELA TORRE
NEGLIGENCE

31. The allegations in Paragraphs 1 through 30 above, are incorporated herein by reference.

32. The Plaintiffs contend that the damages and/ or injuries, as hereinafter stated, suffered by the Plaintiffs are the direct and proximate result of the negligent, careless and/ or reckless conduct of the Defendant, Dr. Dela Torre, in the following particulars:

- 32.1. In failing to properly manage the medical care and/ or treatment of the Plaintiff-Wife;
- 32.2. In failing to properly review the existing medical records and/ or reports in his care and treatment of the Plaintiff-Wife;
- 32.3. In failing to properly diagnosis her condition, relative to the finding of “pulmonary mass” and “density”, during the period of November 14, 2000 to May 1, 2002;
- 32.4. In failing to recognize the true medical significance of the “pulmonary mass” and “density” references;
- 32.5. In failing to make the appropriate and timely medical referrals of the Plaintiff-Wife with regard to the existence of a “pulmonary mass” and “density”;
- 32.6. In failing to follow through with testing recommendations relative to the “pulmonary mass” and “density”;
- 32.7. In failing to take into consideration the patient’s smoking history with regard to her care, treatment and referrals;

- 32.8. In failing to properly and timely assess, diagnosis and monitor the Plaintiff-Wife's medical condition during the aforesated timeframe;
- 32.9. In failing to know and/ or utilize accepted and proper standards of medical care and/ or treatment in his handling of the Plaintiff-Wife's medical condition;
- 32.10. In failing to order the necessary and required "follow-up" care and/ or treatment consistent with the November 1 x-ray study and its findings;
- 32.11. In failing to exercise reasonable judgment with regard to the care and treatment of the Plaintiff-Wife consistent with the circumstances then and there presented; and
- 32.12. In failing to reach the appropriate diagnosis i.e., cancer, with regards to the circumstances then and there existing.

33. For those reasons stated above, the Plaintiffs contend that Dr. Dela Torre's care and/ or treatment of the Plaintiff-Wife fell below that accepted standard of care required of all similarly situated medical practitioners in the area.

34. As a direct and proximate result of the aforesated negligent, careless and/ or reckless conduct of Dr. Dela Torre, the Plaintiffs have suffered and will continue to suffer the damages and/ or injuries as hereinafter set forth.

35. For those reasons stated above, the Plaintiffs contend that Dr. Dela Torre's conduct is the sole cause and/ or a substantial factor in bringing about the damages and/ or injuries sustained or has increased the likelihood of such harm.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendant, Dr. Dela Torre, in an amount in excess of the local arbitration limits.

COUNT II
PLAINTIFFS VS. DR. WIRTHS
NEGLIGENCE

36. The allegations in Paragraphs 1 through 35 above, are incorporated herein by reference.

37. The Plaintiffs contend that the damages and/ or injuries, as hereinafter stated, suffered by the Plaintiffs are the direct and proximate result of the negligent, careless and/ or reckless conduct of the Defendant, Dr. Wirths, in the following particulars:

- 37.1. In failing to properly manage the medical care and/ or treatment of the Plaintiff-Wife;
- 37.2. In failing to properly review the existing medical records and/ or reports in his care and treatment of the Plaintiff-Wife;
- 37.3. In failing to properly diagnosis her condition, relative to the finding of the “pulmonary mass” and “density”, during the period of November 14, 2000 to May 1, 2002;
- 37.4. In failing to recognize the true medical significance of the “pulmonary mass” and “density” references;
- 37.5. In failing to make the appropriate and timely medical referrals of the Plaintiff-Wife with regard to the existence of a “pulmonary mass” and “density”;
- 37.6. In failing to follow through with testing recommendations relative to the “pulmonary mass” and “density”;
- 37.7. In failing to take into consideration the patient’s smoking history with regard to her care, treatment and referrals;

- 37.8. In failing to properly and timely assess, diagnosis and monitor the Plaintiff-Wife's medical condition during the aforesated timeframe;
- 37.9. In failing to know and/ or utilize accepted and proper standards of medical care and/ or treatment in his handling of the Plaintiff-Wife's medical condition;
- 37.10. In failing to order the necessary and required "follow-up" care and/ or treatment consistent with the November 1 x-ray study and its findings;
- 37.11. In failing to exercise reasonable judgment with regard to the care and treatment of the Plaintiff-Wife consistent with the circumstances then and there presented; and
- 37.12. In failing to reach the appropriate diagnosis i.e., cancer, with regards to the circumstances then and there existing.

38. For those reasons stated above, the Plaintiffs contend that Dr. Wirths' care and/ or treatment of the Plaintiff-Wife fell below that accepted standard of care required of all similarly situated medical practitioners in the area.

39. As a direct and proximate result of the aforesated negligent, careless and/ or reckless conduct of Dr. Wirths, the Plaintiffs have suffered and will continue to suffer the damages and/ or injuries as hereinafter set forth.

40. For those reasons stated above, the Plaintiffs contend that Dr. Wirths' conduct is the sole cause and/ or a substantial factor in bringing about the damages and/ or injuries sustained or has increased the likelihood of such harm.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendant, Dr. Wirths, in an amount in excess of the local arbitration limits.

COUNT III
PLAINTIFFS VS. DRMC
NEGLIGENCE

41. The allegations in Paragraphs 1 through 40 above, are incorporated herein by reference.

42. At all times material hereto, the DRMC, by and through its agents, servants and/ or employees, knew or upon inquiry, should have known of the acts and/ or omissions of Dr. Dela Torre and Dr. Wirths and stated in Paragraphs 32 and 37 above.

43. As a result of the aforestated agency relationship as between the individual Defendants and the DRMC, the DRMC is vicariously liable for the damages and/ or injuries sustained by the Plaintiffs.

44. Additionally, the Plaintiffs contend that the damages and/ or injuries, as hereinafter stated, suffered by the Plaintiffs are the direct and proximate result of the negligent, careless and/ or reckless conduct of the DRMC, in the following particulars:

- 44.1. In failing to provide properly trained staff and physicians to render the appropriate and necessary medical care that the Plaintiff-Wife demanded;
- 44.2. In failing to oversee, supervise and/ or monitor the individual Defendants with regard to the care and treatment offered its patients;
- 44.3. In failing to establish and implement policies and procedures to ensure that its physicians, to include Dr. Wirths and Dr. Dela Torre, properly and adequately provided care and treatment to its patients;
- 44.4. In failing to train and/ or supervise its physicians, to include Dr. Wirths and Dr. Dela Torre, so as to avoid those events and/ or omissions referenced to in Paragraphs 32 and 37 above;

- 44.5. In failing to ensure their physicians, to include Dr. Wirths and Dr. Dela Torre, received the appropriate and proper medical training and experience necessary to provide its patients with the appropriate standard of care;
- 44.6. In failing to properly train its physicians, to include Dr. Wirths and Dr. Dela Torre, in the proper diagnosis and treatment of cancers and potential cancers; and
- 44.7 In failing to remove Dr. Dela Torre and Dr. Wirths from providing care and/ or treatment to the Plaintiff-Wife.

45. As a direct and proximate result of the aforesated negligent, careless and/ or reckless conduct of the DRMC, the Plaintiffs have suffered and will continue to suffer the damages and/ or injuries as hereinafter set forth.

46. For those reasons stated above, the Plaintiffs contend that the DRMC's conduct is the sole cause and/ or a substantial factor in bringing about the damages and/ or injuries sustained or has increased the likelihood of such harm.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendant, DRMC, in an amount in excess of the local arbitration limits.

COUNT IV
PLAINTIFFS VS. PENN CLINIC
NEGLIGENCE

47. The allegations in Paragraphs 1 through 46 above, are incorporated herein by reference.

48. At all times material hereto, the Penn Clinic, by and through its agents, servants and/ or employees, knew or upon inquiry, should have known of the acts and/ or omissions of Dr. Dela Torre and Dr. Wirths and stated in Paragraphs 32 and 37 above.

49. As a result of the aforestated agency relationship as between the individual Defendants and the Penn Clinic, the Penn Clinic is vicariously liable for any damages or injuries sustained by the Plaintiffs.

50. Additionally, the Plaintiffs contend that the damages and/ or injuries sustained by the Plaintiffs, as hereinafter set forth, are the direct and proximate result of the negligent, careless and/ or reckless conduct of the Penn Clinic, in the following particulars:

- 50.1. In failing to provide properly trained staff and physicians to render the appropriate and necessary medical care that the Plaintiff-Wife demanded;
- 50.2. In failing to oversee, supervise and/ or monitor the individual Defendants with regard to the care and treatment offered its patients;
- 50.3. In failing to establish and implement policies and procedures to ensure that its physicians, to include Dr. Wirths and Dr. Dela Torre, properly and adequately provided care and treatment to its patients;
- 50.4. In failing to train and/ or supervise its physicians, to include Dr. Wirths and Dr. Dela Torre, so as to avoid those events and/ or omissions referenced to in Paragraphs 32 and 37 above;
- 50.5. In failing to ensure their physicians, to include Dr. Wirths and Dr. Dela Torre, received the appropriate and proper medical training and experience necessary to provide its patients with the appropriate standard of care;
- 50.6. In failing to properly train its physicians, to include Dr. Wirths and Dr. Dela Torre, in the proper diagnosis and treatment of cancers and potential cancers; and

50.7 In failing to remove Dr. Dela Torre and Dr. Wirths from providing care and/ or treatment to the Plaintiff-Wife.

51. As a direct and proximate result of the aforestated negligent, careless and/ or reckless conduct of the Penn Clinic, the Plaintiffs have suffered and will continue to suffer the damages and/ or injuries as hereinafter set forth.

52. For those reasons stated above, the Plaintiffs contend that the Penn Clinic's conduct is the sole cause and/ or a substantial factor in bringing about the damages and/ or injuries sustained or has increased the likelihood of such harm.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendant, Penn Clinic, in an amount in excess of the local arbitration limits.

COUNT V
PLAINTIFFS VS. ALL DEFENDANTS
NEGLIGENCE
JOINT LIABILITY

53. The allegations in Paragraphs 1 through 52 above, are incorporated herein by reference.

54. For those reasons stated above, the Plaintiffs contend the above named Defendants are jointly liable in causing or contributing to the injuries sustained by the Plaintiffs.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendants, either jointly or individually, in an amount in excess of the local arbitration limits.

COUNT VI
PLAINTIFFS VS. DR. DELA TORRE AND DR. WIRTHS
BREACH OF CONTRACT

55. The allegations in Paragraphs 1 through 54 above, are incorporated herein by reference.

56. At all times material hereto, Dr. Dela Torre and Dr. Wirths, jointly or individually, agreed to offer medical care and treatment to the Plaintiff-Wife consistent with the accepted medical standards of care within the area and consistent with the needs of the patient.

57. The Plaintiffs contend that the individual Defendants, jointly or individually, breached this agreement in the following particulars:

- 57.1. In failing to properly and appropriately manage the medical care and/ or treatment of the Plaintiff-Wife;
- 57.2. In failing to properly review the existing and required medical records and/ or reports in their care and/ or treatment of the Plaintiff-Wife;
- 57.3. In failing to properly diagnosis her conditions, related to the “pulmonary mass” and “density”, during the period of November 14, 2000 to May 1, 2002;
- 57.4. In failing to recognize the true medical significance of the “pulmonary mass” and “density”;
- 57.5. In failing to make the appropriate and timely referrals with regard to the existence of the “pulmonary mass” and “density”;
- 57.6. In failing to follow through with testing recommendations relative to the “pulmonary mass” and “density”.
- 55.7. In failing to take into consideration the patient’s smoking history with regards to her care, and treatment;
- 57.8 In failing to properly and timely assess, diagnosis and monitor the Plaintiff-Wife’s condition during the aforestated timeframe;

57.9. In failing to know and/ or utilize accepted and proper principles of medical care and/ or treatment in their handling of the Plaintiff-Wife's medical condition;

57.10. In failing to order the necessary and required follow-up care and/ or treatment consistent with the November 1 x-ray study;

57.11. In failing to exercise reasonable judgment with regard to the care and treatment of the Plaintiff-Wife consistent with the circumstances then and there presented.

57.12. In failing to reach the appropriate diagnosis with regards to the circumstances then and there existing.

58. As a result of Dr. Dela Torre's and Dr. Wirth's breach of the aforestated agreement, the Plaintiffs have suffered and will in the future continue to suffer the damages and/ or injuries as hereinafter stated.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendants, either jointly or individually, in an amount in excess of the local arbitration limits

COUNT VII
PLAINTIFF-WIFE V. DEFENDANTS
DAMAGES

59. The allegations in Paragraphs 1 through 58 above, are incorporated herein by reference.

60. As a result of the aforestated conduct of the Defendants, either in tort or contract, the Plaintiff-Wife has suffered the following damages and/ or injuries:

- 60.1. Radiation and chemical therapy to reduce the tumor mass when a timely diagnosis would have required less aggressive management;
- 60.2 The removal of her entire right lung when a timely diagnosis would have required a less invasive procedure;
- 60.3. A metastasis of the lung cancer to the brain requiring surgical intervention;
- 60.4 Post-surgical radiation therapy;
- 60.5 Various and assorted side effects with regard to chemical and radiation treatments;
- 60.6. A reduced chance of survivability, i.e., "loss of chance";
- 60.7 A decreased life expectancy; and
- 60.8 A reduced immune system causing a susceptibility to disease.

61. Additionally, the Plaintiff-Wife has been forced to spend and will in the future spend large sums of money with regard to her care and treatment that would not have been necessary had an appropriate and timely diagnosis been made in November of 2000 or soon thereafter.

62. As a further result of the aforestated conduct of the Defendants, either individually or jointly, the Plaintiff-Wife has suffered and will in the future suffer the following additional damages:

- 62.1. The past, present and future loss of work and the right to have gainful employment;
- 62.2. Surgical scarring;
- 62.3. The loss of the pleasures of everyday life;

- 62.4. The loss of health and vitality;
- 62.5. Cosmetic losses to include the loss of hair and skin coloration;
- 62.6. Pain and suffering as a result of radiation and chemical therapy;
- 62.7. Pain and suffering as a result of the surgical interventions;
- 62.8. Embarrassment and humiliation;
- 62.9. Recuperative time due to chemical and radiation treatments and surgical interventions; and
- 62.10. Mental and emotional strain caused by the late diagnosis and resulting treatments.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendants, either jointly or individually, in an amount in excess of the local arbitration limits

COUNT VIII
PLAINTIFF-HUSBAND VS. DEFENDANTS
DAMAGES – CONSORTIUM

63. The allegations in Paragraphs 1 through 62 above, are incorporated herein by reference.

64. As a result of the aforesated conduct of the Defendants, either jointly or individually, the Plaintiff-Husband has suffered the following damages.

- 64.1 The loss of the aid, comfort and society of his Wife;
- 64.2 The loss of future aid, comfort and society due to Wife's decreased life expectancy; and
- 64.3. The loss of his Wife's services.


65. Additionally, the Plaintiff-Husband has been forced to spend and will in the future spend large sums of money with regard to his Wife's care and treatment that would not have

been necessary had an appropriate and timely diagnosis been made in November of 2000 or soon thereafter.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendants, either jointly or individually, in an amount in excess of the local arbitration limits.

ECKERT SEAMANS CHERIN & MELLOTT

JURY TRIAL DEMANDED


W. Patric Boyer

VERIFICATION

I, BRIDGET NELEN, state that I am familiar with the facts set forth in the foregoing Complaint and that said facts are true and correct to the best of my knowledge, information and/or belief.

I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, which relates to unsworn falsification to authorities.

Bridget Nelen

VERIFICATION

I, DONALD NELEN, state that I am familiar with the facts set forth in the foregoing Complaint and that said facts are true and correct to the best of my knowledge, information and/or belief.

I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, which relates to unsworn falsification to authorities.

Donald Nelen

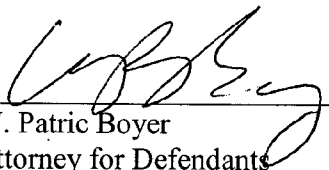
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Complaint was served on the following via United States first class mail, postage prepaid, this 19th day of February, 2004:

Ronald M. Puntl, Jr., Esquire
Israel, Wood, Puntl & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomason, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Penn Township Regional Health Clinic
RR #1, Box 45A
Route 879
Grampian, PA 16838



W. Patric Boyer
Attorney for Defendants

FILED

IN 10:56 AM DEC

FEB 20 2004

[Signature]

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

**CERTIFICATE OF MERIT
PURSUANT TO PA. R.C.P. NO. 1042.3**

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Defendants.

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

FILED

FEB 20 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

CERTIFICATE OF MERIT
PURSUANT TO PA. R.C.P. 1042.3

Certificate of Merit as to the Defendant, Henry G. Dela Torre, M.D.

I, W. Patric Boyer, of the firm of Eckert Seamans Cherin & Mellott, LLC, Counsel of

Record for the Plaintiffs, do hereby certify that:

- ☒ an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the Plaintiffs' harm;

OR

- ☐ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this Defendant is responsible deviated from an acceptable professional standard and an appropriate licensed profession has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge

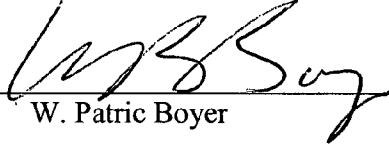
exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the Plaintiffs' harm;

OR

- ☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this Defendant.

ECKERT SEAMANS CHERIN & MELLOTT

Dated: 2-20-04

By: 
W. Patric Boyer

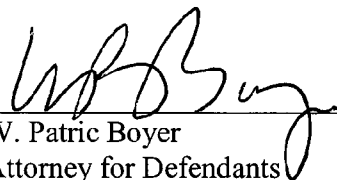
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Certificate of Merit Pursuant to Pa. R.C.P. No. 1042.3 was served on the following via United States first class mail, postage prepaid, this 19th day of February, 2004:

Ronald M. Puntil, Jr., Esquire
Israel, Wood, Puntil & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomason, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Penn Township Regional Health Clinic
RR #1, Box 45A
Route 879
Grampian, PA 16838



W. Patric Boyer
Attorney for Defendants

FILED

m 10:57am KDC

FEB 20 2004

[Signature]

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

**CERTIFICATE OF MERIT
PURSUANT TO PA. R.C.P. NO. 1042.3**

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Defendants.

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

FILED

FEB 20 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
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CIVIL DIVISION

NO. 2004-00057-CD

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HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

CERTIFICATE OF MERIT
PURSUANT TO PA. R.C.P. 1042.3

Certificate of Merit as to the Defendant, Phoung T. Wirths, D.O.

I, W. Patric Boyer, of the firm of Eckert Seamans Cherin & Mellott, LLC, Counsel of

Record for the Plaintiffs, do hereby certify that:

☒ an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the Plaintiffs' harm;

OR

☐ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this Defendant is responsible deviated from an acceptable professional standard and an appropriate licensed profession has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge

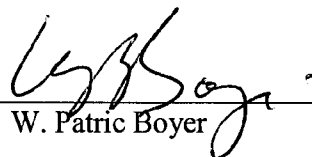
exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the Plaintiffs' harm;

OR

- ☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this Defendant.

ECKERT SEAMANS CHERIN & MELLOTT

Dated: 2-20-04

By: 
W. Patric Boyer

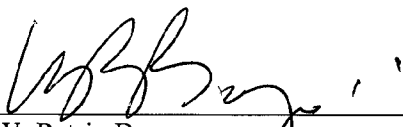
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Grampian, PA 16838



W. Patric Boyer
Attorney for Defendants

FILED

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FEB 20 2004

SEA

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
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CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

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vs.

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PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
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Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Defendants.

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

FILED

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
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CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

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THE DUBOIS REGIONAL MEDICAL
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MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

CERTIFICATE OF MERIT
PURSUANT TO PA. R.C.P. 1042.3

Certificate of Merit as to the Defendant, The DuBois Regional Medical Center

I, W. Patric Boyer, of the firm of Eckert Seamans Cherin & Mellott, LLC, Counsel of

Record for the Plaintiffs, do hereby certify that:

☒ an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the Plaintiffs' harm;

OR

☐ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this Defendant is responsible deviated from an acceptable professional standard and an appropriate licensed profession has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge

exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the Plaintiffs' harm;

OR

- ☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this Defendant.

ECKERT SEAMANS CHERIN & MELLOTT

Dated: 2-20-04

By: 
W. Patric Boyer

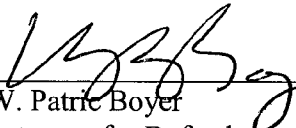
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Penn Township Regional Health Clinic
RR #1, Box 45A
Route 879
Grampian, PA 16838



W. Patric Boyer
Attorney for Defendants

FILED

IN 10:56 AM NOV

FEB 20 2004

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10/26

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
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CIVIL DIVISION -- LAW

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Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Defendants.

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

FILED

FEB 20 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

CERTIFICATE OF MERIT
PURSUANT TO PA. R.C.P. 1042.3

Certificate of Merit as to the Defendant, Penn Township Rural Health Clinic

I, W. Patric Boyer, of the firm of Eckert Seamans Cherin & Mellott, LLC, Counsel of

Record for the Plaintiffs, do hereby certify that:

☒ an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the Plaintiffs' harm;

OR

☐ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this Defendant is responsible deviated from an acceptable professional standard and an appropriate licensed profession has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge

exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the Plaintiffs' harm;

OR

- ☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this Defendant.

ECKERT SEAMANS CHERIN & MELLOTT

Dated: 2.20.04

By: 
W. Patric Boyer

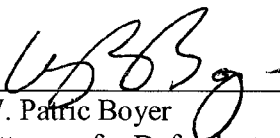
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Certificate of Merit Pursuant to Pa. R.C.P. No. 1042.3 was served on the following via United States first class mail, postage prepaid, this 19th day of February, 2004:

Ronald M. Puntl, Jr., Esquire
Israel, Wood, Puntl & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomason, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Penn Township Regional Health Clinic
RR #1, Box 45A
Route 879
Grampian, PA 16838



W. Patric Boyer
Attorney for Defendants

FILED

IN 10:56 AM NOV

FEB 20 2004

~~CA~~

William A. Shaw
Prothonotary

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

CIVIL DIVISION:

No. 2004-00057-CD

Code: 007

Type of Pleading:

**PRELIMINARY OBJECTIONS TO
PLAINTIFFS' COMPLAINT**

Filed on behalf of:

HENRY G. DELA TORRE, M.D.

Defendant

Counsel of Record for this Party

Ronald M. Puntil, Jr., Esquire
PA I.D. #42146

ISRAEL, WOOD, PUNTIL
& GRIMM, P.C.

Firm I.D. #788
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

(412) 391-1114

JURY TRIAL DEMANDED

FILED

MAR 01 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

CIVIL DIVISION:

Plaintiffs,

No. 2004-00057-CD

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

AND NOW, comes the defendant, Henry G. Dela Torre, M.D. by and through his attorneys Israel, Wood, Puntl & Grimm, P.C. and Ronald M. Puntl, Esquire and files the within Preliminary Objections to the Plaintiffs' Complaint, asserting and setting forth as follows:

COUNT I

MOTION TO STRIKE

1. This defendant moves to strike paragraphs 32.1 and 32.11 of the plaintiffs' Complaint. Paragraph 32 and the above referenced subsections state that the defendant, Dr. Dela Torre was negligent, careless and reckless in the following particulars:

32.1 In failing to properly manage the medical care and/or treatment of the plaintiff-wife;

32.11 In failing to exercise reasonable judgment with regard to the care and treatment of the plaintiff-wife consistent with the circumstances then and there presented.

2. The aforementioned paragraph and subparagraphs of the plaintiffs' Complaint fail to conform with Pa.R.C.P. 1019 (a) insofar as they fail to state facts upon which a cause of action may be based.

WHEREFORE, the defendant, Henry G. Dela Torre, M.D., respectfully requests this Honorable Court enter an Order striking the aforementioned paragraph and subparagraphs as they fail to conform with the Rules of Civil Procedure.

COUNT II

MOTION FOR MORE SPECIFIC PLEADING

3. This Motion was made pursuant to Pa.R.C.P. 1017 (b) on the grounds that this defendant is unable to ascertain from the aforementioned paragraph and subparagraphs the nature of the claim asserted with sufficient precision to prepare a response for trial.

WHEREFORE, the defendant, Henry G. Dela Torre, M.D., respectfully requests this Honorable Court enter an Order striking paragraphs 32.1 and 32.11 of the plaintiffs' Complaint for failure to conform to the rules of court and direct the plaintiffs to amend their Complaint to file a more specific pleading with regard to the aforementioned paragraphs.

COUNT III

MOTION TO STRIKE

4. In paragraphs 32 and 34 of the plaintiffs' Complaint, they attempt to assert that the conduct of the defendant, Dr. Dela Torre was reckless.

5. Specifically, the aforementioned paragraphs provide as follows:

32. Plaintiffs contend that the damages and/or injuries, as herein after stated, suffered by the plaintiffs are the direct and proximate result of a negligent, careless and/or **reckless** conduct of the defendant, Dr. Dela Torre, in the following particulars:

34. As a direct and proximate result of the afore stated negligent, careless and/or **reckless** conduct of Dr. Dela Torre, the plaintiffs have suffered and will continue to suffer the damages and/or injuries as hereinafter set forth.

6. It is well recognized within the Commonwealth of Pennsylvania that "there are no degrees of negligence in Pennsylvania." West Penn Administration, Inc. v. Union National Bank of Pittsburgh, 233 Pa.Super. 311, 332 N.19, 335 A.2d 725 (1975).

7. Insofar as the law within the Commonwealth of Pennsylvania fails to recognize degrees of negligence, this defendant respectfully requests this Honorable Court to strike all references to recklessness contained within paragraphs 32 and 34.

WHEREFORE, the defendant, Henry G. Dela Torre, M.D., respectfully requests this Honorable Court to grant the within Preliminary Objection and strike those portions of paragraph 32 and 34 which allege recklessness against this defendant.

COUNT IV

DEMURRER TO BREACH OF CONTRACT CLAIM

8. In Count VI, paragraphs 55 through 58 the plaintiffs attempt to assert a claim against this defendant for breach of contract.

9. It is well recognized that a physician is neither a warrantor of a cure nor a guarantor of the results of treatment. Smith v. Yohe, 412 Pa. 94, 194 A.2d 167 (1963).

10. It is equally well recognized that the law within the Commonwealth of Pennsylvania does not recognize a claim for breach of contract absent an express contract entered into between the physician and the patient in which the physician promises to achieve a specific result. Mason v. Western Pennsylvania Hospital, 286 Pa.Super. 354, 428 A.2d 1366 (1981), vacated on other grounds, 499 Pa. 484, 453 A.2d 974 (1982).

11. Insofar as no express contract is alleged to exist between Dr. Dela Torre and the patient, Bridget Nelen, formerly Bridget Wilson, in which Dr. Dela Torre promises to achieve a specific result, the plaintiffs' claims for breach of contract cannot stand and must be stricken.

WHEREFORE, the defendant respectfully requests this Honorable Court to enter an Order striking Count VI, paragraphs 55 through 58 of the plaintiffs' Complaint.

ISRAEL, WOOD, PUNTIL & GRIMM, P.C.

By: 

Ronald M. Puntil, Jr., Esquire
Attorneys for Defendant Henry G.
Dela Torre, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN; formerly Bridget Wilson,
and DONALD NELEN, her husband,

CIVIL DIVISION:

Plaintiffs,

No. 2004-00057-CD

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____, 2004, upon
consideration of the defendant, Henry G. Dela Torre, M.D.'s Preliminary Objections, it is
hereby **ORDERED, ADJUDGED** and **DECREED** that said Preliminary Objections are
sustained.

It is further **ORDERED** and **DECREED** as follows:

1. Paragraphs 32.1 and 32.11 of the plaintiffs' Complaint are hereby stricken;
2. Those portions of paragraphs 32 and 34 which assert recklessness against the defendant, Dr. Dela Torre, are hereby stricken; and
3. Count VI, paragraphs 55 through 58 of the plaintiffs' Complaint which allege breach of contract are hereby stricken.

BY THE COURT:

_____. J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Preliminary Objections** were forwarded to the following counsel of record, via first class mail, postage prepaid on the 26th day of February, 2004:

W. Patrick Boyer, Esquire
Eckert, Seamans, Cherin & Mellot, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317
Counsel for Plaintiffs

David R. Johnson, Esquire
Thomson, Rhodes & Cowie
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499
**Counsel for DuBois Regional
Medical Center and Phoung
T. Wirths, D.O.**

A handwritten signature in black ink, appearing to read 'Ronald M. Puntil, Jr.', written over a horizontal line.

Ronald M. Puntil, Jr., Esquire

FILED ^{2cc}

MAR 11 3 33 PM
MAR 01 2004

Atty Puntill

[Signature]

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

AMENDED COMPLAINT
(Professional Liability - Health Care)

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Defendants.

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED

MAR 24 2004
M/11:03 (u) [Signature]
William A. Shaw
Prothonotary/Clerk of Courts
NO COST COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

TO THE DEFENDANTS:

NOTICE

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE.

IF YOU DO NOT HAVE A LAWYER, CONTACT:

Office of Court Administrator
Clearfield County Courthouse
230 East Market Street, Suite 228
Clearfield, PA 16830
814/ 765-2641 (Ext. 5982)

ECKERT SEAMANS CHERIN & MELLOTT

By: 

W. Ratic Boyer

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

AMENDED COMPLAINT

AND NOW, this 24 day of March, 2004, comes the

Plaintiffs, by their attorneys, Eckert Seamans Cherin & Mellott and files this, their Amended Complaint, and in support thereof allege as follows:

1. The Plaintiff, Bridget Nelen, formerly Bridget Wilson, is an adult individual who has, as her local address, 4008 Splash Dam Road, Grampian, Clearfield County, Pennsylvania 16838.

2. The Plaintiff, Donald Nelen, husband of Bridget Nelen, is an adult individual who has, as his local address, 4008 Splash Dam Road, Grampian, Clearfield County, Pennsylvania 16838.

3. The Defendant, DuBois Regional Medical Center (hereinafter referred to as "DRMC"), is a licensed professional (Pa. R.C.P. 1042.1) and a Pennsylvania non-profit corporation that provides medical services with offices in Clearfield County at 100 Hospital Avenue, DuBois, Pennsylvania 15801. The Plaintiffs are asserting a professional liability claim against this Defendant.

4. The Defendant, The Penn Township Rural Health Clinic (hereinafter referred to as "Penn Clinic"), is a licensed professional (Pa. R.C.P. 1042.1) and a medical facility operated, owned and controlled by the DRMC with offices in Clearfield County at RR #1, Box 45A, Route 879, Grampian, Pennsylvania 16838. The Plaintiffs are asserting a professional liability claim against this Defendant.

5. The Defendant, Henry G. Dela Torre, M.D. (hereinafter referred to as "Dr. Dela Torre"), is a licensed professional (Pa. R.C.P. 1042.1) and an adult individual with offices in Clearfield County at RR #1, Box 45A, Route 879, Grampian, Clearfield County, Pennsylvania 16838. The Plaintiffs are asserting a professional liability claim against this Defendant.

6. The Defendant, Phoung T. Wirths (hereinafter referred to as "Dr. Wirths"), is a licensed professional (Pa. R.C.P. 1042.1) and an adult individual with offices in Clearfield County at RR #1, Box 45A, Route 879, Grampian, Pennsylvania 16838. The Plaintiffs are asserting a professional liability claim against this Defendant.

7. At all times material hereto, Dr. Dela Torre and Dr. Wirths, both licensed in the Commonwealth of Pennsylvania as medical practitioners, were acting both individually and as

agents, servants and/or employees of the DRMC and/or the Penn Clinic and within the scope of such employment.

8. On August 18 and September 1, 2000, Bridget Nelen, then Bridget Wilson, a twenty-five (25) year smoker, presented herself to Dr. Wirths at the Penn Clinic in Grampian complaining of a variety of symptoms to include tremors, coughing, urinary frequency and fatigue.

9. On September 1, 2000, Dr. Wirths offered an assessment of "Parkinson's disease versus a benign tumor".

10. Bridget was next seen by Dr. Wirths on November 1, 2000 complaining of neck and back pain, stomach discomfort and vomiting. Due to the stomach discomfort, abdominal and chest x-rays were ordered and taken by the Clearfield Hospital Imaging Department.

11. The x-ray films (chest view) resulted in a report offering the following assessment and impression:

"There is a density projected over the right middle lobe which is abutting the fissure on the lateral view. This may represent a so-called round pneumonia, however, other pathology including pulmonary mass should be considered. Follow-up studies are recommend. Very probable round pneumonia in the right middle lobe. Follow-up studies are recommended after medical treatment. C.T. study of the chest maybe useful at a later date." (Emphasis supplied.)

12. On November 14, 2000, Bridget was seen in "follow-up" at the Penn Clinic by Dr. Dela Torre with regard to her stomach symptomology and to review her x-ray studies. In furtherance of his evaluation, Dr. Dela Torre reviewed Bridget's history.

13. However, in spite of Bridget's history as a smoker and the recommendations on the above stated x-ray report, no aggressive treatment or further consultation was actively pursued.

14. Bridget continued to see Dr. Dela Torre and Dr. Wirths on various occasions and for various conditions from December 14, 2000 until May 1, 2002.

15. On various occasions during this timeframe, Bridget presented with tremors, headaches, coughing, constipation, respiratory problems, indigestion and heart burn, emotional problems and fatigue.

16. At no time during any of these visits, was the x-ray report showing a “density” or “pulmonary mass” discussed with Bridget nor was any follow-up action taken with regards to same.

17. In fact, Dr. Dela Torre’s “assessments” during this period included only migraines, depression, viral syndrome, hormonal imbalance, personality disorder, constipation, respiratory problems, tremors, fever and a urinary tract infection.

18. In early November 2002, Bridget, still complaining of the symptomology indicated above, returned to the Clearfield Hospital for a second set of chest and abdominal x-ray. The resulting x-ray report revealed that the aforestated density or pulmonary mass was now a “large mass” in the right middle lobe.

19. In response to this finding, Bridget was referred to Jack Schocker, M.D., of the Altoona Hospital, to review the x-ray report and to evaluate her current condition.

20. Dr. Schocker first saw Bridget on November 11, 2002 and at that time offered a diagnosis of “squamous cell carcinoma” of the lung and immediately discussed same with Bridget.

21. As a result of this diagnosis and prior to the surgical removal of the mass, Bridget was subjected to an intensive course of radiation therapy to reduce the tumor’s size.

22. On January 23, 2003, a total right pneumonectomy (removal of the lung) was performed. After the surgery, Bridget followed a normal course toward recovery.

23. In June of 2003, after complaining of “blurred vision”, a CT scan of the brain was performed which showed a “mass lesion in the left frontal lobe”.

24. In July 2003, Bridget underwent a craniotomy with a decompression of the tumor mass.

25. The observations during surgery and testing relative thereto, resulted in a report confirming a metastasis of the lung cancer to the brain.

26. Bridget then underwent radiation therapy which ended on September 10, 2003. Since that date, the Plaintiff-Wife has continued treatment with regard to the various issues with her condition listed as “stable.”

27. Presently, Bridget has a ten percent (10%) chance of survival.

28. Had treatment began in November 2000 or soon thereafter, Bridget would have had an eighty percent (80%) chance of survival.

29. At all times material hereto, the DRMC and the Penn Clinic held themselves out to the public as being staffed with competent and qualified health care professionals who are knowledgeable in the current and accepted standards of care with regard to the offering of medical services.

30. At all times material hereto, the Defendants, jointly and individually, owed a duty to the Plaintiffs to provide medical and supervisory services in a reasonable and appropriate manner consistent with that standard of care required of all similarly situated “licensed practitioners” and consistent with the needs of the patient.

COUNT I
PLAINTIFFS VS. DR. DELA TORRE
NEGLIGENCE

31. The allegations in Paragraphs 1 through 30 above, are incorporated herein by reference.

32. The Plaintiffs contend that the damages and/ or injuries, as hereinafter stated, suffered by the Plaintiffs are the direct and proximate result of the negligent and/ or careless conduct of the Defendant, Dr. Dela Torre, in the following particulars:

- 32.1. In failing to properly review the existing medical records and/ or reports in his care and treatment of the Plaintiff-Wife;
- 32.2. In failing to properly diagnosis her condition, relative to the finding of “pulmonary mass” and “density”, during the period of November 14, 2000 to May 1, 2002;
- 32.3. In failing to recognize the true medical significance of the “pulmonary mass” and “density” references;
- 32.4. In failing to make the appropriate and timely medical referrals of the Plaintiff-Wife with regard to the existence of a “pulmonary mass” and “density”;
- 32.5. In failing to follow through with testing recommendations relative to the “pulmonary mass” and “density”;
- 32.6. In failing to take into consideration the patient’s smoking history with regard to her care, treatment and referrals;
- 32.7. In failing to properly and timely assess, diagnosis and monitor the Plaintiff-Wife’s medical condition during the aforesated timeframe;

32.8. In failing to know and/ or utilize accepted and proper standards of medical care and/ or treatment in his handling of the Plaintiff-Wife's medical condition;

32.9. In failing to order the necessary and required "follow-up" care and/ or treatment consistent with the November 1 x-ray study and its findings; and

32.10. In failing to reach the appropriate diagnosis i.e., cancer, with regards to the circumstances then and there existing.

33. For those reasons stated above, the Plaintiffs contend that Dr. Dela Torre's care and/ or treatment of the Plaintiff-Wife fell below that accepted standard of care required of all similarly situated medical practitioners in the area.

34. As a direct and proximate result of the aforestated negligent and/ or careless conduct of Dr. Dela Torre, the Plaintiffs have suffered and will continue to suffer the damages and/ or injuries as hereinafter set forth.

35. For those reasons stated above, the Plaintiffs contend that Dr. Dela Torre's conduct is the sole cause and/ or a substantial factor in bringing about the damages and/ or injuries sustained or has increased the likelihood of such harm.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendant, Dr. Dela Torre, in an amount in excess of the local arbitration limits.

COUNT II
PLAINTIFFS VS. DR. WIRTHS
NEGLIGENCE

36. The allegations in Paragraphs 1 through 35 above, are incorporated herein by reference.

37. The Plaintiffs contend that the damages and/ or injuries, as hereinafter stated, suffered by the Plaintiffs are the direct and proximate result of the negligent and/ or careless conduct of the Defendant, Dr. Wirths, in the following particulars:

- 37.1. In failing to properly review the existing medical records and/ or reports in his care and treatment of the Plaintiff-Wife;
- 37.2. In failing to properly diagnosis her condition, relative to the finding of the “pulmonary mass” and “density”, during the period of November 14, 2000 to May 1, 2002;
- 37.3. In failing to recognize the true medical significance of the “pulmonary mass” and “density” references;
- 37.4. In failing to make the appropriate and timely medical referrals of the Plaintiff-Wife with regard to the existence of a “pulmonary mass” and “density”;
- 37.5. In failing to follow through with testing recommendations relative to the “pulmonary mass” and “density”;
- 37.6. In failing to take into consideration the patient’s smoking history with regard to her care, treatment and referrals;
- 37.7. In failing to properly and timely assess, diagnosis and monitor the Plaintiff-Wife’s medical condition during the aforestated timeframe;
- 37.8. In failing to order the necessary and required “follow-up” care and/ or treatment consistent with the November 1 x-ray study and its findings; and
- 37.9. In failing to reach the appropriate diagnosis i.e., cancer, with regards to the circumstances then and there existing.

38. For those reasons stated above, the Plaintiffs contend that Dr. Wirths' care and/ or treatment of the Plaintiff-Wife fell below that accepted standard of care required of all similarly situated medical practitioners in the area.

39. As a direct and proximate result of the aforestated negligent and/ or careless conduct of Dr. Wirths, the Plaintiffs have suffered and will continue to suffer the damages and/ or injuries as hereinafter set forth.

40. For those reasons stated above, the Plaintiffs contend that Dr. Wirths' conduct is the sole cause and/ or a substantial factor in bringing about the damages and/ or injuries sustained or has increased the likelihood of such harm.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendant, Dr. Wirths, in an amount in excess of the local arbitration limits.

COUNT III
PLAINTIFFS VS. DRMC
NEGLIGENCE

41. The allegations in Paragraphs 1 through 40 above, are incorporated herein by reference.

42. At all times material hereto, the DRMC, by and through its agents, servants and/ or employees, knew or upon inquiry, should have known of the acts and/ or omissions of Dr. Dela Torre and Dr. Wirths and stated in Paragraphs 32 and 37 above.

43. As a result of the aforestated agency relationship as between the individual Defendants and the DRMC, the DRMC is vicariously liable for the damages and/ or injuries sustained by the Plaintiffs.

44. Additionally, the Plaintiffs contend that the damages and/ or injuries, as hereinafter stated, suffered by the Plaintiffs are the direct and proximate result of the negligent and/ or careless conduct of the DRMC, in the following particulars:

- 44.1. In failing to provide properly trained staff and physicians to render the appropriate and necessary medical care that the Plaintiff-Wife demanded;
- 44.2. In failing to oversee, supervise and/ or monitor the individual Defendants with regard to the care and treatment offered its patients;
- 44.3. In failing to establish and implement policies and procedures to ensure that its physicians, to include Dr. Wirths and Dr. Dela Torre, properly and adequately provided care and treatment to its patients;
- 44.4. In failing to train and/ or supervise its physicians, to include Dr. Wirths and Dr. Dela Torre, so as to avoid those events and/ or omissions referenced to in Paragraphs 32 and 37 above;
- 44.5. In failing to ensure their physicians, to include Dr. Wirths and Dr. Dela Torre, received the appropriate and proper medical training and experience necessary to provide its patients with the appropriate standard of care;
- 44.6. In failing to properly train its physicians, to include Dr. Wirths and Dr. Dela Torre, in the proper diagnosis and treatment of cancers and potential cancers; and
- 44.7. In failing to remove Dr. Dela Torre and Dr. Wirths from providing care and/ or treatment to the Plaintiff-Wife.

45. As a direct and proximate result of the aforestated negligent and/ or careless conduct of the DRMC, the Plaintiffs have suffered and will continue to suffer the damages and/ or injuries as hereinafter set forth.

46. For those reasons stated above, the Plaintiffs contend that the DRMC's conduct is the sole cause and/ or a substantial factor in bringing about the damages and/ or injuries sustained or has increased the likelihood of such harm.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendant, DRMC, in an amount in excess of the local arbitration limits.

COUNT IV
PLAINTIFFS VS. PENN CLINIC
NEGLIGENCE

47. The allegations in Paragraphs 1 through 46 above, are incorporated herein by reference.

48. At all times material hereto, the Penn Clinic, by and through its agents, servants and/ or employees, knew or upon inquiry, should have known of the acts and/ or omissions of Dr. Dela Torre and Dr. Wirths and stated in Paragraphs 32 and 37 above.

49. As a result of the aforestated agency relationship as between the individual Defendants and the Penn Clinic, the Penn Clinic is vicariously liable for any damages or injuries sustained by the Plaintiffs.

50. Additionally, the Plaintiffs contend that the damages and/ or injuries sustained by the Plaintiffs, as hereinafter set forth, are the direct and proximate result of the negligent and/ or careless conduct of the Penn Clinic, in the following particulars:

50.1. In failing to provide properly trained staff and physicians to render the appropriate and necessary medical care that the Plaintiff-Wife demanded;

- 50.2. In failing to oversee, supervise and/ or monitor the individual Defendants with regard to the care and treatment offered its patients;
- 50.3. In failing to establish and implement policies and procedures to ensure that its physicians, to include Dr. Wirths and Dr. Dela Torre, properly and adequately provided care and treatment to its patients;
- 50.4. In failing to train and/ or supervise its physicians, to include Dr. Wirths and Dr. Dela Torre, so as to avoid those events and/ or omissions referenced to in Paragraphs 32 and 37 above;
- 50.5. In failing to ensure their physicians, to include Dr. Wirths and Dr. Dela Torre, received the appropriate and proper medical training and experience necessary to provide its patients with the appropriate standard of care;
- 50.6. In failing to properly train its physicians, to include Dr. Wirths and Dr. Dela Torre, in the proper diagnosis and treatment of cancers and potential cancers; and
- 50.7. In failing to remove Dr. Dela Torre and Dr. Wirths from providing care and/ or treatment to the Plaintiff-Wife.

51. As a direct and proximate result of the aforestated negligent and/ or careless conduct of the Penn Clinic, the Plaintiffs have suffered and will continue to suffer the damages and/ or injuries as hereinafter set forth.

52. For those reasons stated above, the Plaintiffs contend that the Penn Clinic's conduct is the sole cause and/ or a substantial factor in bringing about the damages and/ or injuries sustained or has increased the likelihood of such harm.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendant, Penn Clinic, in an amount in excess of the local arbitration limits.

COUNT V
PLAINTIFFS VS. ALL DEFENDANTS
NEGLIGENCE
JOINT LIABILITY

53. The allegations in Paragraphs 1 through 52 above, are incorporated herein by reference.

54. For those reasons stated above, the Plaintiffs contend the above named Defendants are jointly liable in causing or contributing to the injuries sustained by the Plaintiffs.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendants, either jointly or individually, in an amount in excess of the local arbitration limits.

COUNT VI
PLAINTIFFS VS. DR. DELA TORRE AND DR. WIRTHS
BREACH OF CONTRACT

55. The allegations in Paragraphs 1 through 54 above, are incorporated herein by reference.

56. In August of 2000, the Plaintiff-Wife having the symptomology exhibited above, sought the services of Dr. Dela Torre and Dr. Wirths for the express purpose of determining the nature and status of her physical condition.

57. In this regard, both Dr. Dela Torre and Dr. Wirths expressly agreed to effect their examination and treatment of the Plaintiff-Wife consistent with her symptomology and consistent with accepted medical practices within the area.

58. The Plaintiffs contend that the individual Defendants, jointly or individually, breached this agreement in the following particulars:

- 58.1. In failing to properly and appropriately manage the medical care and/ or treatment of the Plaintiff-Wife;
- 58.2. In failing to properly review the existing and required medical records and/ or reports in their care and/ or treatment of the Plaintiff-Wife;
- 58.3. In failing to properly diagnosis her conditions, related to the “pulmonary mass” and “density”, during the period of November 14, 2000 to May 1, 2002;
- 58.4. In failing to recognize the true medical significance of the “pulmonary mass” and “density”;
- 58.5. In failing to make the appropriate and timely referrals with regard to the existence of the “pulmonary mass” and “density”;
- 58.6. In failing to follow through with testing recommendations relative to the “pulmonary mass” and “density”;
- 58.7. In failing to take into consideration the patient’s smoking history with regards to her care, and treatment;
- 58.8. In failing to properly and timely assess, diagnosis and monitor the Plaintiff-Wife’s condition during the aforestated timeframe;
- 58.9. In failing to know and/ or utilize accepted and proper principles of medical care and/ or treatment in their handling of the Plaintiff-Wife’s medical condition;
- 58.10. In failing to order the necessary and required follow-up care and/ or treatment consistent with the November 1 x-ray study;

58.11. In failing to exercise reasonable judgment with regard to the care and treatment of the Plaintiff-Wife consistent with the circumstances then and there presented; and

58.12. In failing to reach the appropriate diagnosis with regards to the circumstances then and there existing.

59. As a result of Dr. Dela Torre's and Dr. Wirth's breach of the aforestated agreement, the Plaintiffs have suffered and will in the future continue to suffer the damages and/ or injuries as hereinafter stated.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendants, either jointly or individually, in an amount in excess of the local arbitration limits

COUNT VII
PLAINTIFF-WIFE V. DEFENDANTS
DAMAGES

60. The allegations in Paragraphs 1 through 59 above, are incorporated herein by reference.

61. As a result of the aforestated conduct of the Defendants, either in tort or contract, the Plaintiff-Wife has suffered the following damages and/ or injuries:

61.1. Radiation and chemical therapy to reduce the tumor mass when a timely diagnosis would have required less aggressive management;

61.2 The removal of her entire right lung when a timely diagnosis would have required a less invasive procedure;

61.3. A metastasis of the lung cancer to the brain requiring surgical intervention;

- 61.4 Post-surgical radiation therapy;
- 61.5 Various and assorted side effects with regard to chemical and radiation treatments;
- 61.6. A reduced chance of survivability, i.e., "loss of chance";
- 61.7 A decreased life expectancy; and
- 61.8 A reduced immune system causing a susceptibility to disease.

62. Additionally, the Plaintiff-Wife has been forced to spend and will in the future spend large sums of money with regard to her care and treatment that would not have been necessary had an appropriate and timely diagnosis been made in November of 2000 or soon thereafter.

63. As a further result of the aforestated conduct of the Defendants, either individually or jointly, the Plaintiff-Wife has suffered and will in the future suffer the following additional damages:

- 63.1. The past, present and future loss of work and the right to have gainful employment;
- 63.2. Surgical scarring;
- 63.3. The loss of the pleasures of everyday life;
- 63.4. The loss of health and vitality;
- 63.5. Cosmetic losses to include the loss of hair and skin coloration;
- 63.6. Pain and suffering as a result of radiation and chemical therapy;
- 63.7. Pain and suffering as a result of the surgical interventions;
- 63.8. Embarrassment and humiliation;

63.9. Recuperative time due to chemical and radiation treatments and surgical interventions; and

63.10. Mental and emotional strain caused by the late diagnosis and resulting treatments.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendants, either jointly or individually, in an amount in excess of the local arbitration limits

COUNT VIII
PLAINTIFF-HUSBAND VS. DEFENDANTS
DAMAGES - CONSORTIUM

64. The allegations in Paragraphs 1 through 63 above, are incorporated herein by reference.

65. As a result of the aforestated conduct of the Defendants, either jointly or individually, the Plaintiff-Husband has suffered the following damages.

65.1. The loss of the aid, comfort and society of his Wife;

65.2. The loss of future aid, comfort and society due to Wife's decreased life expectancy; and

65.3. The loss of his Wife's services.

66. Additionally, the Plaintiff-Husband has been forced to spend and will in the future spend large sums of money with regard to his Wife's care and treatment that would not have been necessary had an appropriate and timely diagnosis been made in November of 2000 or soon thereafter.

WHEREFORE, the Plaintiffs pray your Honorable Court to enter judgment against the Defendants, either jointly or individually, in an amount in excess of the local arbitration limits.

ECKERT SEAMANS CHERIN & MELLOTT

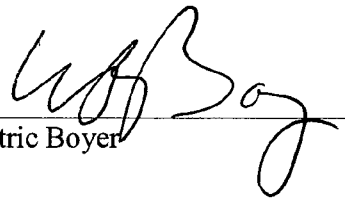
JURY TRIAL DEMANDED



W. Patrick Boyer

VERIFICATION

I, **W. PATRIC BOYER**, Attorney for Bridget and Donald Nelen, verify that the averments contained in the above Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



W. Patric Boyer


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Amended Complaint was served on the following via United States first class mail, postage prepaid, this 23rd day of March, 2004:

Ronald M. Puntl, Jr., Esquire
Israel, Wood, Puntl & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomason, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Penn Township Regional Health Clinic
RR #1, Box 45A
Route 879
Grampian, PA 16838



W. Patric Boyer
Attorney for Defendants

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

FILED

MAR 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

BRIDGET NELEN, formerly Bridget
Wilson, and DONALD NELEN, her
husband

vs.

No. 04-57-CD

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA
TORRE MEDICAL CLINIC

ORDER

NOW, this 25th day of March, 2004, upon consideration of
Attorney Puntl's Preliminary Objections, a Rule is hereby issued upon the parties
to Appear and Show Cause why the Objections should not be granted. Argument
is scheduled the 26 day of April, 2004, at 10:30
A.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield,
PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED

~~01/31/2004~~
MAR 25 2004

William A. Shaw

Prothonotary/Clerk of Courts

KEB

4cc Amy
Puntholmenele: service of rule

CP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

CIVIL DIVISION:

No. 2004-00057-CD

Code: 007

Type of Pleading:

**PRELIMINARY OBJECTIONS TO
PLAINTIFFS' AMENDED COMPLAINT**

Filed on behalf of:

HENRY G. DELA TORRE, M.D.

Defendant

Counsel of Record for this Party

Ronald M. Puntil, Jr., Esquire
PA I.D. #42146

ISRAEL, WOOD, PUNTIL
& GRIMM, P.C.

Firm I.D. #788
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

(412) 391-1114

JURY TRIAL DEMANDED

FILED

APR 02 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

CIVIL DIVISION:

Plaintiffs,

No. 2004-00057-CD

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

PRELIMINARY OBJECTIONS TO PLAINTIFFS' AMENDED COMPLAINT

AND NOW, comes the defendant, Henry G. Dela Torre, M.D. by and through his attorneys Israel, Wood, Puntil & Grimm, P.C. and Ronald M. Puntil, Esquire and files the within Preliminary Objections to the Plaintiffs' Amended Complaint, asserting and setting forth as follows:

COUNT I

DEMURRER TO BREACH OF CONTRACT CLAIM

1. In Count VI, paragraphs 55 through 59, and all attendant subparagraphs, the plaintiffs attempt to assert a claim against this defendant for breach of contract. It is well recognized that a physician is neither a warrantor of a cure nor a guarantor of the results of treatment. Smith v. Yohe, 412 Pa. 94, 194 A.2d 167 (1963).

2. It is equally well recognized that the law within the Commonwealth of Pennsylvania does not recognize a claim for breach of contract absent an express contract entered into between the physician and patient in which the physician promises to achieve a specific result. Mason v. Western Pennsylvania Hospital, 286 Pa.Super. 354, 428 A.2d 1366 (1981), vacated on other grounds, 499 Pa. 484, 453 A.2d 974 (1982).

3. Insofar as no expressed contract is alleged to exist between Dr. Dela Torre and the patient, Bridget Nelen, formerly Bridget Wilson, in which Dr. Dela Torre promised to achieve a specific result, plaintiffs' claims for breach of contract cannot stand and must be stricken.

WHEREFORE, the defendant, Henry G. Dela Torre, M.D., respectfully requests this Honorable Court enter an Order striking Count VI, paragraphs 55 through 59, and all attendant subparagraphs, of the plaintiffs' Amended Complaint.

COUNT II


MOTION TO STRIKE VERIFICATION

3. The plaintiffs' Amended Complaint fails to include a verification of the plaintiffs, Bridget Nelen and Donald Nelen in violation of Pa.R.C.P. §1024.

4. The plaintiffs attached a verification executed by their attorney, W. Patrick Boyer, Esquire. Said verification is in violation of Pa.R.C.P. §1024 and must be stricken.

WHEREFORE, the defendant, Henry G. Dela Torre, M.D., respectfully requests this Honorable Court enter an Order striking the verification and directing the plaintiffs, Bridget Nelen and Donald Nelen, to execute verifications to the Amended Complaint within twenty (20) days.

ISRAEL, WOOD, PUNTIL & GRIMM, P.C.

By: 
Ronald M. Puntel, Jr., Esquire
Attorneys for Defendant Henry G.
Dela Torre, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

CIVIL DIVISION:

Plaintiffs,

No. 2004-00057-CD

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____, 2004, upon
consideration of the defendant, Henry G. Dela Torre, M.D.'s Preliminary Objections to
the Plaintiffs' Amended Complaint, it is hereby **ORDERED, ADJUDGED** and **DECREED**
that said Preliminary Objections are sustained.

It is further **ORDERED** and **DECREED** as follows:

1. Count VI, paragraphs 55 through 59, and all attendant subparagraphs are stricken; and
2. The verification executed by plaintiffs' counsel, W. Patrick Boyer, Esquire is stricken and plaintiffs, Bridget Nelen and Donald Nelen, are directed to execute verifications to the Amended Complaint within twenty (20) days.

BY THE COURT:

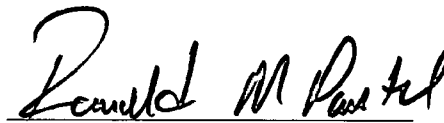
_____. J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Preliminary Objections to Plaintiffs' Amended Complaint** were forwarded to the following counsel of record, via first class mail, postage prepaid on the 30th day of March, 2004:

W. Patrick Boyer, Esquire
Eckert, Seamans, Cherin & Mellot, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317
Counsel for Plaintiffs

David R. Johnson, Esquire
Thomson, Rhodes & Cowie
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499
**Counsel for DuBois Regional
Medical Center and Phoung
T. Wirths, D.O.**


Ronald M. Puntil, Jr., Esquire

FILED

3/13/04
APR 02 2004
Att'y Runtl

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

CIVIL DIVISION

No. 2004-00057-CD

Plaintiffs,

vs.

**PRELIMINARY OBJECTIONS, BRIEF IN
SUPPORT AND ORDER OF COURT**

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Code:

Filed on behalf of Phoung T. Wirths, D.O., one
of the defendants.

Counsel of Record for These Parties:

Defendants.

David R. Johnson, Esquire
PA I.D. #26409

Counsel of Record:

Thomas B. Anderson, Esquire
PA I.D. #79990

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellott, LLC
1001 Corporate Drive
Suite 200
Canonsburg, PA 15317

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

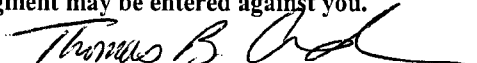
Ronald M. Puntil, Esquire
Israel, Wood, Puntil & Grimm, P.C.
501 Grant Building
Pittsburgh, PA 15219

(412) 232-3400

NOTICE TO PLEAD

TO THE PLAINTIFFS:

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



Thomas B. Anderson, Esquire
Attorneys for Phoung T. Wirths, D.O., one of the
defendants.

FILED /cc
m/11/04/24 Amy
APR 08 2004

William A. Shaw
Prothonotary/Clerk of Courts

PRELIMINARY OBJECTIONS

NOW COMES Phoung T. Wirths, D.O., one of the defendants, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following preliminary objections to plaintiffs' amended complaint stating as follows:

A. Demurrer to Breach of Contract Claim

1. In Count VI of the amended complaint, plaintiffs attempt to assert a claim against Phoung T. Wirths, D.O., for breach of contract.
2. In Pennsylvania, a physician is neither a warrantor of a cure nor a guarantor of a result of treatment absent a special contract in writing. Health Care Services Malpractice Act, 40 P.S. §1301.606 (replaced by §1303.105 of the MCARE Act).
3. It is equally well recognized that the law within the Commonwealth of Pennsylvania does not recognize a claim for breach of contract absent an express contract entered into between the physician and the patient in which the physician promises to achieve a specific result. Id. See also Edwards v. Germantown Hosp., 735 A.2d 612 (Pa. Super. 1999).
4. Insofar as no express written contract is alleged to exist between Dr. Wirths and the patient, Bridget Nelen, in which Dr. Wirths promises to achieve a specific result (nor is one attached to the amended complaint), the plaintiffs' claims for breach of contract must be dismissed.

WHEREFORE, Dr. Wirths respectfully requests that this Honorable Court issue an order dismissing Count VI of the complaint with prejudice.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Thomas B. Anderson, Esquire
Attorneys for Phoung T. Wirths, D.O.,
one of the defendants.

Biof

BRIEF IN SUPPORT OF
PRELIMINARY OBJECTIONS TO AMENDED COMPLAINT

I. BACKGROUND

In this medical malpractice case, plaintiffs allege that wife/plaintiff first came under the care of Dr. Wirths in August of 2000. The complaint alleges that thereafter she continued to treat with Dr. Wirths and Dr. Dela Torre with respect to her lung problems.

The plaintiffs are alleging that on or about November 11, 2002, wife/plaintiff was diagnosed with squamous cell carcinoma of her lungs. Plaintiffs further allege that as a result of the aforementioned diagnosis, wife/plaintiff went on to receive various forms of medical treatment.

In Count VI of the amended complaint, plaintiffs assert a claim of breach of contract against Dr. Wirths. Nowhere in the amended complaint do plaintiffs allege the existence of, or attach, any written contract between plaintiffs and Dr. Wirths.

II. ARGUMENT

A. Plaintiffs' claims of breach of contract against Dr. Wirths
set forth in Count VI of the amended complaint should be dismissed.

Pursuant to the Health Care Services Act, a physician is neither a warrantor or a guarantor of a cure or a particular result without a "special contract in writing." 40 P.S. §1301.606.

In Edwards v. Germantown Hosp., 736 A.2d 612 (Pa. Super. 1999), the Superior Court affirmed the trial court's order granting a demurrer and an order granting judgment on the pleadings, both related to a breach of contract claim. The Superior Court held that absent a written contract between the parties, the plaintiff's claim failed to set forth a basis upon which relief may be granted.

In this case, plaintiffs have failed to allege the existence of a written contract between the plaintiffs and Dr. Wirths. No such contract is attached to the amended complaint. Accordingly, plaintiffs' amended complaint fails to set forth a viable breach of contract claim and Count VI of the amended complaint should be dismissed.

III. CONCLUSION

For the reasons set forth above, the preliminary objections filed by this defendant should be sustained and Count VI of the amended complaint should be dismissed with prejudice.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

A handwritten signature in black ink, appearing to read "Thomas B. Anderson", with a long horizontal flourish extending to the right.

David R. Johnson, Esquire
Thomas B. Anderson, Esquire
Attorneys for Phoung T. Wirths, D.O.,
one of the defendants.

CERTIFICATION OF SERVICE

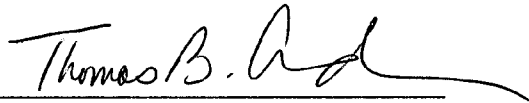
I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. mails on this 6th day of April, 2004:

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellott, LLC
1001 Corporate Drive
Suite 200
Canonsburg, PA 15317

Ronald M. Puntil, Esquire
Israel, Wood, Puntil & Grimm, P.C.
501 Grant Building
Pittsburgh, PA 15219

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Thomas B. Anderson, Esquire
Attorneys for Phoung T. Wirths, D.O.,
one of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET)	CIVIL DIVISION
WILSON and DONALD NELEN, her husband,)	
)	No. 2004-00057-CD
Plaintiffs,)	
)	
vs.)	
)	
DUBOIS REGIONAL MEDICAL CENTER,)	
PENN TOWNSHIP RURAL HEALTH CLINIC,)	
DELA TORRE MEDICAL CLINIC, HENRY G.)	
DELA TORRE, M.D., and PHOUNG T.)	
WIRTHS, D.O., as to both individually and)	
t/d/b/a PENN TOWNSHIP RURAL HEALTH)	
CLINIC, and/or DELA TORRE MEDICAL)	
CLINIC,)	
)	
Defendants.)	
)	

ORDER OF COURT

AND NOW on this _____ day of _____, 2004, it is hereby ORDERED,
ADJUDGED and DECREED that preliminary objections filed by Phoung T. Wirths, D.O., one of the
defendants, are SUSTAINED. Count VI of the complaint is dismissed with prejudice.

BY THE COURT:

J.

In The Court of Common Pleas of Clearfield County, Pennsylvania

NELEN, BRIDGET formerly BRIDGET WILSON & DONALD NELEN

Sheriff Docket # 15059

VS.

04-57-CD

DUBOIS REGIONAL MEDICAL CENTER al

SUMMONS

SHERIFF RETURNS

NOW JANUARY 19, 2004 AT 12:00 NOON SERVED THE WITHIN SUMMONS ON DUBOIS REGIONAL MEDICAL CENTER, DEFENDANT AT EMPLOYMENT, 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO LISA BATSON, RISK MGR. SEC. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: MCCLEARY

NOW JANUARY 19, 2004 AT 3:00 PM SERVED THE WITHIN SUMMONS ON HENRY G. DELATORRE, M.D. i/a/t/d/b/a PENN TOWNSHIP RURAL HEALTH CLININC and/or DELA TORRE MEDICAL CLINIC, DEFENDANT AT EMPLOYMENT, RR#1 BOX 45A, RT 879, GRAMPIAN, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO PENNY YEAGER, LEAD OFFICE ASST. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: MCCLEARY

NOW JANUARY 19, 2004 AT 3:00 PM SERVED THE WITHIN SUMMONS ON PENN TOWNSHIP RURAL HEALTH CLININC, DEFENDANT AT EMPLOYMENT, RR#1 BOX 45A, RT 879, GRAMPIAN, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO PENNY YEAGER, LEAD OFFICE ASST. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: MCCLEARY

NOW JANUARY 19, 2004 AT 3:00 PM SERVED THE WITHIN SUMMONS ON PHOUNG T. WIRTS, D.O. i/a/t/d/b/a PENN TOWNSHIP RURAL HEALTH CLINIC and/or DELA TORRE MEDICAL CLINIC, DEFENDANT AT EMPLOYMENT, RR#1 BOX 45A, RT 879, GRAMPIAN, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO PENNY YEAGER, LEAD OFFICE ASST. A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HER THE CONTENTS THEREOF.

SERVED BY: MCCLEARY

NOW JANUARY 27, 2004 AT 11:35 AM SERVED THE WITHIN SUMMONS ON DELA TORRE MEDICAL CININC, DEFENDANT AT EMPLOYMENT, RR#1 BOX 45A, RT. 879, GRAMPIAN, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DR. DELATORRE A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: COUDRIET/RYEN

Return Costs

Cost	Description
75.00	SHERIFF HAWKINS PAID BY: CASH BY ATTY.
50.00	SURCHARGE PAID BY: CASHY BY ATTY.

In The Court of Common Pleas of Clearfield County, Pennsylvania

NELEN, BRIDGET formerly BRIDGET WILSON & DONALD NELEN

Sheriff Docket # 15059

VS.

04-57-CD

DUBOIS REGIONAL MEDICAL CENTER at

SUMMONS

SHERIFF RETURNS

Sworn to Before Me This

So Answers,

14 Day Of April 2004
William A. Shaw

Chester A. Hawkins
Chester A. Hawkins
Chester A. Hawkins
Sheriff

FILED

APR 14 2004

APR 14 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

**SUPPLEMENT TO
AMENDED COMPLAINT
(Professional Liability - Health Care)**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED

APR 16 2004

William A. Shaw
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

SUPPLEMENT TO AMENDED COMPLAINT

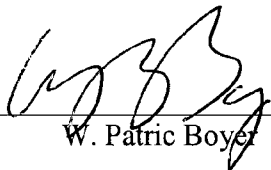
AND NOW, this 13th day of April, 2004, comes the

Plaintiffs, by their attorneys, Eckert Seamans Cherin & Mellott and files this, their Supplement to Amended Complaint, and in support thereof allege as follows:

1. The Verifications of Donald and Bridget Nelen are attached herewith as an Exhibit.

ECKERT SEAMANS CHERIN & MELLOTT

JURY TRIAL DEMANDED


W. Patric Boyer

VERIFICATION

I, Donald Nelen, state that I am familiar with the facts set forth in the foregoing Amended Complaint and that said facts are true and correct to the best of my knowledge, information and/or belief.

I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, which relates to unsworn falsification to authorities.

Donald Nelen

VERIFICATION

I, Bridget Nelen, state that I am familiar with the facts set forth in the foregoing Amended Complaint and that said facts are true and correct to the best of my knowledge, information and/or belief.

I understand that the statements made herein are subject to the penalties of 18 Pa. C.S. § 4904, which relates to unsworn falsification to authorities.

Bridget Nelen

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Supplement to Amended Complaint was served on the following via United States first class mail, postage prepaid, this 13th day of April, 2004:

Ronald M. Puntl, Jr., Esquire
Israel, Wood, Puntl & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomason, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Penn Township Regional Health Clinic
RR #1, Box 45A
Route 879
Grampian, PA 16838



W. Patric Boyer
Attorney for Defendants

FILED ^{AB}_{CC}
M/11:55 ~~BA~~
APR 16 2004

William A. Shaw
Prothonotary/Clerk of Courts

CA

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

BRIDGET NELEN, formerly Bridget :
Wilson, and DONALD NELEN, her :
husband :
vs. : No. 04-57-CD

DUBOIS REGIONAL MEDICAL :
CENTER; PENN TOWNSHIP RURAL :
HEALTH CLINIC; DELA TORRE :
MEDICAL CLINIC; HENRY G. DELA :
TORRE, M.D. and PHOUNG T. :
WIRTHS, D.O., as to both individually :
and t/d/b/a PENN TOWNSHIP RURAL :
HEALTH CLINIC and/or DELA :
TORRE MEDICAL CLINIC :

FILED

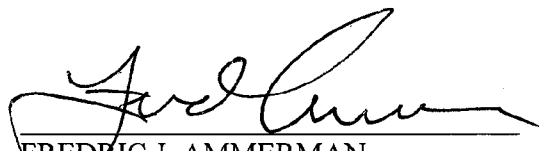
APR 23 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

NOW, this 23 day of April, 2004, upon consideration of
Attorney Puntill's Preliminary Objections to Amended Complaint, a Rule is hereby
issued upon the parties to Appear and Show Cause why the Objections should not
be granted. Argument is scheduled the 26 day of April, 2004, at
10:30 A.M. in Courtroom No. 1, Clearfield County
Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED 3cc

APR 23 2004

William A. Shaw
Prothonotary/Clerk of Courts

all parties notified by
phone - parties will pick
up cc on the 26th

CA

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

BRIDGET NELEN, formerly Bridget :
Wilson, and DONALD NELEN, her :
husband :
vs. : No. 04-57-CD

DUBOIS REGIONAL MEDICAL :
CENTER; PENN TOWNSHIP RURAL :
HEALTH CLINIC; DELA TORRE :
MEDICAL CLINIC; HENRY G. DELA :
TORRE, M.D. and PHOUNG T. :
WIRTHS, D.O., as to both individually :
and t/d/b/a PENN TOWNSHIP RURAL :
HEALTH CLINIC and/or DELA :
TORRE MEDICAL CLINIC :

FILED


APR 23 2004

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

NOW, this 23 day of April, 2004, upon consideration of
Attorney Johnson's Preliminary Objections, a Rule is hereby issued upon the
parties to Appear and Show Cause why the Objections should not be granted.
Argument is scheduled the 26 day of April, 2004, at
10:30 A.M. in Courtroom No. 1, Clearfield County
Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED

3cc

01/3/1081
APR 23 2004

to CIA-

William A. Shaw
Prothonotary/Clerk of Courts

all parties notified by phone
I will pick up cc on the 26th

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

BRIDGET NELEN, formerly Bridget
Wilson, and DONALD NELEN, her
husband,

v.

No. 04-00057-CD

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O., as to both individually and t/d/b/a
PENN TOWNSHP RURAL HEALTH
CLINIC and/or DELA TORRE MEDICAL
CLINIC.

FILED

MAY 05 2004

William A. Shaw
Prothonotary

ORDER

AND NOW, this 5th day of May, 2004 following the submission of briefs and the hearing of oral argument on Plaintiff's Preliminary Objections, the Court finds as follows:

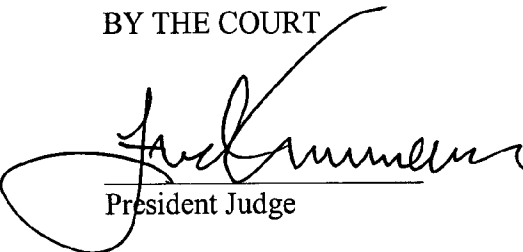
1. That the breach of contract claim contained in Count VI of Plaintiffs' Amended Complaint (Count VI) is redundant in the face of the medical malpractice claim contained in Count I of Plaintiffs' Amended Complaint. While Pennsylvania's appellate courts seem not to have yet examined situations such as the one before the Court, it is apparent that other trial courts of the Commonwealth have. They have concluded that in a medical malpractice setting, absent the averring of special circumstances necessitating their inclusion, contract claims duplicative of negligence claims should be stricken. See Murphy v. Aesthetic & Reconstructive Surgery, 2 Pa. D. & C.4th 273 (1989); Sagulla v. Sculling, 26 Pa. D. & C.3^d 148 (1982); Peterman v. Geisinger Medical Center, 8 Pa. D. & C.3^d 432 (1978). This Court agrees, and GRANTS Defendants'

Preliminary Objection to Count VI. Paragraphs 55 through 59 of Count VI, and all accompanying subparagraphs, are stricken from Plaintiffs' Amended Complaint.

2. Due to the fact that the Court found Plaintiffs' argument contained in Count VI to be duplicative, it did not address Defendants' argument that Count VI is prohibited by Section 1301.606 of the Health Care Service malpractice Act, 40 P.S. § 1303.606.¹

3. In regard to Defendants' Preliminary Objection in the form of a Motion to Strike Verification, the Court notes that subsequent to the filing of their Amended Complaint, but prior to oral argument, Plaintiffs filed a Supplement to the Amended Complaint containing Plaintiffs' verifications. Additionally, as Defense Counsel stipulated at oral argument that the Motion to Strike Verification was no longer relevant, the Court DISMISSES Defendants' Motion to Strike Verification as being MOOT.

BY THE COURT



President Judge

¹ Replaced by Section 1303.105 of the Medical Care Availability and Reduction of Error (MCARE) Act, 40 P.S. § 1303.105, effective March 20, 2002.

FILED

3:13pm 1cc atty General
2cc atty General
1cc atty General

MAY 05 2004

Q
(20)

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No. 2004-00057-CD

ANSWER AND NEW MATTER

Code:

Filed on behalf DuBois Regional Medical
Center, one of the defendants

Counsel of Record for These Parties:

David R. Johnson, Esquire
PA I.D. #26409

Thomas B. Anderson, Esquire
PA I.D. #79990

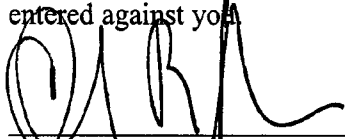
Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

NOTICE TO PLEAD:

To: Plaintiffs

You are hereby notified to file a written
response to the enclosed ANSWER AND
NEW MATTER within twenty (20) days of
service hereof or a default judgment may be
entered against you.



Attorneys for defendant.

FILED

JUN 18 2004

William A. Shaw
Prothonotary/Clerk of Courts

ANSWER AND NEW MATTER

NOW COMES, DuBois Regional Medical Center, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following answer and new matter in response to plaintiffs' complaint.

ANSWER

1. Defendant is advised and therefore believes and avers that the Pennsylvania Rules of Civil Procedure do not require him to set forth his answers and defenses except as stated below.
2. If and to the extent that any factual averment in the complaint is not responded to in the paragraphs which follow, said allegation is denied for the reason that, after a reasonable investigation, this defendant lacks sufficient information or knowledge upon which to form a belief as to the truth of the averments therein.
3. Each of the paragraphs of this answer should be read so as to incorporate by reference each of the other paragraphs of this answer.
4. The following paragraphs of the complaint are denied for the reason that, after a reasonable investigation, this defendant has insufficient information or knowledge to form a belief as to the truth of the averments therein: 1, 2, 16, and 17 through 28.

5. Paragraphs 3, 5, and 6 of the complaint are admitted in part and denied in part. It is admitted that the healthcare providers are properly identified and that they practice at the locations specified. It is also admitted that plaintiffs are asserting a professional liability claim; however, any statement, suggestion or implication that the allegations have any merit is denied, because they do not.

6. The following paragraphs of the complaint are admitted: 11 and 7, except that Paragraph 7 is denied insofar as it states, suggests or implies that "Penn Clinic" designates any entity or that it was the employer of the defendant physicians. In further response, please refer to Paragraph 9 of this answer.

7. Paragraphs 8, 10, 12, 13, 14, 15 of the complaint are denied for the reason that they incompletely, inaccurately and/or misleadingly describe events which occurred. While these paragraphs to some extent extract or reference words or phrases from the medical records, they do not reflect the context in which the notes were made and they ignore other words and phrases necessary to give fair meaning to the referenced language.

8. Paragraph 9 of the complaint is denied.

9. Paragraph 29 of the complaint is admitted as to DRMC. As set forth above, however, "Penn Clinic" is simply the name of the clinic and "Penn Clinic" is not a

separate entity capable of being sued. Therefore, the allegations in Paragraph 29 of the complaint with regard to "Penn Clinic" are denied. For these same reasons, the allegations in Paragraph 4 of the complaint are denied.

10. Paragraph 30, 32 (including sub-paragraphs 32.1 through 32.10), 33 through 35, 37 (including sub-paragraphs 37.1 through 37.9), 38 through 40, 42, 43, 44 (including sub-paragraphs 44.1 through 44.7), 45, 46, 50 (including sub-paragraphs 50.1 through 50.7), 51, 52, 54, 61 (including sub-paragraphs 61.1 through 61.8), 62, 63 (including sub-paragraphs 63.1 through 63.10), 65 (including sub-paragraphs 65.1 through 65.3) and 66 of the complaint constitute conclusions of law to which no further response is required. However, if any response is deemed necessary, these paragraph and sub-paragraphs are denied.

11. Paragraphs 31, 36, 41, 47, 53, 60 and 64 of the complaint solely incorporate by reference other paragraphs, for which no separate response is required. However, to the extent that any additional response is deemed necessary, defendant incorporates by reference its answers to those paragraphs which have been incorporated by the plaintiffs.

12. Paragraphs 48 and 49 of the complaint are denied for the reason that "Penn Clinic" is simply the name of the clinic and "Penn Clinic" does not represent a corporate entity capable of being sued. Accordingly, "Penn Clinic" does not have any agents, servants or employees and cannot be vicariously liable because it is not an entity.

For all of these reasons, the allegations in Paragraphs 48 and 49 of the complaint are denied.

13. The allegations in Paragraphs 55 through 59 of the complaint have been dismissed by court order.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of this defendant.

NEW MATTER

14. In the absence of a special contract in writing, a healthcare provider is neither a warrantor nor a guarantor of a cure. This provision is pleaded as an affirmative defense insofar as there was no special contract in writing in this case.

15. This defendant pleads the applicability of the Pennsylvania Comparative Negligence Statute as an affirmative defense.

16. While denying all negligence and all liability, this defendant avers that if it is found to have been negligent in any respect, any liability resulting therefrom would be diminished or barred by operation of the Pennsylvania Comparative Negligence Statute.

17. Plaintiffs' complaint fails to state any cause of action against this defendant.

18. Defendant pleads the doctrines of intervening and superseding causes as affirmative defenses.

19. Defendant pleads "payment" as an affirmative defense to the extent that any amount less than the amount billed for medical services to the plaintiff after the alleged incident was accepted as payment in full.

20. Defendant is not liable for any pre-existing medical conditions which caused the claimed injuries and/or damages.

21. To the extent that evidence develops during discovery to demonstrate the application of the two schools of thought doctrine, defendant pleads that doctrine as providing a complete defense for any alleged negligence and/or malpractice.

22. This defendant raises all affirmative defenses set forth or available as a result of the provisions of House Bill 1802 which became Pennsylvania law in 2002.

23. To the extent plaintiffs base their claim in whole or in part on any act occurring more than two years prior to the filing of the lawsuit, the claims are barred by the applicable statute of limitations, which is pleaded as an affirmative defense.

24. Defendant pleads all applicable statutes of limitations as affirmative defenses.

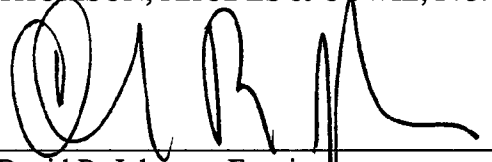
25. If and to the extent that plaintiffs' claims were not filed within the time limitations imposed by law, said lawsuit is barred by the applicable statutes of limitations.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of this defendant.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

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

David R. Johnson, Esquire
Attorneys for DuBois Regional Medical
Center, one of the defendants.

VERIFICATION

I, Gregory J. Volpe in the capacity of
Director of Risk Mgt. at DuBois Regional Medical Center, have read the
foregoing ANSWER AND NEW MATTER. The statements therein are correct to the
best of my personal knowledge or information and belief.

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

Gregory J. Volpe
Date: June 15, 2004

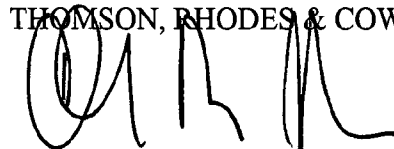
CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within ANSWER AND NEW
MATTER has been served upon the following counsel of record and same placed in the
U.S. Mails on this 16th day of June, 2004:

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellott, LLC
1001 Corporate Drive
Suite 200
Canonsburg, PA 15317

Ronald M. Puntl, Esquire
Israel, Wood, Puntl & Grimm, P.C.
501 Grant Building
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for DuBois Regional Medical
Center, one of the defendants.

FILED NO
3/13/04 cc
JUN 18 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

vs.

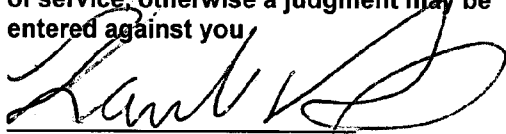
DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

NOTICE TO PLEAD

TO: Plaintiffs

Please take notice that you are to respond to
the within New Matter within twenty (20) days
of service, otherwise a judgment may be
entered against you.



Ronald M. Puntil, Jr., Esquire

CIVIL DIVISION:

No. 2004-00057-CD

Code: 007

Type of Pleading:

**ANSWER AND NEW MATTER TO
PLAINTIFFS' AMENDED COMPLAINT**

Filed on behalf of:

HENRY G. DELA TORRE, M.D.

Defendant

Counsel of Record for this Party

Ronald M. Puntil, Jr., Esquire

PA I.D. #42146

ISRAEL, WOOD, PUNTIL
& GRIMM, P.C.

Firm I.D. #788

Suite 501, Grant Building

310 Grant Street

Pittsburgh, PA 15219

(412) 391-1114

JURY TRIAL DEMANDED

FILED

JUN 24 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

CIVIL DIVISION:

Plaintiffs,

No. 2004-00057-CD

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

ANSWER AND NEW MATTER TO PLAINTIFFS' AMENDED COMPLAINT

AND NOW, comes the Defendant, Henry G. Dela Torre, M.D., by and through his attorneys Israel, Wood, Puntil, & Grimm, P.C. and Ronald M. Puntil, Jr., Esquire and files the following Answer and New Matter to Plaintiffs' Complaint, as follows:

1. The Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted.
2. Pursuant to Pennsylvania Rule of Civil Procedure 1029(e), this Defendant denies each and every allegation of the Plaintiffs' Complaint generally unless otherwise hereinafter admitted.
3. The averments of Paragraph 5 of the Plaintiffs' Complaint are admitted in part and denied in part. It is admitted that Dr. Dela Torre is a licensed physician with an

office in Clearfield County, Pennsylvania. The remainder of the averments of Paragraph 5 are denied generally.

4. The averments of Paragraph 7 are admitted. It is admitted that Dr. Dela Torre is a licensed medical practitioner in the Commonwealth of Pennsylvania. It is admitted that Dr. Dela Torre was acting as an agent, servant, or employee of DRMC and/or Penn Clinic at the time of his treatment of Ms. Nelen.

5. The averments of Paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 of the Plaintiffs' Complaint are denied generally pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

6. In response to Paragraph 31 of Plaintiffs' Amended Complaint, this defendant incorporates Paragraphs 1 through 5 of his Answer and New Matter as though same were fully set forth at length.

7. The averments of Paragraph 32 and its subparagraphs are denied and strict proof thereof is demanded. It is denied that Dr. Dela Torre was negligent, careless, and/or reckless in the treatment of Bridget Nelen and, to the contrary, at all times material hereto, Dr. Dela Torre acted within the applicable standards of care. By way of further answer, the subparagraphs 32.1, 32.2, 32.3, 32.4, 32.5, 32.6, 32.7, 32.8, 32.9, 32.10, 32.11, and 32.12 are specifically denied and strict proof thereof is demanded. By way of further answer, the averments of Paragraph 32 and its subparagraphs are denied generally pursuant to Pa.R.C.P. 1029(e).

8. The averments of Paragraphs 33, 34, and 35 are denied generally pursuant to Pa.R.C.P. 1029(e). By way of further answer, it is denied that Dr. Dela Torre's care and treatment of Mrs. Nelen fell below accepted standards of care or that

Dr. Dela Torre was negligent, careless, or reckless in the treatment of the Plaintiff. By way of further answer, it is denied that Dr. Dela Torre's conduct was a substantial factor in causing injury or damage to Mrs. Nelen. To the contrary, at all times material hereto, Dr. Dela Torre acted in accordance with the applicable standards of care.

9. The averments of Paragraphs 36, 37, 38, 39, and 40 are not directed at this defendant and thus a responsive pleading is not required. Should a responsive pleading be deemed necessary, this defendant generally denies each and every allegation pursuant to Pa.R.C.P. 1029(e).

10. The averments of Paragraphs 41, 42, 43, 44, 45, and 46 of Plaintiffs' Amended Complaint are denied generally pursuant to Pa.R.C.P. 1029(e). By way of further answer, the averments in Paragraphs 42, 43, 44 and its subparagraphs, 45, and 46 which state that Dr. Dela Torre was an agent, servant, and/or employee of DRMC are admitted. By way of further answer, it is denied that Dr. Dela Torre was negligent in any fashion or that any act or omission on the part of Dr. Dela Torre was the proximate cause of any of the Plaintiffs' alleged injuries or damages, and strict proof thereof is demanded at trial.

11. The averments of Paragraph 47, 48, 49, 50, 51, 52, 53, and 54 of Plaintiffs' Amended Complaint are denied generally pursuant to Pa.R.C.P. 1029(e). By way of further answer, it is admitted that Dr. Dela Torre was an agent, servant, or employee of Penn Clinic. By way of further answer, it is denied that Dr. Dela Torre was negligent in any fashion or that any act or omission on the part of Dr. Dela Torre was the proximate cause of any of the Plaintiffs' alleged injuries or damages, and strict proof thereof is demanded at trial.

12. Paragraphs 55, 56, 57, and 58 of the Plaintiffs' Amended Complaint were stricken pursuant to Court Order.

13. The averments of Paragraphs 59, 60, 61, 62, 63, 64, and 65 are denied generally pursuant to Pa.R.C.P. 1029(e). By way of further answer, this defendant denies that any act or omission on the part of this defendant was the proximate cause of any of the Plaintiffs' alleged injuries or damages and strict proof thereof is demanded.

WHEREFORE, this Defendant requests that the Plaintiffs' Amended Complaint be dismissed with prejudice.

NEW MATTER

14. Paragraphs 1 through 13 of Defendant's Answer to Plaintiffs' Amended Complaint are hereby incorporated as though fully set forth at length herein.

15. The Plaintiffs' cause of action is completely and/or partially barred by the applicable statute of limitation, including, but not limited to 42 Pa.C.S.A. §5524.

16. The Plaintiffs' cause of action is completely and/or partially barred or limited pursuant to the terms of the Medical Care Availability and Reduction of Error Act, 40 P.S. §1303.

17. The Plaintiffs' cause of action is completely and/or partially barred by the doctrine of laches.

18. The Plaintiffs' cause of action is completely and/or partially barred by the intervening and/or superseding acts of individuals other than this defendant.

ISRAEL, WOOD, PUNTIL & GRIMM, P.C.

By: 

Ronald M. Puntil, Jr., Esquire
Attorneys for Defendant Henry G.
Dela Torre, M.D.

VERIFICATION

JUN 21 2004

I, **Henry G. Dela Torre, M.D.**, do verify that the statements of fact contained in the foregoing **Answer and New Matter to Plaintiffs' Amended Complaint** are true and correct to the best of my knowledge, information and belief, in the matter of **Nelen v. Dela Torre, et al.**, G.D. No. **2004-00057-CD**, **Clearfield County**.

This verification is made pursuant to the provisions of Pa.C.S.A. 4904 relating to unsworn falsification to authorities.



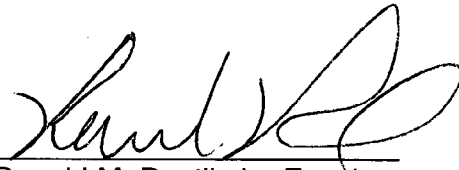
Henry G. Dela Torre, M.D.

Date: 6/15/04

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Answer and New Matter to Plaintiffs' Amended Complaint** was forwarded to the following counsel of record, via first class mail, postage prepaid on the 21st day of June, 2004:

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellot, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317
Counsel for Plaintiffs



Ronald M. Puntil, Jr., Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No. 2004-00057-CD

ANSWER AND NEW MATTER

Code:

Filed on behalf of Phoung T. Wirths, D.O., one
of the defendants

Counsel of Record for These Parties:

David R. Johnson, Esquire
PA I.D. #26409

Thomas B. Anderson, Esquire
PA I.D. #79990

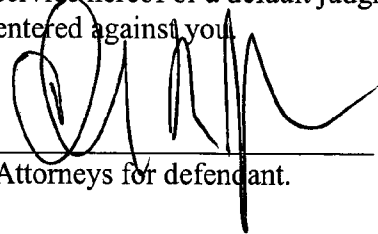
Thomson, Rhodes & Cowie, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

NOTICE TO PLEAD:

To: Plaintiffs

You are hereby notified to file a written
response to the enclosed ANSWER AND
NEW MATTER within twenty (20) days of
service hereof or a default judgment may be
entered against you.


Attorneys for defendant.

FILED

JUN 28 2004

William A. Shaw
Prothonotary/Clerk of Courts

ANSWER AND NEW MATTER

NOW COMES, Phoung T. Wirths, D.O., by his attorneys, Thomson, Rhodes & Cowie, P.C., and files the following answer and new matter in response to plaintiffs' complaint.

ANSWER

1. Defendant is advised and therefore believes and avers that the Pennsylvania Rules of Civil Procedure do not require him to set forth his answers and defenses except as stated below.
2. If and to the extent that any factual averment in the complaint is not responded to in the paragraphs which follow, said allegation is denied for the reason that, after a reasonable investigation, this defendant lacks sufficient information or knowledge upon which to form a belief as to the truth of the averments therein.
3. Each of the paragraphs of this answer should be read so as to incorporate by reference each of the other paragraphs of this answer.
4. The following paragraphs of the complaint are denied for the reason that, after a reasonable investigation, this defendant has insufficient information or knowledge to form a belief as to the truth of the averments therein: 1, 2, 16, and 17 through 28.

5. Paragraphs 3, 5, and 6 of the complaint are admitted in part and denied in part. It is admitted that the healthcare providers are properly identified and that they practice at the locations specified. It is also admitted that plaintiffs are asserting a professional liability claim; however, any statement, suggestion or implication that the allegations have any merit is denied, because they do not.

6. The following paragraphs of the complaint are admitted: 11 and 7, except that Paragraph 7 is denied insofar as it states, suggests or implies that "Penn Clinic" designates any entity or that it was the employer of the defendant physicians. In further response, please refer to Paragraph 9 of this answer.

7. Paragraphs 8, 10, 12, 13, 14, 15 of the complaint are denied for the reason that they incompletely, inaccurately and/or misleadingly describe events which occurred. While these paragraphs to some extent extract or reference words or phrases from the medical records, they do not reflect the context in which the notes were made and they ignore other words and phrases necessary to give fair meaning to the referenced language.

8. Paragraph 9 of the complaint is denied.

9. Paragraph 29 of the complaint is admitted as to DRMC. As set forth above, however, "Penn Clinic" is simply the name of the clinic and "Penn Clinic" is not a

separate entity capable of being sued. Therefore, the allegations in Paragraph 29 of the complaint with regard to "Penn Clinic" are denied. For these same reasons, the allegations in Paragraph 4 of the complaint are denied.

10. Paragraph 30, 32 (including sub-paragraphs 32.1 through 32.10), 33 through 35, 37 (including sub-paragraphs 37.1 through 37.9), 38 through 40, 42, 43, 44 (including sub-paragraphs 44.1 through 44.7), 45, 46, 50 (including sub-paragraphs 50.1 through 50.7), 51, 52, 54, 61 (including sub-paragraphs 61.1 through 61.8), 62, 63 (including sub-paragraphs 63.1 through 63.10), 65 (including sub-paragraphs 65.1 through 65.3) and 66 of the complaint constitute conclusions of law to which no further response is required. However, if any response is deemed necessary, these paragraph and sub-paragraphs are denied.

11. Paragraphs 31, 36, 41, 47, 53, 60 and 64 of the complaint solely incorporate by reference other paragraphs, for which no separate response is required. However, to the extent that any additional response is deemed necessary, defendant incorporates by reference its answers to those paragraphs which have been incorporated by the plaintiffs.

12. Paragraphs 48 and 49 of the complaint are denied for the reason that "Penn Clinic" is simply the name of the clinic and "Penn Clinic" does not represent a corporate entity capable of being sued. Accordingly, "Penn Clinic" does not have any agents, servants or employees and cannot be vicariously liable because it is not an entity.

For all of these reasons, the allegations in Paragraphs 48 and 49 of the complaint are denied.

13. The allegations in Paragraphs 55 through 59 of the complaint have been dismissed by court order.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of this defendant.

NEW MATTER

14. In the absence of a special contract in writing, a healthcare provider is neither a warrantor nor a guarantor of a cure. This provision is pleaded as an affirmative defense insofar as there was no special contract in writing in this case.

15. This defendant pleads the applicability of the Pennsylvania Comparative Negligence Statute as an affirmative defense.

16. While denying all negligence and all liability, this defendant avers that if it is found to have been negligent in any respect, any liability resulting therefrom would be diminished or barred by operation of the Pennsylvania Comparative Negligence Statute.

17. Plaintiffs' complaint fails to state any cause of action against this defendant.

18. Defendant pleads the doctrines of intervening and superseding causes as affirmative defenses.

19. Defendant pleads "payment" as an affirmative defense to the extent that any amount less than the amount billed for medical services to the plaintiff after the alleged incident was accepted as payment in full.

20. Defendant is not liable for any pre-existing medical conditions which caused the claimed injuries and/or damages.

21. To the extent that evidence develops during discovery to demonstrate the application of the two schools of thought doctrine, defendant pleads that doctrine as providing a complete defense for any alleged negligence and/or malpractice.

22. This defendant raises all affirmative defenses set forth or available as a result of the provisions of House Bill 1802 which became Pennsylvania law in 2002.

23. To the extent plaintiffs base their claim in whole or in part on any act occurring more than two years prior to the filing of the lawsuit, the claims are barred by the applicable statute of limitations, which is pleaded as an affirmative defense.

24. Defendant pleads all applicable statutes of limitations as affirmative defenses.

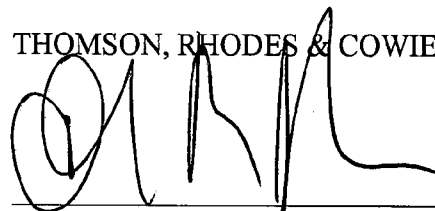
25. If and to the extent that plaintiffs' claims were not filed within the time limitations imposed by law, said lawsuit is barred by the applicable statutes of limitations.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of this defendant.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

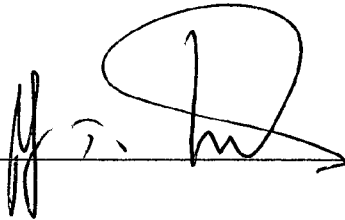
A handwritten signature in black ink, appearing to read 'DRJ', is written over a horizontal line.

David R. Johnson, Esquire
Attorneys for Phoung T. Wirths, D.O., one
of the defendants.

VERIFICATION

I, Phoung T. Wirths, D.O., have read the foregoing ANSWER AND NEW
MATTER. The statements therein are correct to the best of my personal knowledge or
information and belief.

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



A handwritten signature in black ink, appearing to read 'Phoung T. Wirths', is written over a horizontal line.

Date: 6/21/07

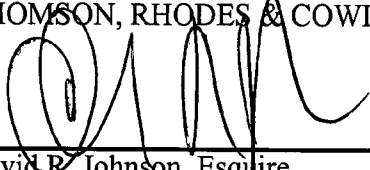
CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within ANSWER AND NEW
MATTER has been served upon the following counsel of record and same placed in the
U.S. Mails on this 24th day of June, 2004:

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellott, LLC
1001 Corporate Drive
Suite 200
Canonsburg, PA 15317

Ronald M. Puntl, Esquire
Israel, Wood, Puntl & Grimm, P.C.
501 Grant Building
Pittsburgh, PA 15219

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for Phoung T. Wirths, D.O., one
of the defendants.

FILED No
01144821 cc
JUN 28 2004
W William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

**REPLY TO DR. WIRTHS' NEW
MATTER**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED No cc
m 11:25 AM
JUL 26 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

REPLY TO DR. WIRTHS' NEW MATTER

AND NOW this 28 day of July, 2004, comes the Plaintiffs, by their attorneys,
Eckert Seamans Cherin & Mellott LLC, and files this, their Reply to Dr. Wirths' New Matter,
and in support thereof alleges as follows:

1. The allegation in Paragraph 14 of said New Matter is a conclusion to which no
reply is necessary. To the extent that a reply may be necessary, it is averred that, at no place
within this Complaint, does it aver that a provider is a grantor or warrantor.

2. The allegations in Paragraphs 15 and 16 of said New Matter alleging the
application of the stated statute, is a conclusion to which no reply is necessary. To the extent that
a reply may be necessary, it is averred that said statute has no application as between the
Plaintiffs and Defendants.

3. The allegation in Paragraph 17 of said New Matter which states that the Plaintiffs have failed to state a cause of action is denied. On the contrary, it is averred that an appropriate action has been asserted within the Complaint.

4. The allegations in Paragraphs 18 and 19 of said New Matter alleging an application of the Doctrine of Intervening and Superseding Cause and Payment is a conclusion to which no reply is necessary. To the extent that a reply may be necessary, it is denied that these doctrines and/or defenses have any application to the case at hand.

5. The allegations in Paragraphs 20 and 21 of said New Matter alleging as defenses preexisting condition and the "two schools of thought" doctrine are conclusions to which no reply is necessary. To the extent that a reply may be necessary, it is averred that defenses and concepts have no application to the case at hand.

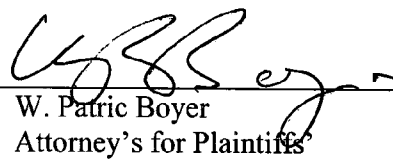
6. The allegation in Paragraph 22 of said New Matter which asserts those defenses available in House Bill 1802 is a conclusion to which no reply is necessary. To the extent that a reply may be necessary, it is averred that the defenses raised by said Bill have no application to the case at hand.

7. The allegations in Paragraphs 23 through 25 of said New Matter raising a statute of limitations defense are conclusions to which no reply is necessary. To the extent that a reply may be necessary, it is averred that the action filed by the Plaintiffs was effected in a timely matter consistent with the applicable law and consistent with the discovery rule.

WHEREFORE, the Plaintiffs pray your Honorable Court to dismiss Dubois Regional
New Matter.

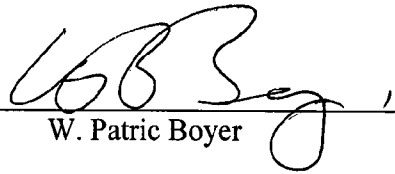
ECKERT SEAMANS CHERIN & MELLOTT

By: _____


W. Patric Boyer
Attorney's for Plaintiffs

VERIFICATION

I, **W. Patric Boyer**, verify that the averments contained in the attached Petition Reply to New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.


W. Patric Boyer

Date: July 20, 2004

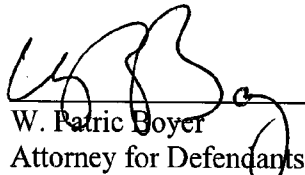
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Reply to New Matter was served on the following via United States first class mail, postage prepaid, this 22nd day of July, 2004:

Ronald M. Puntil, Jr., Esquire
Israel, Wood, Puntil & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Penn Township Regional Health Clinic
RR #1, Box 45A
Route 879
Grampian, PA 16838



W. Patric Boyer
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

Plaintiffs,

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

**REPLY TO DUBOIS REGIONAL'S NEW
MATTER**

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED NO
m/11:2501 cc
JUL 26 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

REPLY TO DUBOIS REGIONAL'S NEW MATTER

AND NOW this 20 day of July, 2004, comes the Plaintiffs, by their attorneys,
Eckert Seamans Cherin & Mellott LLC, and files this, their Reply to Dubois Regional's New
Matter and in support thereof alleges as follows:

1. The allegation in Paragraph 14 of said New Matter is a conclusion to which no
reply is necessary. To the extent that a reply may be necessary, it is averred that, at no place
within this Complaint, does it aver that a provider is a grantor or warrantor.

2. The allegations in Paragraphs 15 and 16 of said New Matter alleging the
application of the stated statute, is a conclusion to which no reply is necessary. To the extent that
a reply may be necessary, it is averred that said statute has no application as between the
Plaintiffs and Defendants.

3. The allegation in Paragraph 17 of said New Matter which states that the Plaintiffs have failed to state a cause of action is denied. On the contrary, it is averred that an appropriate action has been asserted within the Complaint.

4. The allegations in Paragraphs 18 and 19 of said New Matter alleging an application of the Doctrine of Intervening and Superseding Cause and Payment is a conclusion to which no reply is necessary. To the extent that a reply may be necessary, it is denied that these doctrines and/or defenses have any application to the case at hand.

5. The allegations in Paragraphs 20 and 21 of said New Matter alleging as defenses preexisting condition and the "two schools of thought" doctrine are conclusions to which no reply is necessary. To the extent that a reply may be necessary, it is averred that defenses and concepts have no application to the case at hand.

6. The allegation in Paragraph 22 of said New Matter which asserts those defenses available in House Bill 1802 is a conclusion to which no reply is necessary. To the extent that a reply may be necessary, it is averred that the defenses raised by said Bill have no application to the case at hand.

7. The allegations in Paragraphs 23 through 25 of said New Matter raising a statute of limitations defense are conclusions to which no reply is necessary. To the extent that a reply may be necessary, it is averred that the action filed by the Plaintiffs was effected in a timely matter consistent with the applicable law and consistent with the discovery rule.

WHEREFORE, the Plaintiffs pray your Honorable Court to dismiss Dubois Regional
New Matter.

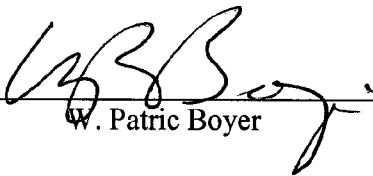
ECKERT SEAMANS CHERIN & MELLOTT

By: 

W. Patric Boyer
Attorney's for Plaintiffs

VERIFICATION

I, **W. Patric Boyer**, verify that the averments contained in the attached Reply to New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.


W. Patric Boyer

Date: July __, 2004

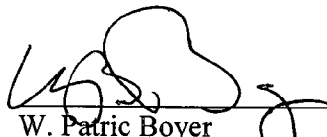
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Reply to New Matter was served on the following via United States first class mail, postage prepaid, this 22nd day of July, 2004:

Ronald M. Puntil, Jr., Esquire
Israel, Wood, Puntil & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Penn Township Regional Health Clinic
RR #1, Box 45A
Route 879
Grampian, PA 16838



W. Patric Boyer
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

**REPLY TO DR. DELA TORRES' NEW
MATTER**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED No
no. 25.61 cc
JUL 26 2004
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

REPLY TO DR. DELA TORRE'S NEW MATTER

AND NOW this 20 day of July, 2004, comes the Plaintiffs, by their attorneys, Eckert Seamans Cherin & Mellott LLC, and files this, their Reply to Dr. Dela Torres' New Matter and in support thereof alleges as follows:


1. In response to Paragraph 14 of said New Matter, which incorporates the answer, the Plaintiffs incorporate herein by reference the contents of their Complaint.
2. The allegations in Paragraphs 15 through 18 of said New Matter which asserts various defenses and limitations are a conclusion to which no reply is necessary. To the extent that a Reply may be necessary, it is denied that the present action is, in any way, barred and/ or limited by the stated defenses.

WHEREFORE, the Plaintiffs' pray your Honorable Court to dismiss the Dr. Dela Torre's
New Matter.

JURY TRIAL DEMANDED

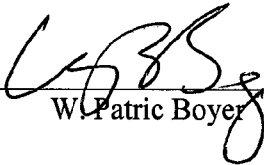
ECKERT SEAMANS CHERIN & MELLOTT LLC

Date: 7-20-08

By: 
W. Patric Boyer
Attorney for Plaintiffs

VERIFICATION

I, **W. Patric Boyer**, verify that the averments contained in the attached Reply to New Matter are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.



W. Patric Boyer

Date: July 20, 2004

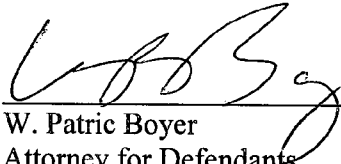
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Reply to New Matter was served on the following via United States first class mail, postage prepaid, this 22nd day of July, 2004:

Ronald M. Puntl, Jr., Esquire
Israel, Wood, Puntl & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Penn Township Regional Health Clinic
RR #1, Box 45A
Route 879
Grampian, PA 16838



W. Patric Boyer
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or
DELA TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION:

No. 2004-00057-CD

Code: 007

Type of Pleading:

**NOTICE OF SERVICE OF ANSWERS TO
INTERROGATORIES DIRECTED TO
HENRY G. DELA TORRE, M.D.**

Filed on behalf of:

HENRY G. DELA TORRE, M.D.

Defendant

Counsel of Record for this Party

Ronald M. Puntil, Jr., Esquire
PA I.D. #42146

ISRAEL, WOOD, PUNTIL
& GRIMM, P.C.
Firm I.D. #788
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

(412) 391-1114

JURY TRIAL DEMANDED

EGK
FILED NO cc
m/12-4501
OCT 13 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

CIVIL DIVISION:

Plaintiffs,

No. 2004-00057-CD

vs.

DUBOIS REGIONAL MEDICAL
CENTER; PENN TOWNSHIP RURAL
HEALTH CLINIC; DELA TORRE
MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T.
WIRTHS, D.O., as to both individually
and t/d/b/a PENN TOWNSHIP RURAL
HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

**NOTICE OF SERVICE OF ANSWERS TO
INTERROGATORIES DIRECTED TO HENRY G. DELA TORRE, M.D.**

Please take note that defendant, **HENRY G. DELA TORRE, M.D.**, by and through his counsel, Israel, Wood, Punttil & Grimm, P.C. and Ronald M. Punttil, Jr., Esquire, served **Answers to Interrogatories** on plaintiffs' counsel of record, W. Patric Boyer, Esquire, by having the same forwarded to Attorney Boyer via first class mail, postage prepaid to Eckert, Seamans, Cherin & Mellot, LLC, 1001 Corporate Drive, Suite 200, Canonsburg, PA 15317, on the 8th day of October, 2004.

ISRAEL, WOOD, PUNTIL & GRIMM, P.C.

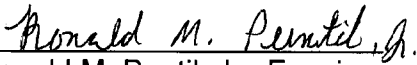
By: Ronald M. Punttil, Jr.
Ronald M. Punttil, Jr., Esquire
Attorneys for Defendant Henry G.
Dela Torre, M.D.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Notice of Service of Answers to Interrogatories Directed to Henry G. Dela Torre, M.D.** was forwarded to the following counsel of record, via first class mail, postage prepaid on the 8th day of October, 2004:

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellot, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317
Counsel for Plaintiffs

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499
**Counsel for DuBois Regional Medical Center
And Phoung T. Wirths, D.O.**



Ronald M. Punttil, Jr., Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL CENTER;
PENN TOWNSHIP RURAL HEALTH
CLINIC; DELA TORRE MEDICAL CLINIC;
HENRY G. DELA TORRE, M.D. and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No.: 2004-00057-CD

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

Filed on behalf of Defendant, Henry G. Dela
Torre, M.D.

Counsel of Record for this Party:

Ronald M. Punttil, Jr., Esquire
Pa. I.D. #42146

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

(412) 803-1140

FILED *no cc*
m/11/15/05
APR 08 2005 *CD*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson, CIVIL DIVISION
and DONALD NELEN, her husband,

No.: 2004-00057-CD

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL CENTER;
PENN TOWNSHIP RURAL HEALTH
CLINIC; DELA TORRE MEDICAL CLINIC;
HENRY G. DELA TORRE, M.D. and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

**DEFENDANTS' NOTICE OF SERVICE OF FIRST SET OF INTERROGATORIES AND
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO
PLAINTIFFS**

I HEREBY CERTIFY that the Defendant Henry G. Dela Torre, M.D.'s First Set of
Interrogatories and Request for Production of Documents Directed to Plaintiffs were served upon all
parties referenced on Certificate of Service this 6th day of April, 2005

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellot, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317
(Attorney for Plaintiffs)

Respectfully submitted,

By: Ronald M. Puntil
Ronald M. Puntil, Jr., Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **DEFENDANT'S NOTICE OF SERVICE FOR FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO PLAINTIFFS** were served upon all parties listed below, by first class United States Mail, postage prepaid, this 6th day of April, 2005, addressed as follows:

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellot, LLC
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317
(Attorney for Plaintiffs)

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

By: Ronald M. Puntil
Ronald M. Puntil, Jr., Esquire
Attorney for Defendant Henry G. Dela Torre,
M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

**PLAINTIFFS' NOTICE OF SERVICE OF
SUPPLEMENTAL INTERROGATORIES
DIRECTED TO HENRY G. DELA
TORRE, M.D.**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED

6K
NO
cc
m112:4881
APR 15 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

**NOTICE OF SERVICE OF
SUPPLEMENTAL INTERROGATORIES DIRECTED TO
HENRY G. DELA TORRE, M.D.**

I hereby certify that the Plaintiffs' Bridget Nelen and Donald Nelen Supplemental Interrogatories Directed to Henry G. Dela Torre, M.D., was served upon all parties referenced on the Certificate of Service this 12th day of April, 2005.

ECKERT SEAMANS CHERIN & MELLOTT LLC

By: 

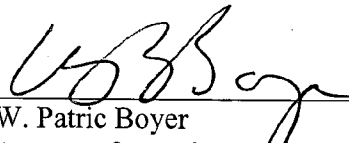
W. Patric Boyer
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Notice of Service of Supplemental Interrogatories was served on the following via United States first class mail, postage prepaid, this 12th day of April, 2005:

Ronald M. Puntl, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin PC
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499



W. Patric Boyer
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

**PLAINTIFFS' NOTICE OF SERVICE OF
SUPPLEMENTAL INTERROGATORIES
DIRECTED TO PHOUNG T. WIRTHS,
D.O.**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED
m/12:48
APR 15 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

**NOTICE OF SERVICE OF
SUPPLEMENTAL INTERROGATORIES DIRECTED TO
PHOUNG T. WIRTHS, D.O.**

I hereby certify that the Plaintiffs' Bridget Nelen and Donald Nelen Supplemental Interrogatories Directed to The Dubois Regional Medical Center was served upon all parties referenced on the Certificate of Service this 12th day of April, 2005.

ECKERT SEAMANS CHERIN & MELLOTT LLC

By: 

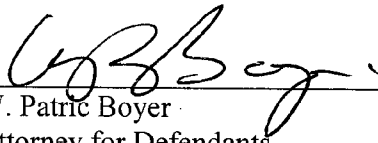
W. Patric Boyer
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Notice of Service of Supplemental Interrogatories was served on the following via United States first class mail, postage prepaid, this 12th day of April, 2005:

Ronald M. Puntl, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin PC
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499



W. Patric Boyer
Attorney for Defendants



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

**PLAINTIFFS' NOTICE OF SERVICE OF
SUPPLEMENTAL INTERROGATORIES
DIRECTED TO THE DUBOIS
REGIONAL MEDICAL CENTER**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED ^{6K} _{no cc}
m 112:4861
APR 15 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

**NOTICE OF SERVICE OF
SUPPLEMENTAL INTERROGATORIES DIRECTED TO
THE DUBOIS REGIONAL MEDICAL CENTER**

I hereby certify that the Plaintiffs' Bridget Nelen and Donald Nelen Supplemental Interrogatories Directed to The Dubois Regional Medical Center was served upon all parties referenced on the Certificate of Service this 12th day of April, 2005.

ECKERT SEAMANS CHERIN & MELLOTT LLC

By: 

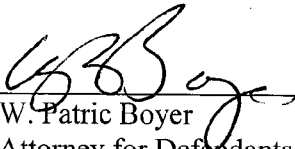
W. Patric Boyer
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Notice of Service of Supplemental Interrogatories was served on the following via United States first class mail, postage prepaid, this 12th day of April, 2005:

Ronald M. Puntl, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin PC
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499


W. Patric Boyer
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

**REQUEST FOR EXPERT REPORTS
PURSUANT TO PA. R.C.P. 1042.29
DIRECTED TO PHOUNG T. WIRTHS,
D.O.**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED

AUG 25 2005

m/12110/w
William A. Shaw

Prothonotary/Clerk of Courts

no c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

REQUEST FOR EXPERT REPORTS PURSUANT TO PA. R.C.P. 1042.29

To: Phoung T. Wirths, D.O.
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

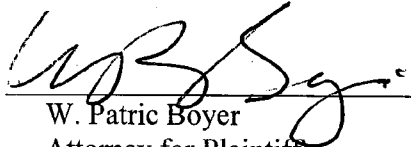
1. We, the Plaintiffs named above, by and through our attorneys, Eckert Seamans Cherin & Mellott, have furnished you, the Defendant named above, expert reports summarizing the expert testimony that will be offered to support the claims of professional negligence made against you.

2. Pursuant to Pa. R.C.P. 1042.29(a)(2), you are requested within sixty (60) days of the service of this request to furnish Eckert Seamans Cherin & Mellott expert reports summarizing the expert testimony that you will offer to support your defense as to the claims of professional negligence that have been made against you.

3. You are required to serve copies of all expert reports on all other parties.

ECKERT SEAMANS CHERIN & MELLOTT LLC

Date: 8-22-05

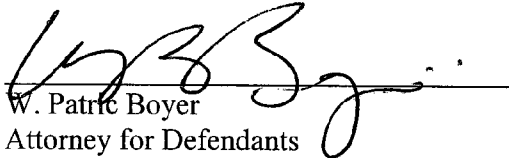
By: 
W. Patric Boyer
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Plaintiffs' Pretrial Statement was served on the following via United States first class mail, postage prepaid, this 22 day of August, 2005.

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Ronald M. Puntl, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin PC
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219


W. Patric Boyer
Attorney for Defendants

FILED
AUG 25 2009
Prothonotary/Clerk of Courts
William A. Shaw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

**REQUEST FOR EXPERT REPORTS
PURSUANT TO PA. R.C.P. 1042.29
DIRECTED TO HENRY G. DELA
TORRE, M.D.**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED

AUG 25 2005
William A. Shaw
Prothonotary/Clerk of Courts
no c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

REQUEST FOR EXPERT REPORTS PURSUANT TO PA. R.C.P. 1042.29

To: Henry G. Dela Torre, M.D.
c/o Ronald M. Puntl, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219

1. We, the Plaintiffs named above, by and through our attorneys, Eckert Seamans Cherin & Mellott, have furnished you, the Defendant named above, expert reports summarizing the expert testimony that will be offered to support the claims of professional negligence made against you.

2. Pursuant to Pa. R.C.P. 1042.29(a)(2), you are requested within sixty (60) days of the service of this request to furnish Eckert Seamans Cherin & Mellott expert reports summarizing the expert testimony that you will offer to support your defense as to the claims of professional negligence that have been made against you.

3. You are required to serve copies of all expert reports on all other parties:

ECKERT SEAMANS CHERIN & MELLOTT LLC

Date: 8-22-05

By: 

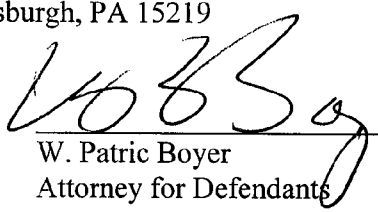
W. Patric Boyer
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Plaintiffs' Pretrial Statement was served on the following via United States first class mail, postage prepaid, this 22 day of August, 2005.

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Ronald M. Puntl, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin PC
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219



W. Patric Boyer
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

**PLAINTIFFS' MOTION TO COMPEL
PRODUCTION OF EXPERT REPORTS
PURSUANT TO Pa. R.C.P. 1042.29**

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
Sam H. Jessee, Esquire
PA I.D. No. 85748

Defendants.

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED 2cc
m/11:51/67
FEB 24 2006
Atty Jessee

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF EXPERT REPORTS
PURSUANT TO Pa. R.C.P. 1042.29

AND NOW, come Plaintiffs Bridget Nelen and Donald Nelen, by and through their counsel Eckert Seamans Cherin & Mellott, LLC, and herewith file this Motion to Compel Production of Expert Reports Pursuant to Pa. R.C.P. 1042.29, and in support thereof, aver as follows:

1. On or about January 13, 2004, Plaintiffs commenced this civil action by Praecipe for Writ of Summons.
2. On or about February 19, 2004, Plaintiffs filed a Complaint in Civil Action alleging professional negligence against Defendants.
3. On or about February 19, 2004, Plaintiffs filed the requisite Certificates of Merit as required by Pa. R.C.P. 1042.3.

4. On or about August 22, 2005, Plaintiffs served upon Defendant Henry G. Delatorre, M.D. Plaintiffs' Request for Expert Reports Pursuant to Pa. R.C.P. 1042.29. A true and correct copy of Plaintiffs' Request is attached hereto as Exhibit "A".

5. Pursuant to Plaintiffs' Request, Defendant Henry G. Delatorre, M.D. was required to produce to Plaintiffs' counsel, within one hundred twenty (120) days, expert reports summarizing the expert testimony that will be offered in support of Defendant Henry G. Delatorre, M.D. as to the claims of professional negligence alleged by Plaintiffs.

6. Accordingly, Defendant was required to produce the expert reports requested by Plaintiffs on or before December 20, 2005.

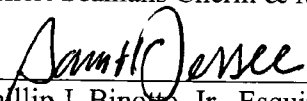
7. To date, Defendant Henry G. Delatorre, M.D. has not produced the requested expert reports.

8. Accordingly, Plaintiffs request this Honorable Court enter an Order compelling Defendant Henry G. Delatorre, M.D. to produce the requested expert reports in accordance with Pa. R.C.P. 1042.29.

WHEREFORE, Plaintiffs, Bridget Nelen and Donald Nelen, respectfully request this Honorable Court to enter an Order compelling Defendant Henry G. Delatorre, M.D. to produce the requested expert reports within fifteen (15) days of the date of the Order.

Date: Feb 21, 2006

Respectfully submitted,
Eckert Seamans Cherin & Mellott, LLC


Phillip J. Binotto, Jr., Esquire
Sam H. Jessee, Esquire
1001 Corporate Drive
Summit Corporate Center, Ste. 200
Canonsburg, PA 15317
(724) 873-2870
Attorneys for Plaintiffs

AUG 25 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

**REQUEST FOR EXPERT REPORTS
PURSUANT TO PA. R.C.P. 1042.29
DIRECTED TO HENRY G. DELA
TORRE, M.D.**

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

Filed on Behalf of Plaintiffs

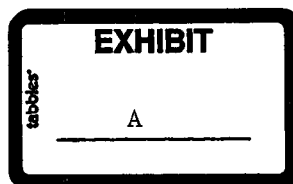
Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

{W0006631.1}



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

REQUEST FOR EXPERT REPORTS PURSUANT TO PA. R.C.P. 1042.29

To: Henry G. Dela Torre, M.D.
c/o Ronald M. Puntil, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219

1. We, the Plaintiffs named above, by and through our attorneys, Eckert Seamans Cherin & Mellott, have furnished you, the Defendant named above, expert reports summarizing the expert testimony that will be offered to support the claims of professional negligence made against you.


2. Pursuant to Pa. R.C.P. 1042.29(a)(2), you are requested within sixty (60) days of the service of this request to furnish Eckert Seamans Cherin & Mellott expert reports summarizing the expert testimony that you will offer to support your defense as to the claims of professional negligence that have been made against you.

3. You are required to serve copies of all expert reports on all other parties:

ECKERT SEAMANS CHERIN & MELLOTT LLC

Date: 8-22-05

By: _____

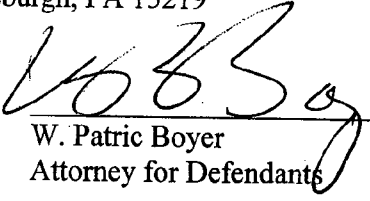

W. Patric Boyer
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the Plaintiffs' Pretrial Statement was served on the following via United States first class mail, postage prepaid, this 22 day of August, 2005.

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Ronald M. Puntil, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin PC
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219


W. Patric Boyer
Attorney for Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

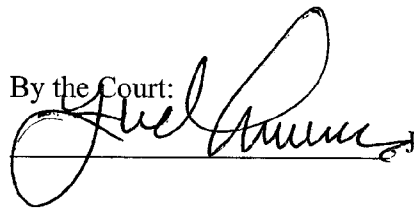
THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

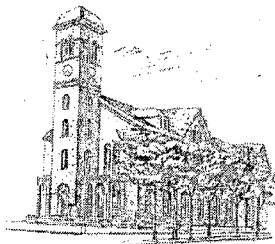
ORDER OF COURT

AND NOW, this 27 day of February, 2006, it is HEREBY,
ORDERED, ADJUDGED AND DECREED that Defendant Henry G. Delatorre, M.D. shall
produce the expert reports requested by Plaintiffs pursuant to Pa. R.C.P. 1042.29 within ^{Thirty}~~fifteen~~ 30
(~~15~~) days of the entry of this Order. FJA

By the Court:



FILED ^{see}
0110:58.001 ^{Any Jessel}
FEB 28 2006 ^{cc}



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 2/28/06

X You are responsible for serving all appropriate parties.

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

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

CA 1
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

**PLAINTIFFS' MOTION TO COMPEL
PRODUCTION OF EXPERT REPORTS
PURSUANT TO Pa. R.C.P. 1042.29**

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
Sam H. Jessee, Esquire
PA I.D. No. 85748

Defendants.

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

FILED
01:10:41 PM
MAR 16 2006
cc
CR

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

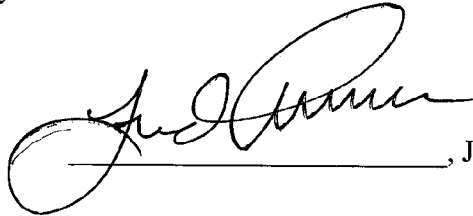
Defendants.

SCHEDULING ORDER

AND NOW, this 13 day of March, 2006, it is HEREBY,
ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Compel Production of
Expert Report of Defendant Henry G. Delatorre, M.D. is scheduled for presentation and
argument on the 17th day of April, 2006 at 10:00 a.m./p.m in the courtroom of the
Honorable Frederic J. Ammerman.

The ORDER of February 27, 2006 is hereby vacated.

By the Court:


_____, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

ORDER OF COURT

AND NOW, this ____ day of _____, 2006, it is HEREBY,
ORDERED, ADJUDGED AND DECREED that Defendant Henry G. Delatorre, M.D. shall
produce the expert reports requested by Plaintiffs pursuant to Pa. R.C.P. 1042.29 within thirty
(30) days of the entry of this Order.

By the Court:

_____, J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF EXPERT REPORTS
PURSUANT TO Pa. R.C.P. 1042.29

AND NOW, come Plaintiffs Bridget Nelen and Donald Nelen, by and through their counsel Eckert Seamans Cherin & Mellott, LLC, and herewith file this Motion to Compel Production of Expert Reports Pursuant to Pa. R.C.P. 1042.29, and in support thereof, aver as follows:

1. On or about January 13, 2004, Plaintiffs commenced this civil action by Praecipe for Writ of Summons.
2. On or about February 19, 2004, Plaintiffs filed a Complaint in Civil Action alleging professional negligence against Defendants.
3. On or about February 19, 2004, Plaintiffs filed the requisite Certificates of Merit as required by Pa. R.C.P. 1042.3.

4. On or about August 22, 2005, Plaintiffs served upon Defendant Henry G. Delatorre, M.D. Plaintiffs' Request for Expert Reports Pursuant to Pa. R.C.P. 1042.29. A true and correct copy of Plaintiffs' Request is attached hereto as Exhibit "A".

5. Pursuant to Plaintiffs' Request, Defendant Henry G. Delatorre, M.D. was required to produce to Plaintiffs' counsel, within one hundred twenty (120) days, expert reports summarizing the expert testimony that will be offered in support of Defendant Henry G. Delatorre, M.D. as to the claims of professional negligence alleged by Plaintiffs.

6. Accordingly, Defendant was required to produce the expert reports requested by Plaintiffs on or before December 20, 2005.

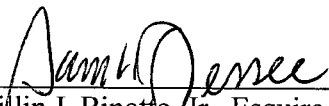
7. To date, Defendant Henry G. Delatorre, M.D. has not produced the requested expert reports.

8. Accordingly, Plaintiffs request this Honorable Court enter an Order compelling Defendant Henry G. Delatorre, M.D. to produce the requested expert reports in accordance with Pa. R.C.P. 1042.29.

WHEREFORE, Plaintiffs, Bridget Nelen and Donald Nelen, respectfully request this Honorable Court to enter an Order compelling Defendant Henry G. Delatorre, M.D. to produce the requested expert reports within fifteen (15) days of the date of the Order.

Respectfully submitted,
Eckert Seamans Cherin & Mellott, LLC

Date: _____



Phillip J. Binotto, Jr., Esquire
Sam H. Jesse, Esquire
1001 Corporate Drive
Summit Corporate Center, Ste. 200
Canonsburg, PA 15317
(724) 873-2870
Attorneys for Plaintiffs

AUG 25 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

**REQUEST FOR EXPERT REPORTS
PURSUANT TO PA. R.C.P. 1042.29
DIRECTED TO HENRY G. DELA
TORRE, M.D.**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
W. Patric Boyer, Esquire
PA I.D. No. 26650

Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

JURY TRIAL DEMANDED

{W0006631.1}

EXHIBIT

A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

REQUEST FOR EXPERT REPORTS PURSUANT TO PA. R.C.P. 1042.29

To: Henry G. Dela Torre, M.D.
c/o Ronald M. Punttil, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219

1. We, the Plaintiffs named above, by and through our attorneys, Eckert Seamans Cherin & Mellott, have furnished you, the Defendant named above, expert reports summarizing the expert testimony that will be offered to support the claims of professional negligence made against you.

2. Pursuant to Pa. R.C.P. 1042.29(a)(2), you are requested within sixty (60) days of the service of this request to furnish Eckert Seamans Cherin & Mellott expert reports summarizing the expert testimony that you will offer to support your defense as to the claims of professional negligence that have been made against you.

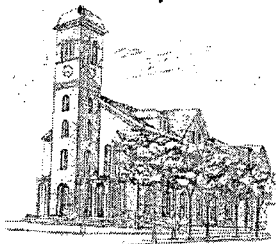
3. You are required to serve copies of all expert reports on all other parties:

ECKERT SEAMANS CHERIN & MELLOTT LLC

Date: 8-22-05

By: 

W. Patric Boyer
Attorney for Plaintiffs



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 3/16/06

X You are responsible for serving all appropriate parties.

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

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

ORDER OF COURT

AND NOW, this 17th day of April, 2006, it is HEREBY,

ORDERED, ADJUDGED AND DECREED that Defendant Henry G. Delatorre, M.D. shall

produce the expert reports requested by Plaintiffs pursuant to Pa. R.C.P. 1042.29 within ~~thirty~~ ^{forty five} days ^{FJA} of the entry of this Order.

By the Court.

For Christman, J.

FILED

APR 17 2006

0/9:25/w @

William A. Shaw
Prothonotary/Clerk of Courts

3 CERT to Army

JESSIE FOR
SER.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

AFFIDAVIT OF SERVICE

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

Filed on Behalf of Plaintiffs

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Counsel of Record for these Parties:

Phillip J. Binotto, Jr., Esquire
PA I.D. No. 21817
John E. Hall, Esquire
PA I.D. No. 11095
Eckert Seamans Cherin & Mellott, LLC
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317
(724) 873-2870

Defendants.

JURY TRIAL DEMANDED

FILED NO CC
m/b:3801
APR 27 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

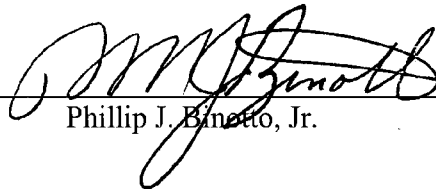
vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

AFFIDAVIT OF SERVICE

I, Phillip J. Binotto, Jr. of the firm of Eckert Seamans Cherin & Mellott, LLC, the counsel
of record for the Plaintiff, Bridge Nelen, do hereby attest that a true copy of the Order of Court
dated April 17, 2006 was served upon counsel for the Defendants, by U.S. First Class Mail,
postage prepaid.



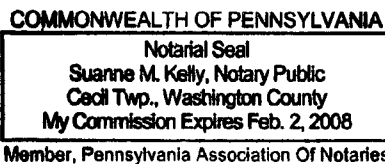
Phillip J. Binotto, Jr.

Sworn to and Subscribed before me

this 25 day of April, 2006.



Notary Public

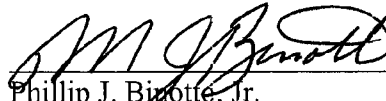


CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Affidavit of Service** was served this 25th day of April, 2006 via U.S. first class mail, postage prepaid:

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

Ronald M. Punttil, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin PC
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219


Phillip J. Binotte, Jr.
Attorney for Plaintiffs

FILED

APR 27 2006

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

**PLAINTIFFS' MOTION FOR
SANCTIONS AGAINST DEFENDANT
HENRY G. DELA TORRE, M.D.
PURSUANT TO Pa. R.Civ.P. 1042.31(b)**

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Edward C. Flynn, Esq.
Pa ID No. 35198
Livia F. Langton, Esq.
Pa ID No. 91548

Defendants.

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

JURY TRIAL DEMANDED

FILED ^{NO} ^{CC}
DEC 01 2006 @

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

**PLAINTIFFS' MOTION FOR SANCTIONS AGAINST DEFENDANT
HENRY G. DELA TORRE, M.D. PURSUANT TO Pa. R.Civ.P. 1042.31(b)**

Plaintiffs Bridget Nelen and Donald Nelen, by and through their counsel Eckert Seamans Cherin & Mellott, LLC, file this Motion For Sanctions Against Defendant Henry G. Dela Torre, M.D. pursuant to Pa. R.Civ.P. 1042.31(b), and in support thereof, aver as follows:

1. Plaintiffs have commenced this medical malpractice action against Defendants on January 13, 2004.
2. Plaintiffs claim that Defendants' negligence resulted in a two year delay in diagnosis of Plaintiff Bridget Nelen's lung cancer.
3. Specifically, Plaintiffs claim that, after a chest X-ray revealed an abnormality in Mrs. Nelen's right lung, Defendants failed to perform or order necessary follow-up studies that

were specifically recommended by the radiologist. Had those follow-up studies been performed in a timely manner, Mrs. Nelen's lung cancer would have been diagnosed two years earlier than when it was ultimately diagnosed.

4. Plaintiffs further claim that as a result of the failure to diagnose Mrs. Nelen's lung cancer in a timely manner, she has suffered numerous injuries and damages, including metastatic disease to the brain, total removal of her lung, craniotomy, extensive chemotherapy and radiation, and substantially diminished chances for cure and survival.

5. On or about August 22, 2005, Plaintiffs served upon Defendant Henry G. Dela Torre, M.D. Plaintiffs' Request for Expert Reports Pursuant to Pa. R.C.P. 1042.29.

6. Pursuant to Plaintiffs' Request, Defendant Henry G. Dela Torre, M.D. was required to produce to Plaintiffs' counsel, within one hundred twenty (120) days, or by December 20, 2005, expert reports summarizing the expert testimony to be offered in support of Defendant Henry G. Dela Torre, M.D., as to the claims of professional negligence alleged by Plaintiffs.

7. On or about February 24, 2006, as a result of Defendant Henry G. Dela Torre M.D.'s failure to produce expert reports, Plaintiffs filed a Motion to Compel pursuant to Pa. R.C.P. 1042.31(a).

8. On or about April 17, 2006, this Honorable Court entered an Order compelling Defendant Henry G. Dela Torre, M.D. to produce the requested expert reports to Plaintiffs' counsel within forty-five (45) days, or by June 1, 2006.

9. Since June 1, 2006, Plaintiffs have made repeated requests for the production of Defendant Henry G. Delatorre, M.D.'s expert reports.

10. To date, notwithstanding this Court's Order of April 17, 2006, Defendant Henry G. Delatorre, M.D. has still not produced any expert reports.

WHEREFORE, Plaintiffs, Bridget Nelen and Donald Nelen, respectfully request this Honorable Court to enter an Order for Sanctions, precluding Defendant Dela Torre from offering or introducing any expert testimony at the time of trial, opposing any expert testimony offered at the time of trial by Plaintiffs, or otherwise offering any testimony or evidence opposing liability.

Respectfully submitted,
Eckert Seamans Cherin & Mellott, LLC

Date: November 30, 2006

Edward C. Flynn

Edward C. Flynn, Esq.
PA ID No. 35198
Livia F. Langton, Esq.
PA ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

Attorneys for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

ORDER OF COURT

AND NOW, this ____ day of _____, 2006, it is HEREBY,
ORDERED, ADJUDGED AND DECREED, pursuant to Pa. R.Civ.P. 1042.31(b), that Plaintiffs'
Motion for Sanctions is GRANTED and Defendant Henry G. Delatorre, M.D. is precluded from
offering or introducing any expert testimony at the time of trial, opposing any expert testimony
offered at the time of trial by Plaintiffs, or otherwise offering any testimony or evidence
opposing liability.

By the Court:

_____, J.

118

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

SCHEDULING ORDER

AND NOW, this 5th day of December, 2006, it is HEREBY,

ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Sanctions Against Defendant Henry G. Delatorre, M.D. pursuant to Pa. R.Civ.P. 1042.31(b) is scheduled for presentation and argument on the 12nd day of January 2007 at 10:00 (a.m.) p.m in the courtroom of the Honorable Frederic J. Ammerman.

By the Court:

Frederic J. Ammerman
_____, J.

FILED

DEC 06 2006

William A. Shaw
Prothonotary/Clerk of Courts

FILED

DEC 06 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/6/06

X You are responsible for serving all appropriate parties.

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

 Plaintiff(s) Plaintiff(s) Attorney Other

 Defendant(s) Defendant(s) Attorney

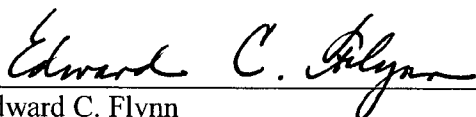
 Special Instructions:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
PLAINTIFFS' MOTION FOR SANCTIONS AGAINST DEFENDANT HENRY G. DELA
TORRE, M.D. PURSUANT TO Pa. R.C.P. 1042.31(b) was served upon counsel for all parties by
depositing a true and correct copy thereof, in the United States Mail, postage pre-paid this 30th day
of November, 2006, addressed to:

Ronald M. Puntil, Jr., Esquire
Israel, Wood, Puntil & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499



Edward C. Flynn
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

PLAINTIFFS' PRAECIPE FOR TRIAL

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

Filed on Behalf of Plaintiffs

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Counsel of Record for these Parties:

Edward C. Flynn, Esq.
Pa ID No. 35198
Livia F. Langton, Esq.
Pa ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

Defendants.

JURY TRIAL DEMANDED

FILED 4cc
m/10:59/301 Amy Flynn
DEC 01 2006 (60)

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

PLAINTIFFS' PRAECIPE FOR TRIAL

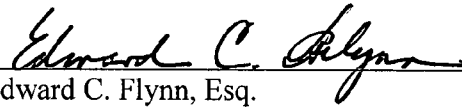
To: William Shaw, Prothonotary
Clearfield County

Please place the above-captioned case at issue.

1. Discovery is complete in this case.
2. The only motion outstanding is a Motion for Sanctions Against Defendant Henry G. Dela Torre, M.D. for failure to comply with the Court's Order of April 17, 2006 ordering production of Defendant's expert reports. Plaintiffs have requested that this motion be scheduled and heard on December 18, 2006.
3. This case is to be heard by a jury.
4. Notice of this Praecipe has been given to opposing counsel.

Respectfully submitted,
Eckert Seamans Cherin & Mellott, LLC

Date: November 30, 2006


Edward C. Flynn, Esq.
PA ID No. 35198
Livia F. Langton, Esq.
PA ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

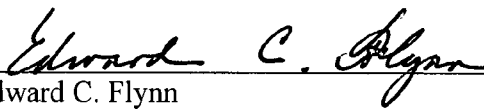
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
PLAINTIFFS' PRAECIPE FOR TRIAL was served upon counsel for all parties by depositing a
true and correct copy thereof, in the United States Mail, postage pre-paid this 30th day of November,
2006, addressed to:

Ronald M. Puntl, Jr., Esquire
Israel, Wood, Puntl & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499


Edward C. Flynn
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

**PLAINTIFFS' PETITION FOR
SETTLEMENT CONFERENCE
PURSUANT TO LR RULE 212.5**

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Edward C. Flynn, Esq.
Pa ID No. 35198
Livia F. Langton, Esq.
Pa ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

Defendants.

JURY TRIAL DEMANDED

FILED *no cc*
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DEC 06 2006

Shaw
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

PLAINTIFFS' PETITION FOR SETTLEMENT CONFERENCE
PURSUANT TO LR RULE 212.5

Plaintiffs Bridget Nelen and Donald Nelen, by and through their counsel Eckert Seamans Cherin & Mellott, LLC, file this Petition for Settlement Conference Pursuant to LR Rule 212.5 of the Clearfield County Local Rules, and in support thereof, aver as follows:

1. Plaintiffs commenced this medical malpractice action against Defendants on January 13, 2004.
2. Plaintiffs claim that Defendants' negligence resulted in a two year delay in diagnosis of Plaintiff Bridget Nelen's lung cancer.
3. Specifically, Plaintiffs claim that, after a chest X-ray revealed an abnormality in Mrs. Nelen's right lung, Defendants failed to perform or order necessary follow-up studies that

were specifically recommended by the radiologist. Had those follow-up studies been performed in a timely manner, Mrs. Nelen's lung cancer would have been diagnosed two years earlier than when it was ultimately diagnosed.

4. Plaintiffs further claim that as a result of the failure to diagnose Mrs. Nelen's lung cancer in a timely manner, she has suffered numerous injuries and damages, including metastatic disease to the brain, total removal of her lung, craniotomy, extensive chemotherapy and radiation, and substantially diminished chances for cure and survival.

5. A Praecipe for Trial was filed with the Prothonotary on December 1, 2006.

6. There is no further discovery to be conducted by the parties. The only outstanding motion is Plaintiffs' Motion for Sanction Against Defendant Dela Torre, for failure to produce an expert report in accordance with this Court's Order dated April 17, 2006. That motion is scheduled to be heard on January 2, 2007.

7. Counsel for Plaintiffs has previously solicited the agreement of Defendants to engage in mediation. In prior discussions, counsel for Defendant Dela Torre has indicated that Dr. Dela Torre would be amenable to mediation, provided that Defendant Dr. Wirths would be agreeable to mediate. Dr. Wirths has not indicated his consent to mediate.

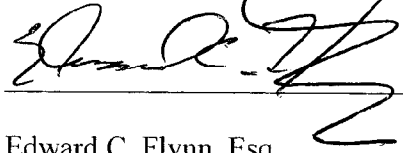
8. Both Dr. Dela Torre and Dr. Wirths are insured by PMSLIC.

9. Plaintiffs believe that, given the facts and circumstances that have been developed in this case, there is at least a reasonable chance for settlement.

WHEREFORE, Plaintiffs, Bridget Nelen and Donald Nelen, respectfully request this Honorable Court to enter an Order scheduling a Settlement Conference for January 11, 2007, at 10:00 a.m.

Date: 12/5/06

Respectfully submitted,
Eckert Seamans Cherin & Mellott, LLC



Edward C. Flynn, Esq.
PA ID No. 35198
Livia F. Langton, Esq.
PA ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

Attorneys for Plaintiffs

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

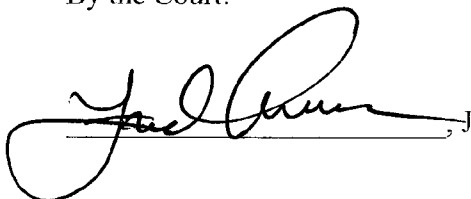
THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

SCHEDULING ORDER

AND NOW, this 7 day of Dec, 2006, it is HEREBY, ORDERED,
ADJUDGED AND DECREED, pursuant to LR Rule 212.5, that a Scheduling Conference will
take place on the 11th day of January, 2007 at 10:00 a.m. before the Honorable Judge
Ammerman. Plaintiffs and Defendants, or a representative of Defendants' insurance carrier
with unlimited authority, shall personally be present along with counsel at the Settlement
Conference.

By the Court:



FILED
01:52 PM
DEC 08 2006

William A. Shaw
Prothonotary/Clerk of Courts

FILED

DEC 08 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/8/06

☒ You are responsible for serving all appropriate parties.

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

_____ Plaintiff(s) _____ Attorney _____ Other

_____ Defendant(s) _____ Defendant(s) Attorney

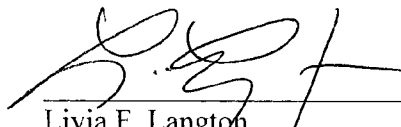
_____ Special Instructions:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
PLAINTIFFS' PETITION FOR SETTLEMENT CONFERENCE PURSUANT TO LR RULE
212.5 was served upon counsel for all parties by depositing a true and correct copy thereof, in the
United States Mail, postage pre-paid this 5th day of December, 2006, addressed to:

Ronald M. Puntl, Jr., Esquire
Israel, Wood, Puntl & Grimm, P.C.
Suite 501, Grant Building
310 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499



Livia F. Langton
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilsor,
and DONALD NELEN, her husband,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL CENTER;
PENN TOWNSHIP RURAL HEALTH
CLINIC; DELA TORRE MEDICAL CLINIC;
HENRY G. DELA TORRE, M.D. and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No.: 2004-00057-CD

**DEFENDANT'S RESPONSE TO
PLAINTIFFS' REQUEST FOR
PRODUCTION OF EXPERT REPORTS**

Filed on behalf of Defendant, Henry G. Dela
Torre, M.D.

Counsel of Record for this Party:

Ronald M. Puntil, Jr., Esquire
Pa. I.D. #42146

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

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

(412) 803-1140

FILED

DEC 26 2006

12:15 PM

William A. Shaw

Prothonotary/Clerk of Courts

1 Cent to Art 7

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson, and
DONALD NELEN, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 2004-00057-CD

v.

DUBOIS REGIONAL MEDICAL CENTER; PENN
TOWNSHIP RURAL HEALTH CLINIC; DELA
TORRE MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS, D.O., as to
both individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

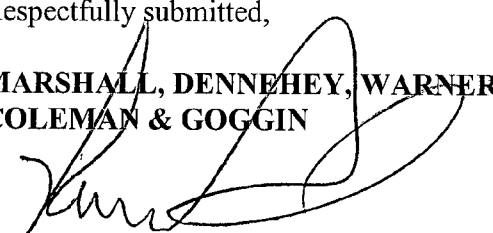
**DEFENDANT'S RESPONSE TO PLAINTIFFS'
REQUESTS FOR PRODUCTION OF EXPERT REPORTS**

AND NOW, comes the Defendant, Henry G. Dela Torre, M.D., by and through his
attorneys, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, and RONALD M.
PUNTIL, JR., ESQUIRE, and pursuant to Pa.R.C.P. 1042.29, hereby files and serves upon the
Plaintiffs the expert report of the following:

1. Lee H. McCormick, M.D.
McCormick Medical Associates
2708 Brownsville Road
Pittsburgh, PA 15227

Respectfully submitted,

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



Ronald M. Punttil, Jr., Esquire
Counsel for Henry G. Dela Torre, M.D.

McCORMICK MEDICAL ASSOCIATES

2708 Brownsville, Road
Pittsburgh, PA 15227

(412) 885-6330
Fax (412) 885-3277

Lee H. McCormick, M.D.

December 19, 2006

Ronald M. Puntil, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
Suite 2900, U.S. Steel Tower
600 Grant Street
Pittsburgh PA 15219

RE: Bridget Nelen and Donald Nelen v. Henry G. Dela Torre, M.D.
Your File No.: 16243-00452

Mr. Puntil:

I have reviewed the various materials you have provided regarding the above captioned case, including Plaintiffs Complaint in Civil Action, various medical records of Bridget Nelen, deposition transcripts of Bridget Nelen, Phoung T. Wirths, D.O., and Henry G. Dela Torre, M.D., as well as expert reports of Jack D. Shocker, M.D., Michael P. McGonigan, M.D. and Richard D. Bruehlman, M.D. At your request, I offer the following comments.

Bridget Nelen was a patient of the Penn Township Clinic in Grampian, PA. Dr. Dela Torre and Dr. Wirths had separate practices at the clinic but frequently saw one another's patients. Mrs. Nelen had previously seen Dr. Wirths on 8/18/00 and 9/1/00, and presented on 11/1/00 because of abdominal pain. Dr. Wirths diagnosed a ruptured ovarian cyst and treated her with reassurance and analgesic medication. Her pain persisted and she was apparently unhappy with Dr. Wirths' management, so she presented to Clearfield Hospital Emergency Room later that day. As part of her evaluation she had a chest x-ray, which was interpreted as: "Very probable round pneumonia in the right middle lobe. Follow up studies are recommended after medical treatment. CT study of the chest may be useful at a later date."

It is unclear when Dr. Wirths received the report of that chest x-ray, but he made the following notation on the report: "Is pt. on abx? Need f/u". One of his staff members responded with the notation "Is on z-pak + IV antibiotic X2 at ER". There is no evidence in the medical record that Dr. Wirths made any specific recommendations or arrangements for follow up.

Mrs. Nelen's next contact with the Clinic was on 11/14/2000, and, in keeping with her pattern of seeing whichever doctor was available, she was seen by Dr. Dela Torre. The report of the chest x-ray taken in Clearfield Hospital Emergency Room was apparently not available to Dr. Dela Torre at the time of that visit. The medical record states that she was there for follow up, but reported that she felt much better. It appears that

the bulk of the office visit was devoted to her concerns about headaches and tremors. Although Mrs. Nelen in her deposition (a retrospective recollection of that visit) states that she reported an ongoing cough, Dr. Dela Torre's contemporary report of that visit makes no mention of cough.

Mrs. Nelen's subsequent visits at the Clinic were on 1/23/01 (allergic rhinosinusitis) with Dr. Dela Torre, 9/24/01 (viral syndrome) with Dr. Wirths, 1/28/02 (constipation) with Dr. Wirths and 1/30/02 (chronic constipation) and 5/1/02 (migraine headache, chronic anxiety) with Dr. Dela Torre. On 10/31/02 she again presented to Clearfield Hospital Emergency Room because of chest pain, and evaluation at that time revealed lung cancer.

It has been alleged that Dr. Dela Torre was negligent in failing to order follow up chest x-rays and in delay in diagnosis of lung cancer.

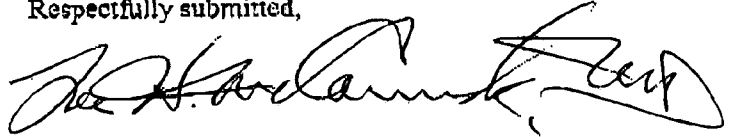
The medical records show that Mrs. Nelen saw both Dr. Dela Torre and Dr. Wirths, depending upon who was available at the time she needed medical care. It appears that the first time that Dr. Dela Torre saw Mrs. Nelen was on 11/14/00. Since she had been seen on three previous occasions (8/18/00, 9/1/00, and 11/1/00) by Dr. Wirths, Dr. Dela Torre appropriately assumed that Dr. Wirths was Mrs. Nelen's primary physician. Therefore, he assumed that he was providing episodic care on 11/14/00. Although the visit was ostensibly for "follow up", it appears that Mrs. Nelen was more concerned about other problems, and did state that she was feeling better. She made no complaints referable to her recent diagnosis of pneumonia; specifically, there is no mention of fever, cough, chest pain or any other symptoms one might reasonably expect from an ongoing pulmonary problem. The medical record of that visit is clear that Mrs. Nelen was primarily concerned about her headaches and tremors. Dr. Dela Torre did address the previous diagnosis of pneumonia, noting that the presentation was muscle aches and nausea, and stating his opinion that it was likely that she had a viral syndrome, vomited and aspirated, causing the pneumonia. There is no mention on that visit that the diagnosis was a "round" pneumonia, and he apparently did not have available the x-ray report from her Emergency Room visit. Since she reported feeling better, he spent the majority of the office visit addressing her major concerns of headaches and tremors.

The radiologist who interpreted Mrs. Nelen's chest x-ray recommended follow up. It is clear that was an appropriate recommendation. What is not clear is whose responsibility it was to initiate the follow up. Since Dr. Wirths was Mrs. Nelen's primary physician, and since Dr. Wirths was the one who received the chest x-ray report, it is my opinion that Dr. Wirths was the one who was responsible for ordering the follow up. Indeed, Dr. Wirths' handwritten note on the chest x-ray report says "need f/u (follow up)". That notation, however, does not meet the standard of care. He should have specified what follow up was needed, when it was needed, and should either have contacted Mrs. Nelen himself to inform her or directed one of his office staff to do so. When Dr. Dela Torre saw Mrs. Nelen on 11/14/00, he assumed he was simply covering for Dr. Wirths and therefore did not have primary responsibility for her care. Since she reported feeling better, made no complaints of cough or chest pain and was more concerned about headaches and tremors, it was not unreasonable for Dr. Dela Torre to assume that there were no unresolved issues from her recent illness.

In summary, it is my opinion that Dr. Dela Torre's care of Mrs. Nelen was appropriate and met the accepted standard of care. He believed that he was providing episodic care for another physician's patient. He addressed the issues that appeared to be most important to her at that time. She reported feeling better and he assumed that her previous illness was now resolved. He did not have access to the report of her chest x-ray; that report was seen by Dr. Wirths and should have been followed up by him.

The opinions expressed have been reached with a reasonable degree of medical certainty.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lee H. McCormick, M.D.", with a stylized, cursive script.

Lee H. McCormick, M.D.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFFS' REQUEST FOR PRODUCTION OF EXPERT REPORTS** have been served upon counsel as listed below this 22nd day of December, 2006.

Edward C. Flynn, Esquire
Eckert Seamans, Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiffs)

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499
(Counsel for Dr. Wirths)



Ronald M. Puntl, Jr., Esquire
Attorney for Defendant Henry G. Dela
Torre, M.D.

JA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

**PLAINTIFFS' PRAECIPE TO
WITHDRAW MOTION FOR
SANCTIONS**

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Edward C. Flynn, Esq.
Pa ID No. 35198
Livia F. Langton, Esq.
Pa ID No. 91548

Defendants.

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

JURY TRIAL DEMANDED

FILED NO CC
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JAN 03 2007

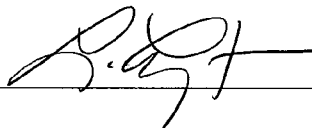
William A. Shaw
Prothonotary/Clerk of Court

4. In light of the report of Dr. McCormick produced by Defendant Dela Torre, Plaintiffs are willing to withdraw their Motion for Sanctions.

WHEREFORE, Plaintiffs request that the Motion for Sanctions against Defendant Dela Torre be withdrawn, and that the argument scheduled for January 2, 2007, be canceled.

Respectfully submitted,
Eckert Seamans Cherin & Mellott, LLC

Date: 12/30/06



Edward C. Flynn, Esq.
PA ID No. 35198
Livia F. Langton, Esq.
PA ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

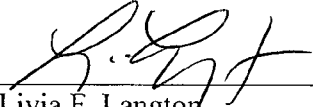
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing PLAINTIFFS' PRAECIPE TO WITHDRAW MOTION FOR SANCTIONS was served upon counsel for all parties by depositing a true and correct copy thereof, in the United States Mail, postage pre-paid this 30th day of December, 2006, addressed to:

Ronald M. Puntl, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin, PC
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499



Livia F. Langton
Attorney for Plaintiffs

CMA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL CENTER;
PENN TOWNSHIP RURAL HEALTH
CLINIC; DELA TORRE MEDICAL CLINIC;
HENRY G. DELA TORRE, M.D. and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No.: 2004-00057-CD

**DEFENDANT'S REPLY TO PLAINTIFFS'
MOTION FOR SANCTIONS**

**Filed on behalf of Defendant, Henry G. Dela
Torre, M.D.**

Counsel of Record for this Party:

Ronald M. Puntil, Jr., Esquire
Pa. I.D. #42146

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

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

(412) 803-1140

FILED
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m/12:20/w
William A. Shaw
Prothonotary/Clerk of Courts
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IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson, and
DONALD NELEN, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 2004-00057-CD

v.

DUBOIS REGIONAL MEDICAL CENTER; PENN
TOWNSHIP RURAL HEALTH CLINIC; DELA
TORRE MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS, D.O., as to
both individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

**DEFENDANT'S REPLY
TO PLAINTIFFS' MOTION FOR SANCTIONS**

AND NOW, comes the Defendant, Henry G. Dela Torre, M.D., by and through his attorneys, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, and RONALD M. PUNTIL, JR., ESQUIRE, and files the within Reply to Plaintiffs' Motion for Sanctions and, in support thereof, avers as follows:

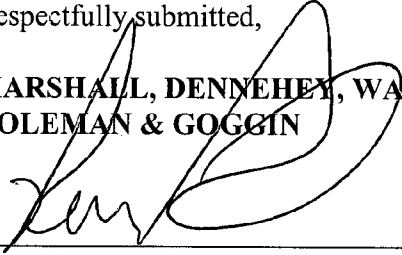
1. The instant case is a medical malpractice action in which Plaintiffs allege that there was a delay in the diagnosis of cancer.
2. Plaintiffs filed a Motion for Sanctions compelling production of Defendant's expert report.
3. Counsel for this Defendant obtained an expert report from Dr. Lee McCormick, and filed a Response to Plaintiffs' Request for Production of Expert Reports on December 26, 2006, a copy of which is appended hereto.
4. The instant case has not been scheduled for trial and Plaintiffs are not prejudiced by the delay in the production of the Defendant's expert report.

5. Plaintiffs served the Motion for Sanctions on counsel's former address and it was not forwarded.

WHEREFORE, this Defendant requests that the Plaintiffs' Motion for Sanctions be dismissed with prejudice.

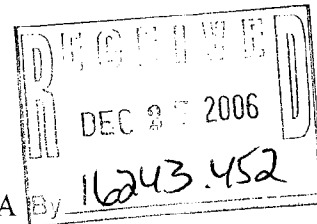
Respectfully submitted,

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



Ronald M. Puntill, Jr., Esquire
Counsel for Henry G. Dela Torre, M.D.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA



BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

CIVIL DIVISION

No.: 2004-00057-CD

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL CENTER;
PENN TOWNSHIP RURAL HEALTH
CLINIC; DELA TORRE MEDICAL CLINIC;
HENRY G. DELA TORRE, M.D. and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

**DEFENDANT'S RESPONSE TO
PLAINTIFFS' REQUEST FOR
PRODUCTION OF EXPERT REPORTS**

Filed on behalf of Defendant, Henry G. Dela
Torre, M.D.

Counsel of Record for this Party:

Ronald M. Punttil, Jr., Esquire
Pa. I.D. #42146

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

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

(412) 803-1140

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

DEC 26 2006

Attest.

William A. Shaw
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson, and
DONALD NELEN, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 2004-00057-CD

v.

DUBOIS REGIONAL MEDICAL CENTER; PENN
TOWNSHIP RURAL HEALTH CLINIC; DELA
TORRE MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS, D.O., as to
both individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

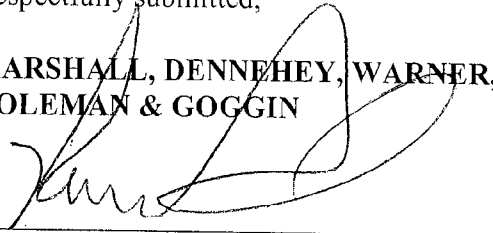
**DEFENDANT'S RESPONSE TO PLAINTIFFS'
REQUESTS FOR PRODUCTION OF EXPERT REPORTS**

AND NOW, comes the Defendant, Henry G. Dela Torre, M.D., by and through his attorneys, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, and RONALD M. PUNTIL, JR., ESQUIRE, and pursuant to Pa.R.C.P. 1042.29, hereby files and serves upon the Plaintiffs the expert report of the following:

1. Lee H. McCormick, M.D.
McCormick Medical Associates
2708 Brownsville Road
Pittsburgh, PA 15227

Respectfully submitted,

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



Ronald M. Punttil, Jr., Esquire
Counsel for Henry G. Dela Torre, M.D.

McCORMICK MEDICAL ASSOCIATES

2708 Brownsville, Road
Pittsburgh, PA 15227

(412) 885-6330
Fax (412) 885-3277

Lee H. McCormick, M.D.

December 19, 2006

Ronald M. Puntill, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
Suite 2900, U.S. Steel Tower
600 Grant Street
Pittsburgh PA 15219

RE: Bridget Nelen and Donald Nelen v. Henry G. Dela Torre, M.D.
Your File No.: 16243-00452

Mr. Puntill:

I have reviewed the various materials you have provided regarding the above captioned case, including Plaintiffs Complaint in Civil Action, various medical records of Bridget Nelen, deposition transcripts of Bridget Nelen, Phoung T. Wirths, D.O., and Henry G. Dela Torre, M.D., as well as expert reports of Jack D. Shocker, M.D., Michael P. McGonigan, M.D. and Richard D. Bruehlman, M.D. At your request, I offer the following comments.

Bridget Nelen was a patient of the Penn Township Clinic in Grampian, PA. Dr. Dela Torre and Dr. Wirths had separate practices at the clinic but frequently saw one another's patients. Mrs. Nelen had previously seen Dr. Wirths on 8/18/00 and 9/1/00, and presented on 11/1/00 because of abdominal pain. Dr. Wirths diagnosed a ruptured ovarian cyst and treated her with reassurance and analgesic medication. Her pain persisted and she was apparently unhappy with Dr. Wirths' management, so she presented to Clearfield Hospital Emergency Room later that day. As part of her evaluation she had a chest x-ray, which was interpreted as: "Very probable round pneumonia in the right middle lobe. Follow up studies are recommended after medical treatment. CT study of the chest may be useful at a later date."

It is unclear when Dr. Wirths received the report of that chest x-ray, but he made the following notation on the report: "Is pt. on abx? Need f/u". One of his staff members responded with the notation "Is on z-pak + IV antibiotic X2 at ER". There is no evidence in the medical record that Dr. Wirths made any specific recommendations or arrangements for follow up.

Mrs. Nelen's next contact with the Clinic was on 11/14/2000, and, in keeping with her pattern of seeing whichever doctor was available, she was seen by Dr. Dela Torre. The report of the chest x-ray taken in Clearfield Hospital Emergency Room was apparently not available to Dr. Dela Torre at the time of that visit. The medical record states that she was there for follow up, but reported that she felt much better. It appears that

the bulk of the office visit was devoted to her concerns about headaches and tremors. Although Mrs. Nelen in her deposition (a retrospective recollection of that visit) states that she reported an ongoing cough, Dr. Dela Torre's contemporary report of that visit makes no mention of cough.

Mrs. Nelen's subsequent visits at the Clinic were on 1/23/01 (allergic rhinosinusitis) with Dr. Dela Torre, 9/24/01 (viral syndrome) with Dr. Wirths, 1/28/02 (constipation) with Dr. Wirths and 1/30/02 (chronic constipation) and 5/1/02 (migraine headache, chronic anxiety) with Dr. Dela Torre. On 10/31/02 she again presented to Clearfield Hospital Emergency Room because of chest pain, and evaluation at that time revealed lung cancer.

It has been alleged that Dr. Dela Torre was negligent in failing to order follow up chest x-rays and in delay in diagnosis of lung cancer.

The medical records show that Mrs. Nelen saw both Dr. Dela Torre and Dr. Wirths, depending upon who was available at the time she needed medical care. It appears that the first time that Dr. Dela Torre saw Mrs. Nelen was on 11/14/00. Since she had been seen on three previous occasions (8/18/00, 9/1/00, and 11/1/00) by Dr. Wirths, Dr. Dela Torre appropriately assumed that Dr. Wirths was Mrs. Nelen's primary physician. Therefore, he assumed that he was providing episodic care on 11/14/00. Although the visit was ostensibly for "follow up", it appears that Mrs. Nelen was more concerned about other problems, and did state that she was feeling better. She made no complaints referable to her recent diagnosis of pneumonia; specifically, there is no mention of fever, cough, chest pain or any other symptoms one might reasonably expect from an ongoing pulmonary problem. The medical record of that visit is clear that Mrs. Nelen was primarily concerned about her headaches and tremors. Dr. Dela Torre did address the previous diagnosis of pneumonia, noting that the presentation was muscle aches and nausea, and stating his opinion that it was likely that she had a viral syndrome, vomited and aspirated, causing the pneumonia. There is no mention on that visit that the diagnosis was a "round" pneumonia, and he apparently did not have available the x-ray report from her Emergency Room visit. Since she reported feeling better, he spent the majority of the office visit addressing her major concerns of headaches and tremors.

The radiologist who interpreted Mrs. Nelen's chest x-ray recommended follow up. It is clear that was an appropriate recommendation. What is not clear is whose responsibility it was to initiate the follow up. Since Dr. Wirths was Mrs. Nelen's primary physician, and since Dr. Wirths was the one who received the chest x-ray report, it is my opinion that Dr. Wirths was the one who was responsible for ordering the follow up. Indeed, Dr. Wirths' handwritten note on the chest x-ray report says "need f/u (follow up)". That notation, however, does not meet the standard of care. He should have specified what follow up was needed, when it was needed, and should either have contacted Mrs. Nelen himself to inform her or directed one of his office staff to do so. When Dr. Dela Torre saw Mrs. Nelen on 11/14/00, he assumed he was simply covering for Dr. Wirths and therefore did not have primary responsibility for her care. Since she reported feeling better, made no complaints of cough or chest pain and was more concerned about headaches and tremors, it was not unreasonable for Dr. Dela Torre to assume that there were no unresolved issues from her recent illness.

In summary, it is my opinion that Dr. Dela Torre's care of Mrs. Nelen was appropriate and met the accepted standard of care. He believed that he was providing episodic care for another physician's patient. He addressed the issues that appeared to be most important to her at that time. She reported feeling better and he assumed that her previous illness was now resolved. He did not have access to the report of her chest x-ray; that report was seen by Dr. Wirths and should have been followed up by him.

Dec-19-08

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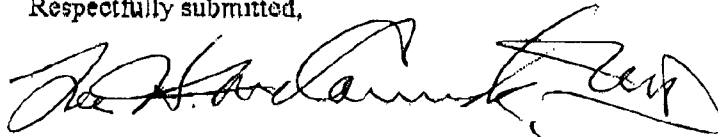
From: Marshall Dennohey Warner Coleman Goggin

412-802-1188

T-352 P 004/004 F-334

The opinions expressed have been reached with a reasonable degree of medical certainty.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lee H. McCormick, M.D.", with a stylized flourish at the end.

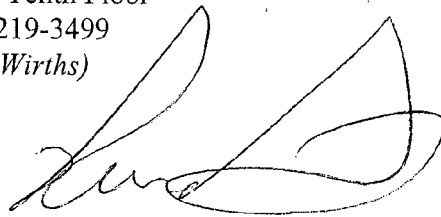
Lee H. McCormick, M.D.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**DEFENDANT'S RESPONSE TO PLAINTIFFS' REQUEST FOR PRODUCTION OF
EXPERT REPORTS** have been served upon counsel as listed below this 22nd day of December,
2006.

Edward C. Flynn, Esquire
Eckert Seamans, Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiffs)

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499
(Counsel for Dr. Wirths)



Ronald M. Puntil, Jr., Esquire
Attorney for Defendant Henry G. Dela
Torre, M.D.

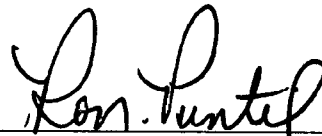
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
DEFENDANT'S REPLY TO PLAINTIFFS' MOTION FOR SANCTIONS have been served
upon counsel as listed below this 28th day of December, 2006.

Edward C. Flynn, Esquire
Eckert Seamans, Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiffs)

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499
(Counsel for Dr. Wirths)

Honorable Fred Ammerman
Clearfield County Courthouse
One North 2nd Street
Clearfield, PA 16830



Ronald M. Puntil, Jr., Esquire
Attorney for Defendant Henry G. Dela
Torre, M.D.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson, and
DONALD NELEN, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 2004-00057-CD

v.

DUBOIS REGIONAL MEDICAL CENTER; PENN
TOWNSHIP RURAL HEALTH CLINIC; DELA
TORRE MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS, D.O., as to
both individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____, 2007, upon consideration of the
Defendant's Reply to Plaintiffs' Motion for Sanctions, it is hereby **ORDERED, ADJUDGED,**
and **DECREED** that Plaintiffs' Motion for Sanctions is dismissed with prejudice.

BY THE COURT,

Honorable Fred Ammerman

Prothonotary/Clerk of Courts
William A. Shaw

JAN 03 2007

FILED

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

BRIDGET NELEN, formerly BRIDGET WILSON and
DONALD NELEN, her Husband,
Plaintiffs

vs.

THE DUBOIS REGIONAL MEDICAL CENTER,
Defendant

vs.

PENN TOWNSHIP RURAL HEALTH CLINIC,
DELA TORRE MEDICAL, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both individually and
t/d/b/a PENN TOWNSHIP RURAL HEALTH CLINIC, and/or
DELA TORRE MEDICAL CLINIC,
Additional Defendants

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NO. 04-57-CD

ORDER

AND NOW, this 2nd day of January, 2007, it is the ORDER of this Court that the
Pre-Trial Conference in the above matter shall be held on the **24th day of January,**
2007 at 11:00 a.m. in Chambers.

FILED

JAN 03 2007

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

icc Attys:

W. Boyer

E. Flynn

L. Langton

D. Johnson

R. Pentil

icc: PennTwp. Rural Health Clinic
RR1, Box 45A
Route 879
Grampian, PA 16838

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED

JAN 03 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/3/07

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 X Defendant(s) X Defendant(s) Attorney

 X Defendant(s) X Defendant(s) Attorney
 X Plaintiff(s) X Plaintiff(s) Attorney

Special Instructions:

 X Defendant(s) X Defendant(s) Attorney
 X Plaintiff(s) X Plaintiff(s) Attorney

 X Defendant(s) X Defendant(s) Attorney
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 X Plaintiff(s) X Plaintiff(s) Attorney

FILED
01/10/07
JAN 26 2007

cc Aug:

Boyer, Flynn, Langton

Johnson

R. Pustil

(60)

William A. Shaw
Prothonotary/Clerk of Courts

ICC Penn - RR1 Box 45A, Rt. 879, Grampian, PA 16838

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

BRIDGET NELEN, formerly BRIDGET WILSON and
DONALD NELEN, her Husband,
Plaintiffs

vs.

THE DUBOIS REGIONAL MEDICAL CENTER,
Defendant

vs.

PENN TOWNSHIP RURAL HEALTH CLINIC,
DELA TORRE MEDICAL, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both individually and
t/d/b/a PENN TOWNSHIP RURAL HEALTH CLINIC, and/or
DELA TORRE MEDICAL CLINIC,
Additional Defendants

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NO. 04-57-CD

ORDER

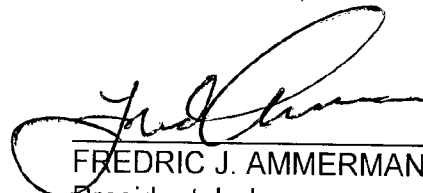
NOW, this 24th day of January, 2007, following Pre-Trial Conference with
counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on February 1, 2007 commencing at 9:00
a.m. in Courtroom No. 1 of the Clearfield County Courthouse,
Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for April 16, 17, 18, 19 and 20, 2007
commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County
Courthouse, Clearfield, Pennsylvania.
3. Any party making objections relative the testimony to be provided by
any witness in the form of a deposition at time of trial shall submit
said objections to the Court, in writing, no later than thirty (30) days
prior to the commencement of trial. All objections shall reference
specific page and line numbers within the deposition(s) in question

along with that party's brief relative same. The opposing party shall submit its brief in opposition to said objections no later than fifteen (15) days prior to the commencement of trial.

4. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than thirty (30) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than fifteen (15) days prior to trial.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

DATE: 1/26/07

☐ You are responsible for serving all appropriate parties.

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

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

☒ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions: Pen-Trop. Rural Health Clinic

William A. Shaw
Prothonotary/Clerk of Courts

JAN 26 2007

FILED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

CIVIL DIVISION

No. 2004-00057-CD

Plaintiffs,

vs.

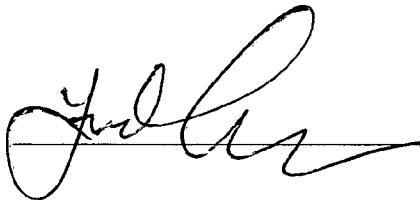
DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

ORDER OF COURT

AND NOW on this 6 day of March, 2007, it is hereby
ORDERED, ADJUGED and DECREED that oral argument on defendant's motion in limine to
preclude proposed expert report and testimony of plaintiffs' expert, Jack Shocker, M.D., is
scheduled for the 29th day of March, 2007, at 10:00 a.m. p.m.
before Judge Ammerman in Courtroom No. 1 of the Clearfield County
Courthouse.

BY THE COURT:

 J.

FILED
014:00/31
MAR 06 2007

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Any Korinski

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William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAR 06 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3/6/07

☒ You are responsible for serving all appropriate parties.

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

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

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No. 2004-00057-CD

MOTION IN LIMINE TO PRECLUDE
PROPOSED EXPERT REPORT AND
TESTIMONY OF PLAINTIFFS' EXPERT,
JACK SHOCKER, M.D.

Code:

Filed on behalf of DuBois Regional Medical
Center and Phoung T. Wirths, M.D., two of the
defendants

Counsel of Record for This Party:

David R. Johnson, Esquire
PA I.D. #26409

Brad R. Korinski, Esquire
PA I.D. #86831

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

(412) 232-3400

FILED 3cc
MAR 05 2007 44y
OK

William A. Shaw
Prothonotary/Clerk of Courts

MOTION IN LIMINE TO PRECLUDE PROPOSED EXPERT REPORT
AND TESTIMONY OF PLAINTIFFS' EXPERT, JACK SHOCKER, M.D.

NOW COME Phoung T. Wirths, M.D. and DuBois Regional Medical Center, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following motion in limine.

1. In relevant part for this motion, this is a medical malpractice lawsuit arising out of treatment rendered to wife-plaintiff by Dr. Phoung T. Wirths. It is plaintiffs contention that Dr. Wirths failed to recognize, treat or diagnose signs and symptoms of wife-plaintiff's lung cancer from approximately November of 2000 through November of 2002, from which time wife-plaintiff also treated with co-defendant, Dr. Dela Tore. Defendants DRMC and Dr. Wirths oppose all allegations of liability. During the time Dr. Wirths acted as wife-plaintiff's physician, he rendered her appropriate care and attention and recommended to her that she seek follow-up care for her symptoms and complaints. Wife-plaintiff never undertook to receive further necessary medical attention, nor, while treating with Dr. Wirths, did she offer to him any observations, problems or complaints suggestive of a malignant condition of the lungs. In addition, after November 1, 2000, wife-plaintiff decided that she no longer wished Dr. Wirths to act as her "primary" family physician, thus precluding him from actively monitoring her condition. In all respects, Dr. Wirths complied with the standard of care.

2. Dr. Wirths practices in the medical sub-specialty of family practice. The care and treatment he rendered to wife-plaintiff was consistent with that specialization.

3. Plaintiffs have provided expert reports from the following individuals as to liability:

(a) Michael P. McGonigal, M.D.; and

(b) Jack D. Shocker, M.D.

4. Dr. Shocker's report's reports of July 6, 2004, November 5, 2004 and September 7, 2006 are attached hereto as Exhibit "A." Dr. Shocker's curriculum vitae is attached hereto as Exhibit "B." Despite being identified throughout his CV as a practitioner in the field of radiation oncology, Dr. Shocker does not limit the scope of his reports to that particular medical sub-specialty. Rather, he improperly opines upon the liability of Dr. Wirths (a family practice physician), as well as criticizing the manner of communications done in the office setting between Dr. Wirths and Dr. Dela Torre (another family practice physician). His criticisms are outrageous and considering that, from his C.V., Dr. Shocker has spent his entire carrer as a radiation oncologist in a hospital setting.

5. As to the aspersions casually levied by Dr. Shocker against his fellow physicians, the Medical Care Availability and Reduction of Error Act (hereinafter, "M-Care") contains specific requirements for expert testimony in medical malpractice cases, which exist to preclude physicians such as Dr. Shocker from "moon-lightening" in court on areas of medicine with which they have no familiarity or experience.

6. Section 1303.512 of M-Care requires that an expert testifying as to a physician's standard of care must meet the following criteria:

- (a) The expert must be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged breach of the standard of care;
- (b) Practice in the same sub-specialty of the said defendant or in a sub-specialty which has a substantially similar standard of care for the specific care at issue; and
- (c) In the even that the defendant physician is certified by an approved board, the expert must be board certified by the same or similar approved board.

40 P.S. § 1303.512(c).

7. Since Dr. Shocker does not practice in the sub-specialty of family practice medicine, he may not offer opinions against Dr. Wirths. Nor may Dr. Shocker offer any comments, criticisms or opinions as to the types of communications that should have been undertaken by and/or between Dr. Wirths and Dr. Dela Torre in their respective capacities as family practice physicians. No reasonable basis has been established suggesting that Dr. Shocker is "substantially familiar with the applicable standards of care" pertaining to family practice physicians under the circumstances present in this case. There is no evidence to suggest that Dr. Shocker treats patients in the area of family practice medicine.

8. Additionally, it should be noted that plaintiffs have submitted a report from Dr. McGonigal, a physician who practices within an appropriate specialty. To the extent Dr. Shocker offers liability opinions against Dr. Wirths those opinions are cumulative of similar opinions offered by another of plaintiffs' experts, and should be stricken for that reason as well.

9. For all of the above reasons, Dr. Shocker is not competent to provide expert medical opinions relative to the standard of care required of Dr. Wirths, a family practice physician, nor is Dr. Shocker appropriately qualified and experienced to offer criticism as to what, if any, communications should have occurred within an office of family practice physicians.

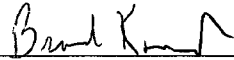
WHEREFORE, Phoung T. Wirths, M.D. and DuBois Regional Medical Center, two of the defendants, respectfully request that this Honorable Court grant this motion in limine, and thereby preclude plaintiffs from:

(1) Offering any opinions by Dr. Shocker that Dr. Wirths deviated from the applicable standard of care.

(2) Offering any opinions or criticisms concerning any communications that should have been made or undertaken between Dr. Wirths and Dr. Dela Torre within the setting of a family practice physicians' office.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Phoung T. Wirths, M.D. and DuBois
Regional Medical Center, two of the defendants.



altoona hospital

CENTER FOR CANCER CARE

620 Howard Avenue • Altoona, PA 16601-4899
814 / 946-2400 • 800 / 870-4660 • Fax: 814 / 946-2048

DEPARTMENT OF RADIATION ONCOLOGY

Jack D. Schocker, M.D., *Chairman*

John A. Clement, M.D.

Michael A. Vince, Ph.D.

Gregory M. Price, M.S.

Received DRJ

July 6, 2004

JUL 2 1 2004

RE: Bridgette Nelen

DOB: 1/4/61

Reviewed on (✓)
Copy in DRJ () Copy Key Dec. ()

Mrs. Nelen is a 43-year old white female with a diagnosis of a squamous cell carcinoma of the lung. All of her pertinent medical records were reviewed, including imaging films dating back to November 2000. The patient was seen on a number of occasions by her primary care physicians, Drs. Henry Dela Torre and Phoung T. Wirths (Penn Township Rural Health Clinic), with nonspecific complaints including abdominal discomfort and headache. She also had some difficulty with concentration and with sleeping. On November 1, 2000, the patient was seen in the emergency department at Clearfield Hospital. At that time, a chest x-ray was obtained. In the official report from the radiologist, a density was described in the right middle lobe. It stated that this might "represent a so called round pneumonia; however, other pathology including pulmonary mass should be considered. Follow-up studies are recommended" (underlining added). In addition, in the final sentence of the report, the radiologist stated that "CT study of the chest may be useful at a later date." In fact, no such follow-up studies were performed. The chest x-ray was ordered by Dr. Mark Shaw, and a copy was sent to Dr. Dela Torre. A copy of the written chest x-ray report was received from the patient's chart at Penn Township Rural Health Clinic, and it contains a handwritten note at the bottom stating "is patient on abx? Need F/U." Another note at the bottom of the report, also written in hand states "is on Z-Pak + I.V. antibiotic x2 at ER."

In November 2002, two years after the situation just described, the patient was again seen in the emergency department of Clearfield Hospital. She was having chest pain at the time of that visit. A chest x-ray showed a large mass in the right middle lobe of the lung, at the same location as the previously noted abnormality. Further work-up was then started. A CT study of the chest showed a huge mass involving the right middle lobe of the lung. The patient was seen by Dr. Romeo, who performed bronchoscopy on November 1, 2002. Although no endobronchial lesion was seen, there was narrowing at the level of the right middle lobe bronchus. A transbronchial biopsy was performed, and the pathology report showed squamous cell carcinoma.

The patient was subsequently sent for oncologic evaluation. She was seen in the department of Radiation Oncology at Altoona Hospital. A review of the imaging films showed the large mass in the lung, measuring about 10 cm in size. A PET scan was

performed, showing intense uptake at the site of the tumor, but no other evidence of metastatic disease. The case was reviewed with a thoracic surgeon, and it was agreed that the mass was so large, that primary surgical therapy would not be the best initial approach.

The patient was subsequently treated with an intensive course of radiation therapy and concurrent chemotherapy. The tumor showed considerable regression. Ultimately, it was felt that surgical resection would be a reasonable option. The patient was taken to the operating room on January 23, 2003, and a total right pneumonectomy was performed. The remaining tumor was called adenosquamous cell carcinoma, and it was removed with clear margins. A total of 11 lymph nodes were examined, all negative for metastatic disease.

The patient was followed on a regular basis following surgery. She noted headache and some blurring of her vision in June 2003. A CT study of the brain was done on July 8, 2003, and it showed a mass lesion in the left frontal lobe of the brain. This was not seen on a previous study from November 2002. An MR study of the brain was then performed, and it confirmed the presence of a 2.2 cm mass in the left frontal lobe of the brain, with no other abnormality elsewhere in the brain. The patient again underwent oncologic evaluation, and was referred to a neurosurgeon. She underwent craniotomy with decompression of the tumor mass. The pathology report confirmed metastatic disease, consistent with the lung primary. The patient was subsequently give radiation therapy to the brain, with the treatment ending on September 10, 2003.

Based upon review of all the medical records, as summarized above, it is felt that the care given to this patient by her primary care physician in DuBois, Pennsylvania, was clearly outside of acceptable professional standards. Specifically, a written radiology report from November 1, 2000, described an abnormality of major significance. The patient had a long history of cigarette smoking, and malignant tumor would be very high on the list of differential diagnoses. If the finding was related to pneumonia, it would have resolved, and a follow-up study of the chest would have shown improvement. It is for that reason that a follow-up chest x-ray would have been the minimum mandatory requirement, and should have been done within 6-8 weeks. Alternatively, a CT study of the chest could have been done sooner. At that point, the patient had a rather small tumor, and probably would have been amenable to curative treatment with surgery alone. The surgery at that time would probably have been limited to a lobectomy, much less extreme than the surgery ultimately required, and with a rather high chance for cure. By the time this patient was diagnosed with malignancy, she needed to undergo intensive treatment with radiation therapy and chemotherapy. Then, she required a total pneumonectomy, resulting in the loss of her lung. Later, she developed metastatic brain disease. Her chance for cure is now very small. Had this patient been evaluated properly, her treatment would have been much less intense, and her chance for surviving

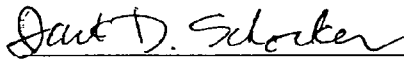
RE: Bridgette Nelen

Page 3

would have been greatly increased. The care given to her has had a major impact upon her chance of survival and no reasonable excuse can be given to explain such action. It is my opinion that her chances of surviving has gone from 80% to 10% as a result of the delayed treatment.

Based upon this review of the records, and examination of the patient, I believe it can be stated with reasonable certainty that this patient was given care below the standard required from a similarly trained physician in this geographic area.

The opinion expressed above is presented by a physician licensed within the Commonwealth of Pennsylvania, with special training regarding the care and treatment of cancer patients.

A handwritten signature in cursive script, reading "Jack D. Schocker", written over a horizontal line.

Jack D. Schocker, M.D.



altoona hospital

CENTER FOR CANCER CARE

620 Howard Avenue • Altoona, PA 16601-4899
814 / 889-2400 • 800 / 870-4660 • Fax: 814 / 889-2048

DEPARTMENT OF RADIATION ONCOLOGY

Jack D. Schocker, M.D., *Chairman*

John A. Clement, M.D.

Michael A. Vince, Ph.D.

Gregory M. Price, M.S., DABR

November 05, 2004

Received DRJ

NOV 29 2004

W. Patric Boyer
Eckert Siemans
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317

Place () Dictated on ()
Diary Note ()
Copy to DRJ () Copy Key Doc. ()

RE: BRIDGETTE NELEN
4008 SPLASH DAM RD
GRAMPIAN, PA 16838
DOB: 1/4/1961
#5714

Dear Mr. Boyer:

I am writing this letter with reference to several recent notes that were sent to me. In your letter dated July 12, 2004, you asked about a mass in the left lung on the x-ray film dated November 1, 2000. In fact, there is no mass in the left lung at that time. The only mass seen is the neoplasm in the right lung, as previously discussed. Next, I received a letter from you dated August 11, 2004, requesting billing records. I have asked my business office manager to prepare a copy of that information and forward it to you. Similarly, I will ask Altoona Hospital's business office to also send a record of charges to you.

Lastly, I just recently received your letter dated October 26, 2004. Clearly, there was a major difference in the type of treatment given to this patient, and the ultimate expected outcome, because of the delay in diagnosis. The chest x-ray done on November 1, 2000, showed a mass in the right lung measuring about 4 cm in size. There was no evidence of any lymph node enlargement seen on the conventional radiograph. Almost certainly, the only treatment needed at that time would have been surgery, and a lobectomy would have been performed. That means removal of a single lobe of the lung, and not the entire lung. There are a number of published studies in the medical literature showing that the chance for cure in cases like this is reasonably good. (As just one example, Martini published the results from 598 patients (Journal of Thoracic and Cardiovascular Surgery, Volume 109, pages 120-129, 1995). In that series, the five year survival rate was about 70%. Because of the delay in diagnosis, and the large size of the mass at the time of diagnosis, this patient needed chemotherapy and radiation therapy treatments. Then, she needed a much more extensive surgical procedure. She then developed metastatic brain disease, and it is likely that she never would have had brain metastasis if the diagnosis was made earlier. The metastatic brain disease lead to craniotomy, with major brain surgery, followed by additional radiation therapy. The prognosis in such cases is dramatically decreased, certainly well under 10% survival at five years.

In summary, the patient's delay in diagnosis had a major impact on the treatment given to this treatment, and the chance for cure is dramatically decreased. This can be established based upon numerous studies and by any basic oncologic principle.

Letter to W. Patric Boyer
Page 2
RE: BRIDGETTE NELEN
November 05, 2004

Please contact me if additional information is needed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jack Schocker".

Jack D. Schocker, M.D.

JDS/ghb

UPDATED REPORT

PATIENT: Bridgette Nelen
4008 Splash Dam Rd.
Grampian, PA 16838

DOB: 1/04/1961

DEPT: 5714

DATE: September 07, 2006

Material regarding the care of Mrs. Nelen was again reviewed. As noted previously, this patient had an abnormal chest x-ray performed on November 1, 2000. The radiologist described an abnormality in the right lung. Such a finding requires follow-up, and it is not acceptable practice to simply observe clinically. Specifically, even if the patient had only pneumonia, a follow-up chest x-ray would be needed to prove that it resolved. In this case, it would have shown that there was no resolution, since a malignant mass was present causing the abnormality. Such a follow-up study should have been performed within several weeks of the first radiograph. This is a basic requirement in caring for an adult patient with an abnormal chest x-ray, especially since the radiologist could not exclude a neoplasm, and this is stated in the report. It was the responsibility of Dr. Wirths to obtain a follow-up chest radiograph. If another physician in the same office was caring for the patient, then this obligation would fall on both physicians. The physicians also have the duty to communicate with each other to make sure that the patient received the proper follow-up care. I also have reviewed the transcripts of the depositions of Dr. Wirths and Dr. Dela Torre, and while they may disagree regarding who had responsibility, the standard of care would place the responsibility on both of them. The subsequent delay in the diagnosis of lung cancer has had a major impact regarding the patient's treatment, and still with her prospect for long term survival.

Because of the delay in treatment, the patient required much more extensive therapy. If she was diagnosed in 2000, it probably would have been adequate to perform surgery with removal of one lobe of the lung. It is doubtful that she would have needed any additional treatment, and would have had a fairly high chance for cure. Because of the delay in diagnosis, the patient required extensive treatment with chemotherapy and radiation therapy. Then, she required total removal of the right lung. The patient developed metastatic disease to her brain requiring craniotomy with removal of the tumor and additional radiation therapy to her brain. Even if the patient survives beyond five years from treatment, the patient may also suffer additional consequences because of the extensive treatment that was required. For example, she now only has one lung, making it more difficult for her to breathe. If she ever develops another malignant tumor in the left lung, treatment will be greatly limited because of her surgery on the right side. She may still develop some changes in cognitive function or in cerebellar function because of the radiation therapy to the brain.

In summary, the delay in diagnosis has had a major impact upon this patient's treatment, her present chances for survival, and her ultimately quality of life. These opinions are rendered within a reasonable degree of medical certainty, and reflect the minimum standard of care deserved by a patient.

Jack D. Schocker

Jack D. Schocker, M.D.

JDS/ghb

CURRICULUM VITAE

July 1, 1995

NAME: Jack David Schocker, M.D.

OFFICE ADDRESS: 620 Howard Avenue
Altoona, PA 16601

DATE AND PLACE OF BIRTH: May 9, 1951 -- Allentown, Pennsylvania

EDUCATION AND TRAINING:

Graduated William Allen High School, Allentown, Pennsylvania, 1969

B.A. (with honors), Lehigh University, Bethlehem, Pennsylvania, 1973

M.D. (academic honors), Hahnemann University, Philadelphia, 1977

Internship and Residency, Hahnemann University Hospital, 1977-1981

American Cancer Society Fellow In Clinical Oncology, 1979-1981

PROFESSIONAL CERTIFICATIONS:

Diplomate, National Board Of Medical Examiners

Diplomate, American Board Of Radiology (Certified in Radiation Oncology)

CURRENT PROFESSIONAL APPOINTMENTS:

Chairman, Department Of Radiation Oncology, Altoona Hospital,
Altoona, Pennsylvania, 1995 - present

Assistant Clinical Professor Of Radiation Oncology and Nuclear Medicine,
Hahnemann University, Philadelphia, Pennsylvania, 1983 - present

PREVIOUS APPOINTMENT:

Director, Department Of Radiation Oncology, Mercy Regional Health System,
Altoona, Pennsylvania, 1982 - 1995

Chairman, Department Of Radiation Oncology, Lehigh Valley Hospital,
Allentown, Pennsylvania, 1988 - 1991

HOSPITAL MEDICAL STAFF MEMBERSHIPS:

Altoona Hospital, Altoona, Pa.

Mercy Regional Health System, Altoona, Pa.

Nason Hospital, Roaring Spring, Pa.

Memorial Hospital Of Bedford County, Everett, Pa.

Tyrone Hospital, Tyrone, Pa.

Clearfield Hospital, Clearfield, Pa.

EXHIBIT

B

Jack D. Schocker, M.D.
Curriculum Vitae
Page 2

SELECTED OTHER PRESENT APPOINTMENTS:

Director, American Cancer Society, Blair County Unit

President, Radiation Oncology Group, P.C.

SELECTED OTHER PAST APPOINTMENTS:

President, Keystone Area Society Of Radiation Oncology

Treasurer, Pennsylvania Oncologic Society

Director, American Cancer Society, Pennsylvania Division

Vice President, American Cancer Society, Blair County Unit

Trustee, Mercy Regional Health System

SELECTED PUBLICATIONS / PRESENTATIONS:

Schocker, J., and Brady, L., "Radiation Therapy For Bone Metastasis",
Clinical Orthopedics and Related Research, September, 1982.

Schocker, J., "Pre-Operative Radiation Therapy For Carcinoma Of the
Rectum and Rectosigmoid", Philadelphia Medicine, December, 1977.

Damjanov, I., and Schocker, J., "Malignant Paraganglioma Of Retro-
peritoneum", Urology, 17: 6 (1981).

Schocker, J., et. al., "Radiation Therapy For Bone Metastases", in
Bone Metastasis, edited by Weis and Gilbert, Hall Medical Publishers, 1981.

Schocker, J., et. al., "Mammography After Definitive Radiotherapy For
Breast Cancer", Presented to the Pennsylvania Radiologic Society, 1979.

Schocker, J., and Brady, L., "Definitive Radiotherapy For Treatment Of
Stages I and II Breast Cancer, presented to the South Carolina Oncology
Group, 1981. Also presented: "Post-operative Irradiation For Breast Cancer".

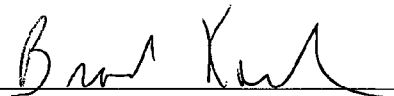
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 28th day of Feb, 2007:

Edward C. Flynn, Esquire
Eckert, Seamans, Cherin & Mellott, LLC
1001 Corporate Drive
Suite 200
Canonsburg, PA 15317

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

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for DuBois Regional Medical Center and
Phoung T. Wirths, M.D., two of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her husband,

CIVIL DIVISION

No. 2004-00057-CD

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH CLINIC,
DELA TORRE MEDICAL CLINIC, HENRY G.
DELA TORRE, M.D., and PHOUNG T.
WIRTHS, D.O., as to both individually and
t/d/b/a PENN TOWNSHIP RURAL HEALTH
CLINIC, and/or DELA TORRE MEDICAL
CLINIC,

Defendants.

ORDER OF COURT

AND NOW, on this _____ day of _____, 2007, it is hereby ORDERED
that the defendants' motion in limine with respect to plaintiffs' proposed expert report and testimony
of Jack D. Shocker, M.D. is GRANTED with the effect that the plaintiffs' are prohibited at trial from:

(1) Offering any opinions by Dr. Shocker that Dr. Wirths deviated from the applicable
standard of care.

(2) Offering any opinions or criticisms of Dr. Wirths concerning any communications
between himself and Dr. Dela Torre or within their family practice physicians' office pertaining to
the treatment and care of wife-plaintiff.

BY THE COURT:

_____. J.

JA

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

BRIDGET NELEN, formerly BRIDGET:
WILSON and DONALD NELEN, :
her husband :

vs. :

No. 04-0057-CD

DUBOIS REGIONAL MEDICAL :
CENTER, PENN TOWNSHIP RURAL :
HEALTH CLINIC, DELA TORRE :
MEDICAL CLINIC, HENRY G. :
DELA TORRE, M.D., and PHOUNG T. :
WIRTHS, D.O., as to both individually :
and t/d/b/a PENN TOWNSHIP RURAL :
HEALTH CLINIC, and/or DELA :
TORRE MEDICAL CLINIC :

FILED

MAR 19 2007

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William A. Shaw
Prothonotary/Clerk of Courts

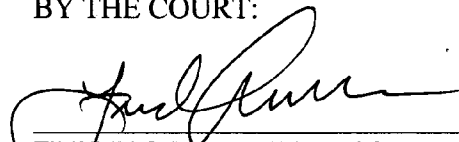
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D. Johnson
M.P.R. H.C.

ORDER

AND NOW, this 19 day of March, 2007, it is the ORDER of the Court that oral argument on all outstanding Petitions and Motions in Limine in the above-captioned matter have been scheduled for **Thursday, March 29, 2007 at 10:00 A.M.** in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA. Answers to said Motions shall be filed on or before Wednesday, March 28, 2007.

The scheduling provisions of this Order shall supercede those set forth in the Court's Order of January 24, 2007.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Defendants.

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION IN LIMINE
TO PRECLUDE PROPOSED EXPERT
REPORT AND TESTIMONY OF
PLAINTIFFS' EXPERT, JACK
SCHOCKER, M.D.**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Edward C. Flynn, Esq.
Pa ID No. 35198
Livia F. Langton, Esq.
Pa ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

JURY TRIAL DEMANDED

FILED *NO CC*
m110:57601
MAR 28 2007 *(GK)*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION IN LIMINE
TO PRECLUDE PROPOSED EXPERT REPORT AND TESTIMONY OF
PLAINTIFFS' EXPERT, JACK SCHOCKER, M.D.**

Defendants attempt to preclude the expert testimony of Plaintiffs' Expert, Jack Schocker, M.D., from testifying as to the standard of care applicable to family practice physicians, on the basis that he is not board certified in family practice medicine. According to Defendants, therefore, he is not acquainted with the standards of care required of such physicians. Dr. Schocker's qualifications, training, and experience, however, together with Pennsylvania appellate authority, readily expose Defendants' position to be without merit.

Section 1303.512 of the MCARE Act governs the competency of an expert witness to testify in a medical professional liability action. 40 P.S. §1303.512. Subsections (c) and (e), relating to the competency of an expert to testify as to a physician's standard of care, are the subsections relevant to Defendants' Motion in Limine. Subsection (c) provides as follows:

(c) STANDARD OF CARE. – In addition to the requirements set forth in subsections (a) and (b), an expert testifying as to a physician's standard of care also must meet the following qualifications:

- (1) Be substantially familiar with the applicable standard of care *for the specific care at issue* as of the time of the alleged breach of the standard of care.
- (2) Practice in the same subspecialty as the defendant physician or in a subspecialty which has a substantially similar standard of care *for the specific care at issue*, except as provided in subsection (d) or (e).
- (3) In the event the defendant physician is certified by an approved board, be board certified by the same or a similar approved board, except as provided in subsection (e).

40 Pa.C.S. §1303.512(c). Emphasis added.

Subsection (e) allows a court to waive the same specialty and board certification requirements set forth in subsection (c)(2) and (c)(3). Subsection (e) provides as follows:

(e) OTHERWISE ADEQUATE TRAINING, EXPERIENCE AND KNOWLEDGE. – A court may waive the same specialty and board certification requirements for an expert testifying as to a standard of care if the court determines that the expert possesses sufficient training, experience and knowledge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine within the previous five-year time period.

40 Pa.C.S. §1303.512(e).

These relevant provisions of the MCARE Act make it abundantly clear that, although Dr. Schocker is not certified to practice in the sub-specialty of family practice medicine, the lack of that particular certification is not fatal to his ability to render an expert opinion as to the standard of care for the specific care at issue in this case. Dr. Schocker has spent over 25 years as an oncologist. His training and experience evaluating and treating cancer patients have encompassed the same medical care issues as those confronted by family practice physicians. Indeed, in addition to his many years of experience as an oncologist, he has been a member of the teaching faculty of a family medicine residency program for more than ten years. *See*, the

supplemental report and current Curriculum Vitae of Dr. Schocker attached as Exhibit "A" to this Opposition. The family medicine residents have rotations with Dr. Schocker in his department. *Id.* Dr. Schocker lectures the family medicine residents and regularly meets with them on the hospital floor to discuss appropriate patient care. *Id.* Family practice physicians will no doubt see patients during the course of their practice who will present with signs and symptoms of cancer. As noted by Dr. Schocker, it is essential that family practice physicians be properly trained with respect to the follow-up care necessary to evaluate a patient who evidences signs of a potentially cancerous condition. *Id.*

The teaching and training that Dr. Schocker provides to the family medicine residents will obviously include the basic requirements for proper follow-up of a patient with abnormal chest x-rays, where a radiologist has specifically warned that a cancerous mass cannot be ruled out. The standard of care applicable in such a circumstance is not unique to family practice physicians. In fact, it would be the appropriate standard of care applicable to any specialty, indeed, to any properly trained medical provider.

Contrary to Defendants' assertions, Dr. Schocker's qualifications amply demonstrate that he is well-acquainted with the standard of care applicable in this case, and that he practices in a subspecialty that at least has a substantially similar standard of care *for the specific care at issue*, in satisfaction of Section 1303.512 (c)(1) and (2). In addition, even if he were not deemed to be competent under those subsections, he surely is under subsection (e), given his training, experience and knowledge, as well as his teaching duties in the family medicine residency program.

The recent Pennsylvania Superior Court decision of *Smith v. Paoli Mem'l Hosp.* 885 A.2d 1012 (Pa. Super Ct. 2005), attached as Exhibit "B" hereto, is dispositive of Defendants'

Motion in Limine. In *Smith*, plaintiff sued his deceased wife's gastroenterologists for failure to timely diagnose and treat her ultimately fatal leiomyosarcoma. Plaintiff specifically claimed that the Defendants breach the standard of care by failing, over a two year period, to order a CT scan to evaluate the decedent's bleeding and bowel symptoms. At issue before the Court was whether Plaintiff's expert witnesses, an oncologist and a board-certified general surgeon, were qualified to testify as to the standard of care applicable to the defendant gastroenterologists, since they were not board-certified in gastroenterology.

The Court found that Plaintiff's experts met the requirements of the MCARE Act for those qualified to offer testimony on standard of care. *Id.* at 1022. In doing so, the Court focused on the standard of care *for the specific care at issue*, as specified in subsections (c)(1) and (c)(2). *See Id.* at 1020. The Court accepted the reasoning of Plaintiff's expert that all physicians are trained, whether a surgeon, internist or oncologist, to diagnose signs and symptoms, by way of a differential diagnosis, which process crosses all boundaries and is not unique to any one specialty. *Id.* at 1018. Physicians of various specialties are all involved in the treatment of cancer and must be familiar with the appropriate course of action under the circumstances. The experts claimed that their subspecialties overlapped with those of the defendants as to the standard of care applicable when a patient presents to *any* appropriately trained medical care provider with an obscure GI bleed. *Id.* at 1019.¹

Finally, Defendants cite *Wexler v. Hecht*, 847 A.2d 95 (Pa. Super Ct. 2004), in support of their proposition that Dr. Schocker should not be allowed to testify as to the standard of care applicable to Dr. Dela Torre and Dr. Wirths in this case. *Wexler* involved claims against a licensed physician, which Plaintiff attempted to support with the expert testimony of a podiatrist.

¹ Moreover, in reviewing the qualifications of plaintiff's expert oncologist, the Court noted that he was a professor of medicine who instructed third year medical students rotating through his practice in examination, diagnosis, and management of patients with various cancers. *Id.* at 1018.


Wexler, however, is clearly inapplicable to the question at hand. As noted by the *Smith* Court, the Superior Court in *Wexler*, in affirming the trial court's decision to preclude the testimony of the podiatrist, based its decision primarily on the fact that a podiatrist does not possess an unrestricted physician's license to practice medicine, as is required by section 1303.512(c)(1). That issue clearly does not exist in this case.

The applicability of *Smith* to the present case could hardly be clearer, particularly in light of the facts of this case. The radiologist who interpreted Mrs. Nelen's abnormal chest x-ray specifically recommended that a follow-up x-ray and or CT scan should be performed. Defendants have not up to this point denied that such follow-up care was appropriate, and even necessary, nor are they expected to do so at trial. Each one has merely suggested that the responsibility of follow-up care lay with the other. As stated by Dr. Schocker, and surely with the agreement of the Pennsylvania Appellate Courts, the standard of care in this case is not limited to family practice physicians, but would be applicable to any medical provider, regardless of the specialty.

For the reasons stated above, Plaintiffs respectfully submit that Defendants' Motion in Limine should be denied.

Respectfully submitted,

Date: 3/27/07



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Livia F. Langton, Esq.
PA ID No. 91548
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Attorneys for Plaintiffs



Altoona Regional Health System

CENTER FOR CANCER CARE

620 Howard Avenue • Altoona, PA 16601-4899
814 / 889-2400 • 800 / 870-4660 • Fax: 814 / 889-2048

DEPARTMENT OF RADIATION ONCOLOGY

Jack D. Schocker, M.D., *Chair*

Michael A. Vince, Ph.D.

Gregory M. Price, M.S., DABR

March 25, 2007

Mr. Edward C. Flynn
Eckert Seamans Cherin & Mellott, LCC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

Dear Mr. Flynn:

With reference to the case of Mrs. Nelen, I am submitting this supplemental report on the issue of my qualifications to comment on the standard of care applicable to family practice physicians as it relates to the specific care rendered by Drs. Dela Torre and Wirths in this case. First, as indicated on my updated CV enclosed with this report, I am a member of the teaching faculty of the Altoona Family Physicians, a family medicine residency program. I have served in this capacity for many years. As part of my responsibilities, I lecture to family medicine residents, and family medicine residents have rotations with me in my department. I also meet with the residents on a frequent basis in the hospital to discuss appropriate patient care. This only makes sense, as it is expected that family practice physicians will be confronted with patients requiring assessment and follow-up evaluation for potential cancerous conditions, and it is essential that the family practice physician be appropriately trained on what to do in the appropriate circumstances. The teaching and training I provide to residents would certainly include the basic requirements for proper follow-up in a patient who presents with an abnormal chest x-ray, particularly where the radiologist interpreting the x-ray has specifically recommended additional studies to evaluate the possibility of a cancerous mass. Therefore, I am very well familiar with the standard of care applicable to these physicians as it relates to the care provided to Mrs. Nelen.

In this case, the findings on the chest x-ray were flagged by the radiologist, who called for follow-up studies that were never done. The standard of care under these circumstances is not limited to family practice physicians. It is the standard of care that would be applicable to any appropriately trained medical provider, regardless of the specialty. To say the least, the standard of care in my specialty would overlap with the standard of care applicable to family practice physicians under the circumstances of this case. This standard of care applies not only to the need to do the follow-up studies that were required here, but to the need for physicians in the same clinic to communicate with each other to make sure that their patient was receiving the care that she needed.

Please contact me if you are in need of additional information.

Sincerely,

Jack D. Schocker, M.D.

JDS/keb

Curriculum Vitae
January 2, 2007

NAME: Jack D. Schocker, M.D.

OFFICE: 620 Howard Avenue, Altoona, PA 16601

BIRTHPLACE: Allentown, Pennsylvania

EDUCATION AND TRAINING:

Graduated William Allen High School, Allentown, Pennsylvania

B.A. (with honors), Lehigh University, 1973

M.D. (academic honors), Hahnemann University, Philadelphia, 1977

Internship and Residency, Hahnemann University Hospital, Philadelphia 1977-1981

PROFESSIONAL CERTIFICATION:

Diplomate, National Board Of Medical Examiners

Diplomate, American Board Of Radiology (Certified in Radiation Oncology)

CURRENT PROFESSIONAL APPOINTMENT:

Chair, Department of Radiation Oncology, Altoona Regional Health System,
Altoona, Pennsylvania, 1982 to present.

Vice-President, Medical Staff and Chair of the Medical Executive Committee,
Altoona Regional Health System

Teaching Faculty, Altoona Family Physicians

HOSPITAL MEDICAL STAFF MEMBERSHIPS:

Altoona Regional Health System, Altoona, Pa.

Nason Hospital, Roaring Spring, Pa.

UPMC-Bedford Memorial Hospital, Everett, Pa.

Clearfield Hospital, Clearfield, Pa.

Tyrone Hospital, Tyrone, Pa.

SELECTED PAST APPOINTMENTS:

President, Keystone Area Society Of Radiation Oncology

Treasurer, Pennsylvania Oncologic Society

Director, American Cancer Society, Pennsylvania Division

Vice-president, American Cancer Society, Blair County Unit

Trustee, Mercy Regional Health System

SELECTED PUBLICATIONS / PRESENTATIONS

Schocker, J., and Brady, L., "Radiation Therapy For Bone Metastasis." Clinical Orthopedics and Related Research. September, 1982.

Schocker, J., "Pre-operative Radiation Therapy For Carcinoma of the Rectum and Rectosigmoid." Philadelphia Medicine, December, 1977.

Damjanov, I., and Schocker, J., "Malignant Paraganglioma of Retroperitoneum." Urology, 17: 6 (1981).

Schocker, J., et. al., "Radiation Therapy for Bone Metastases," in Bone Metastases, edited by Weis and Gilbert, Hall Medical Publishers, 1981.

Schocker, J., et. al., "Mammography After Definitive Radiotherapy For Breast Cancer," presented to the Pennsylvania Radiologic Society, 1979.

Schocker, J., and Brady, L., "Definitive Radiotherapy for Treatment of Stages I and II Breast Cancer." presented to the South Carolina Oncology Group, 1981.

Schocker, J., and Brady, L., "Post-operative Irradiation For Breast Cancer." presented to the South Carolina Oncology Group, 1981.



Positive

As of: Mar 27, 2007

DONALD J. SMITH, ADMINISTRATOR OF THE ESTATE OF MAUREEN T. SMITH, DECEASED v. PAOLI MEMORIAL HOSPITAL, MAIN LINE HEALTH RADIOLOGY, DAVID H. FORSTED, M.D., F.A.C.R., VALERIE T. HUNT, M.D., DONALD G. SAMUELSON, M.D., ELISE SHRECK, M.D., JEFFERSON HEALTH SYSTEM, MAIN LINE GASTROENTEROLOGY ASSOCIATES, P.C., MATTHEW R. ASTROFF, M.D., RICHARD D. TOLIN, M.D., SURGICAL SPECIALISTS OF THE MAIN LINE, P.C., TIMOTHY FOX, M.D., PRESBYTERIAN MEDICAL CENTER, ANDREA RUSSO, M.D., NICHOLAS C. BATTAFARANO, M.D., AND N.C. BATTAFARANO, M.D., P.C.; APPEAL OF: MATTHEW R. ASTROFF, M.D., RICHARD D. TOLIN, M.D. & MAIN LINE GASTROENTEROLOGY ASSOCIATES, Appellants

No. 1187 Eastern District Appeal 2004

SUPERIOR COURT OF PENNSYLVANIA

2005 PA Super 352; 885 A.2d 1012; 2005 Pa. Super. LEXIS 3607

May 10, 2005, Argued
October 18, 2005, Filed

PRIOR HISTORY: [***1] Appeal from the Judgment of the Court of Common Pleas of Philadelphia County, Civil Division, No. June Term, 2001, No. 1622. Before JELIN, J.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant physicians appealed a judgment on jury verdict of the Philadelphia County Court of Common Pleas, Civil Division (Pennsylvania), in favor of plaintiff estate administrator and widower in his wrongful death and survival action based on negligent failure to timely diagnose a deceased patient's cancer. They argued that the widower's experts were not qualified under Pa. Stat. Ann. tit. 40, § 1303.512 and that the verdict was excessive.

OVERVIEW: The physicians were involved in examining and treating the patient from the first time she was admitted to a hospital with rectal bleeding. Despite several such episodes and a family history of bowel cancer, it was several years before her cancer was discovered, by which time it was too late. When the widower sued the physicians for malpractice, they moved in limine to exclude the testimony of his proposed experts, one a general surgeon and one an oncologist/internist, arguing that only gastroenterologists could testify as to the applicable standard of care. The court held that while § 1303.512 expressed a preference for experts in a defendant's subspecialty, it also allowed for qualification based on knowledge and experience in the same area of treatment. The experts in question had provided ample evidence that in actual treatment situations involving rectal bleeding, their subspecialties overlapped with that of the physicians, and that they had long experience in diagnosing and treating conditions involving bowel cancers. Further, the court found no abuse of discretion in the trial court's determination that the amount of the verdict did not shock its conscience.

OUTCOME: The court affirmed the judgment.

CORE TERMS: gastroenterologist, bleeding, standard of care, decedent, administrator, patient, subspecialty, tumor, algorithm, cancer, scan, surgery, MCARE Act, nephrologist, gastroenterology, bowel, surgeon, specialty, diagnosis, gastrointestinal, internist, board-certified, qualification, post-trial, training, obscure, opined, substantially similar, internal medicine, excessive

LexisNexis(R) Headnotes

***Civil Procedure > Appeals > Standards of Review > Abuse of Discretion
Evidence > Procedural Considerations > Rulings on Evidence***

Evidence > Testimony > Experts > Admissibility

[HN1] Decisions regarding admission of expert testimony, like other evidentiary decisions, are within the sound discretion of the trial court. The Pennsylvania Superior Court may reverse only if it finds an abuse of discretion or error of law.

***Civil Procedure > Appeals > Standards of Review > De Novo Review
Governments > Legislation > Interpretation***

[HN2] Since interpretation of a statute is a question of law, review is plenary. The Pennsylvania Superior Court is, therefore, bound by the rules of statutory interpretation, particularly as found in the Pennsylvania Statutory Construction Act, 1 Pa. Cons. Stat. §§ 1501-1991.

Governments > Legislation > Interpretation

[HN3] The goal in interpreting any statute is to ascertain and effectuate the intention of the Pennsylvania General Assembly.

Governments > Legislation > Interpretation

[HN4] The plain language of a statute is in general the best indication of the legislative intent that gave rise to the statute. When the language is clear, explicit, and free from any ambiguity, the Pennsylvania Superior Court discerns intent from the language alone, and not from arguments based on legislative history or spirit of the statute.

Evidence > Testimony > Experts > Qualifications

Torts > Malpractice & Professional Liability > Healthcare Providers

[HN5] See Pa. Stat. Ann. tit. 40, § 1303.512.

Evidence > Testimony > Experts > Qualifications

[HN6] Pennsylvania appellate courts do not condone the practice of relying solely on an expert's curriculum vitae when determining whether he or she is competent to testify. Rather, the better practice is for trial courts to take evidence directly from the expert before ruling on the issue.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Evidence > Testimony > Experts > Qualifications

Torts > Malpractice & Professional Liability > Healthcare Providers

[HN7] The Pennsylvania Medical Care Availability and Reduction of Error Act, Pa. Stat. Ann. tit. 40, §§ 1303.101-1303.910, plainly prefers, and in some cases may require, that expert testimony in professional medical malpractice cases come from witnesses with expertise in the defendant's particular subspecialty. The "same subspecialty" ideal contained in Pa. Stat. Ann. tit. 40, § 1303.512(c)(2) includes an express caveat, however, reflecting the legislature's decision to afford the trial court discretion to admit testimony from a doctor with expertise in another specialty that has a similar standard of care for the specific care at issue. This reading comports with Pennsylvania courts' historical deference to trial courts' discretion in deciding whether to admit evidence at trial and is consistent with the plain language of the statute itself.

Evidence > Testimony > Experts > Qualifications

Torts > Malpractice & Professional Liability > Healthcare Providers

[HN8] Some medical expert testimony may concern the standard of care applicable to any physician.

Civil Procedure > Judgments > Relief From Judgment > Additurs & Remittiturs > General Overview

[HN9] The Supreme Court of Pennsylvania has articulated as follows the standard for setting aside a verdict as excessive: A court is not warranted in setting aside, reducing, or modifying verdicts for personal injuries unless unfairness, mistake, partiality, prejudice, or corruption is shown, or the damages appear to be grossly exorbitant. The verdict must be clearly and immoderately excessive to justify the granting of a new trial. The amount must not only be greater than that which the court would have awarded, but so excessive as to offend the conscience and judgment of the court.

Governments > Courts > Judicial Precedents

[HN10] Federal decisions are not binding on the Pennsylvania Superior Court, but may provide persuasive authority in a case of first impression.

COUNSEL: Barbara S. Magen, Philadelphia, for appellants.

David C. Federman, Philadelphia, for Smith, appellee.

JUDGES: BEFORE: FORD ELLIOTT, JOYCE, AND MONTEMURO, * JJ. OPINION BY FORD ELLIOTT, J.

* Retired Justice assigned to Superior Court.

OPINION BY: FORD ELLIOTT

OPINION: [**1013] OPINION BY FORD ELLIOTT, J.:

[*P1] The pivotal issue in this case is whether the plaintiff's expert medical witnesses qualified to testify as to the standard of care of defendant physicians pursuant to the requirements of the MCARE Act, 40 P.S. §§ 1303.101-1303.910. n1 Finding that the experts were qualified, we affirm.

n1 Medical Care Availability and Reduction of Error Act.

[*P2] Appellee Donald J. Smith ("administrator") filed a wrongful death and survival action on his own behalf and on behalf of the estate of his late wife, Maureen Smith ("decendent"), claiming that appellant/physicians and others breached the standard [***2] of care in failing timely to diagnose and treat decendent's small bowel leiomyosarcoma, thereby resulting in her untimely death. In support of his claim, administrator retained W. Stuart Battle, M.D., a board-certified general surgeon; and Allen Krutchik, M.D., a board-certified oncologist and [**1014] internist. Appellant physicians, Matthew R. Astroff, M.D., and Richard D. Tolin, M.D., are board-certified gastroenterologists.

[*P3] According to decendent's primary care physician, Nicholas C. Battafarano, M.D., because he was aware of the history of cancer in decendent's family, he immediately referred decendent to Timothy Fox., M.D., a general surgeon, when decendent presented at Dr. Battafarano's office on May 26, 1998 with rectal bleeding. (Deposition testimony of Nicholas Battafarano read into the record at notes of testimony, 11/18/03 at 150-151.) Decendent, who was 61 years old at the time, experienced a significant episode of rectal bleeding at Dr. Fox's office; therefore, he immediately admitted decendent to Paoli Memorial Hospital ("hospital") under his service as attending physician the same day. During her hospitalization, decendent received approximately three to four pints of blood. [***3]

[*P4] Dr. Fox attempted to perform a colonoscopy, but due to equipment failure, called in Dr. Astroff and his group, Main Line Gastroenterology, to assist in the testing and diagnosis. Despite performing numerous tests, the physicians involved in decendent's care were unable to determine the exact cause of her bleeding; however, two tests indicated the probable source of the bleeding as the mid to distal ileum portion of the small bowel. Following her discharge, decendent underwent further outpatient tests in June of 1998, including an endoscopy, small bowel enteroclysis, and other tests; however, none of those tests established the cause of her bleeding. Because all of the tests the physicians per-

formed viewed the inside of the colon and small bowel, however, none of the tests could rule out the possibility of an extrinsic tumor.

[*P5] In November of 1998, decedent again experienced rectal bleeding and returned to hospital, where she was admitted under the service of Dr. Tolin, also of Main Line Gastroenterology. Dr. Tolin performed another colonoscopy and discharged decedent the next day with no definitive diagnosis, although he indicated the possibility of a "right-sided [***4] diverticulum." In November of 1999, decedent again experienced rectal bleeding and was admitted to hospital under Dr. Astroff's care. Following another colonoscopy, decedent was again discharged without a definitive diagnosis. According to Dr. Astroff, his working hypothesis during the November 1999 hospitalization was that decedent suffered from an arteriovenous malformation or AVM. AVM's, according to Dr. Astroff, are "like little dilated veins on your face, they are flat to the surface. It can't show something flat on the surface, so often when all the tests are done, if we find no other source, often we have to presume it was an AVM." (Notes of testimony, 11/17/03 at 145.)

[*P6] Following an unrelated hospitalization in December 1999, decedent presented to Dr. Battafarano on March 25, 2000 with lower abdominal pain and fever and was admitted to hospital. A CT scan done the following day revealed a large pelvic and mesenteric mass extrinsic to the ileum of the small bowel. The tumor was diagnosed as a high-grade GIST, or stromal tumor of the gastrointestinal tract. Additional testing and surgery at Sloan-Kettering Memorial Hospital, to which decedent transferred, revealed [***5] the tumor was a leiomyosarcoma. Despite several surgeries, the cancer had metastasized to several of decedent's other organs, and she died on December 14, 2000.

[*P7] On June 14, 2001, administrator filed a complaint sounding in negligence, naming numerous physicians, medical centers, medical practices, and hospital as defendants, and including counts for wrongful [**1015] death and survival. Administrator retained the services of the two expert medical witnesses noted *supra* to address the standard of care for determining the cause of occult gastrointestinal bleeding. Specifically, the experts addressed whether Drs. Tolin and Astroff, the two gastroenterologists ("gastroenterologists"), and others breached the standard of care by failing to order a CT scan to investigate the possibility of a source extrinsic to the GI tract. Dr. Battle filed his report on April 1, 2003 and Dr. Krutchik filed two reports, one on April 15, 2003, and one on October 31, 2003, after he had reviewed the reports of Emanuel Rubin, M.D., one of the gastroenterologists' experts, who determined that the tumor was a leiomyosarcoma, not a GIST.

[*P8] It was not until November 4, 2003, however, ten [***6] days before trial commenced, that gastroenterologists filed their motion *in limine*, seeking to preclude administrators' experts from testifying based upon their purported lack of qualification pursuant to the MCARE Act. To support their motion, gastroenterologists appended their *curricula vitae* as well as those of Drs. Battle and Krutchik. (Plaintiff's Response to Motion *in Limine*, 11/10/03, R. at 55.) Administrator then filed a response, attaching the reports and *curricula vitae* of his two medical experts. The court heard argument on the motion after the jury had been selected, on November 14, 2003, after which it entered an order denying the motion. (Notes of testimony, 11/14/03 at 13-23.)

[*P9] On November 25, 2003, following a jury trial during which several of the remaining defendants were granted motions for compulsory nonsuit or were dismissed by stipulation, the jury returned a verdict in favor of administrator, finding gastroenterologists negligent and apportioning 50 percent of the damages, or \$ 500,000, to each, for a total of \$ 1,000,000. Gastroenterologists filed a post-trial motion on December 4, 2003, and administrator filed [***7] a motion for delay damages. The trial court granted administrator's motion and molded the verdict to \$ 1,077,725.88.

[*P10] According to the trial court, it did not decide the post-trial motion, however, because gastroenterologists failed to order the transcripts in a timely manner, thereby precluding the court from filing a briefing order and/or disposing of the motion within the prescribed 120 days. (Trial court opinion, 6/3/04 at 3 n.1 and 2, 6.) Our review of the record indicates, to the contrary, that gastroenterologists included a request for transcripts with their December 4, 2003 post-trial motion and also moved for leave to specify additional grounds after the motion clerk notified counsel that the requested transcript had been transcribed. Additionally, administrator included in its response to the post-trial motion a motion that the entire transcript, including the arguments and objections of counsel and the rulings of the court, be transcribed. Administrator filed its response on December 12, 2003.

[*P11] On December 6, 2004, having received the certified record as well as a motion from gastroenterologists' counsel for leave to complete the record, this court [***8] granted the motion and remanded to the trial court to complete the record. (Per curiam order, No. 1187 EDA 2004, 12/6/04.) Gastroenterologists' counsel then hand-delivered to the trial court a request for that court to forward numerous items that were missing from the certified record when this court received the record on November 23, 2004. Included among those items are both the post-trial motion and the response thereto. They are located in Part 3 of the certified record, but are not numbered.

[**1016] [*P12] Regardless of the cause, the post-trial motion was denied by operation of law on or about April 4, 2004, and administrator entered judgment on the verdict on April 6, 2004. This timely appeal followed, in which gastroenterologists raise the following issues:

A. DID THE LOWER COURT ERR IN FAILING TO AWARD DEFENDANTS RELIEF IN THE NATURE OF A JUDGMENT N.O.V. OR A NEW TRIAL AS THE VERDICT RENDERED WAS IMPROPER AND UNSUPPORTED BY THE REQUISITE COMPETENT EXPERT EVIDENCE?

1. Are defendants entitled to appellate relief since the trial court erred in denying their Motion in Limine and in allowing plaintiff's expert witnesses to testify against these healthcare providers, [***9] in contravention of Section 512 of Pennsylvania's Medical Care Availability and Reduction of Error Act, n.2 since those experts were not Board Certified or practicing in the field of gastroenterology or in a sub-specialty with a substantially similar standard of care?

2. Are defendants entitled to appellate relief since, without competent expert testimony, plaintiff's case should not have reached a jury, and the healthcare providers are entitled to the entry of Judgment or, at a minimum, a new trial?

3. Are defendants entitled to appellate relief since the verdict rendered is against the overwhelming weight of the evidence as no two reasonable minds could disagree that, based upon the consensus statement of the American Gastroenterological Association, n.3 a CAT scan is not a diagnostic tool which is required by the standard of care for a gastroenterologist performing a work-up for occult and/or obscure bleeding?

B. DID THE LOWER COURT ERR AND ABUSE ITS DISCRETION IN REFUSING TO GRANT DEFENDANTS A NEW TRIAL OR A REMITTITUR BASED ON THE UNSUPPORTED AND EXCESSIVE AWARD?

n.2 40 P.S. § 1303.512. [***10]

n.3 R. 1021a.

-----End Footnotes-----

Appellants' brief at 5.

[*P13] [HN1] "Decisions regarding admission of expert testimony, like other evidentiary decisions, are within the sound discretion of the trial court." *Weiner v. Fisher*, 2005 PA Super 118, 871 A.2d 1283, 1285 (Pa.Super. 2005), citing *Turney Media Fuel, Inc. v. Toll Bros., Inc.*, 1999 PA Super 37, 725 A.2d 836, 839 (Pa.Super. 1999). "We may reverse only if we find an abuse of discretion or error of law." *Id.* (citation omitted).

[*P14] The issue regarding the experts' qualifications under the MCARE Act is, however, in essence a question of statutory interpretation. *Id.* As the *Weiner* court observed, [HN2] "Since interpretation of a statute is a question of law, our review is plenary." *Id.*, citing *Commonwealth v. Gilmour Mfg. Co.*, 573 Pa. 143, 148, 822 A.2d 676, 679 (2003). We are, therefore, bound by the rules of statutory interpretation, "particularly as found in the Statutory Construction Act. 1 Pa.C.S.A. §§ 1501-1991 [***11] ." *Id.* As the *Weiner* court continued, [HN3] "The goal in interpreting any statute is 'to ascertain and effectuate the intention of the General Assembly.' " *Id.*, quoting 1 Pa.C.S.A. § 1921(a). As [**1017] noted in *Weiner*, "Our Supreme Court has stated that [HN4] the plain language of a statute is in general the best indication of the legislative intent that gave rise to the statute." *Id.*, citing *Gilmour, supra* at 148, 822 A.2d at 679. The *Weiner* panel, citing several cases, therefore observed, "When the language is clear, explicit, and free from any

ambiguity, we discern intent from the language alone, and not from arguments based on legislative history or 'spirit' of the statute." *Id.* at 1285-1286, citing 1 Pa.C.S.A. § 1921(b) (other citations omitted).

[*P15] The portions of the MCARE Act relevant to this case follow:

[HN5] **§ 1303.512. Expert qualifications**

(a) General rule.--No person shall be competent to offer an expert medical opinion in a medical professional liability action against a physician unless that person possesses sufficient [***12] education, training, knowledge and experience to provide credible, competent testimony and fulfills the additional qualifications set forth in this section as applicable.

(b) Medical testimony.--An expert testifying on a medical matter, including the standard of care, risks and alternatives, causation and the nature and extent of the injury, must meet the following qualifications:

- (1) Possess an unrestricted physician's license to practice medicine in any state or the District of Columbia.
- (2) Be engaged in or retired within the previous five years from active clinical practice or teaching.

Provided, however, the court may waive the requirements of this subsection for an expert on a matter other than the standard of care if the court determines that the expert is otherwise competent to testify about medical or scientific issues by virtue of education, training or experience.

(c) Standard of care.--In addition to the requirements set forth in subsections (a) and (b), an expert testifying as to a physician's standard of care also must meet the following qualifications:

- (1) Be substantially familiar with the applicable standard [***13] of care for the specific care at issue as of the time of the alleged breach of the standard of care.
- (2) Practice in the same subspecialty as the defendant physician or in a subspecialty which has a substantially similar standard of care for the specific care at issue, except as provided in subsection (d) or (e).
- (3) In the event the defendant physician is certified by an approved board, be board certified by the same or a similar approved board, except as provided in subsection (e).

(e) Otherwise adequate training, experience and knowledge. --A court may waive the same specialty and board certification requirements for an expert testifying as to a standard of care if the court determines that the expert possesses sufficient training, experience and knowledge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine within the previous five-year time period.

[*P16] In this case, the trial court determined that both Drs. Battle and Krutchik met the requirements [***14] of subsections (c)(1) and (2), and apparently of subsection (e). (Trial court opinion, 6/3/04 at 4.) The trial court based its conclusion on the *curricula vitae* and reports of the two experts, which were the only evidence available to the court when it decided the [**1018] motion *in limine*. n2 The sum and substance of the trial court's analysis follows:

[Dr. Battle] is board certified in surgery, which overlaps with gastroenterology for the specific care at issue in this case. [Dr. Krutchik] is board certified in medical oncology, which is a subspecialty of internal medicine, which has a substantially similar standard of care as gastroenterology for the specific care at issue in this case. In addition, both doctors are actively involved in the treatment of patients with gastrointestinal bleeding and cancers.

Id. at 4-5.

N2 *See Wexler v. Hecht*, 2004 PA Super 95, 847 A.2d 95, 105 n.7 (Pa. Super. 2004) (noting, "We stress we [HN6] do not condone the practice of relying solely on an expert's *curriculum vitae* when determining whether he or she is competent to testify. Rather, the better practice is for trial courts to take evidence directly from the expert before ruling on the issue."), *allocatur granted*, 583 Pa. 700, 879 A.2d 1258 (2005).

[***15]

[*P17] We find support for the trial court's order denying the motion *in limine* in the MCARE Act and in the administrator's experts' testimony with regard to both their qualifications and the substantive issue administrator asked them to address.

[*P18] Dr. Krutchik testified that an oncologist is "a physician who has a background in adult and internal medicine who then does a two-year specialty training program post-graduate at a cancer center and is trained in the diagnosis, management and treatment of all adult cancers and malignancies and related disorders." (Notes of testimony, 11/18/03 at 6.) As part of his post-doctoral training, Dr. Krutchik rotated through the different specialties of oncology, including gastrointestinal oncology and sarcoma. (*Id.* at 8.) Additionally, Dr. Krutchik testified he sees "all kinds of patients," including patients with various gastrointestinal cancers, including soft tissue sarcoma. (*Id.* at 15.)

[*P19] In addition to his full-time practice as an oncologist, Dr. Krutchik is a clinical assistant professor of medicine at a medical college, instructing third-year medical students who rotate through his [***16] practice in examination, diagnosis, and management of patients with various cancers. (*Id.* at 9-10.) He had also published a paper on all types of sarcoma, including soft tissue sarcoma and small bowel sarcoma. (*Id.* at 31.)

[*P20] With regard to whether there would be an overlap in the standard of care among physicians specializing in different areas who are diagnosing a 61-year-old woman with gastrointestinal bleeding, Dr. Krutchik opined:

Yes, there's a significant overlap because physicians are trained, whether it's a surgeon or an internist or a gastroenterologist or oncologist to diagnose signs and symptoms and then develop a list [sic] will have diagnosis that one has to work through, which is called a differential diagnosis, so this crosses all boundaries. It's not unique to any specialty.

...

The standards would be the same because internists, surgeons, gastroenterologists, who are internists [are] all involved in the treatment of cancer and non-cancer related problems, so one has to be familiar with the different diagnoses and then be prepared to deal with it.

Id. at 17.

[*P21] Dr. Battle, a board-certified [***17] general surgeon, testified that general surgery is a subspecialty within surgery and deals with the diagnosis and treatment of diseases which primarily involve the breast; the abdominal cavity, including the liver, the [**1019] spleen, the stomach, the esophagus, and the small and large bowel; the thyroid; burns;

shock and trauma, including gunshot wounds and automobile accidents; and vascular surgery. (Notes of testimony, 11/19/03 at 6-7.) According to Dr. Battle, "most of the cancer surgery in this country is done by general surgeons; that is, thyroid glands, breasts, all of the intra-abdominal organs, like cancer of the stomach, cancer of the small and large bowel." (*Id.* at 14.)

[*P22] Dr. Battle testified that his personal experience over the past 33 years had been diagnosing and treating cancers of the intra-abdominal organs, specifically the gastrointestinal tract, the thyroid, and skin cancers such as melanoma and smaller cancers of the skin. (*Id.*) Dr. Battle had been a member of the American Society of Gastrointestinal Endoscopy for over 30 years, and had received all of their publications up until the year of trial. (*Id.* at 22.) He also testified [***18] that he was familiar with the standard of care for the evaluation and work-up of a 60-year-old woman with GI bleeding. (*Id.*)

[*P23] According to Dr. Battle, the standard would be no different for him as a surgeon than it would be for a gastroenterologist because "it has traditionally been the purview of both the [general surgeon] and a gastroenterologist The problem of bleeding from the gastrointestinal tract is addressed by either specialty and both specialties are knowledgeable and well-trained in the diagnosis and treatment of those diseases." (*Id.* at 15.) As Dr. Battle explained, "The surgeons actually end up operating sometimes on people with GI bleeding. Gastroenterologists these days can stop GI bleeding through the scopes that they put down, so it's sort of a joint, certainly a big overlap area in that disease process." (*Id.* at 16.)

[*P24] We agree with the trial court that with regard to the specific issue this case presents, the standard of care when presented with a patient with obscure GI bleeding, administrator's experts' expertise overlapped with the expertise of gastroenterologists for purposes of the MCARE Act. As [***19] this court noted in *Weiner, supra*, "Internal medicine is a specialty, of which gastroenterology is a subspecialty. To be certified in gastroenterology, a physician must first be certified in internal medicine." *Weiner*, 871 A.2d at 1289 n.8.

[*P25] In *Weiner*, this court concluded the trial court erred in disqualifying an expert because he did not teach a specific diagnostic technique within the subspecialty of gastroenterology, when he was offered as an expert in gastroenterology to address the standard of care applicable when a patient presented to a gastroenterologist with certain symptoms and a family history of gastrointestinal cancer. *Id.* at 1289. The *Weiner* court therefore remanded the case because the record was insufficient to establish the extent, level, or frequency of the expert's teaching activities. *Id.*

[*P26] In this case, unlike *Weiner*, the experts do not claim to possess expertise in the subspecialty of gastroenterology. Rather, they claim their specialties and/or subspecialties overlap with that of gastroenterology as to the standard of care applicable when a [***20] patient presents to *any* appropriately trained medical care provider with an obscure GI bleed. Recently, this court addressed a similar set of facts in *Herbert v. Parkview Hospital*, 2004 PA Super 287, 854 A.2d 1285 (Pa.Super. 2004), *appeal denied*, 582 Pa. 710, 872 A.2d 173 (2005).

[*P27] In *Herbert*, the patient had a history of end-stage renal failure and had been seen by a nephrologist for some period of time as a result. Patient's wife called for emergency transportation when she found patient on the floor of the kitchen, breathing [**1020] heavily. He was admitted to intensive care at Parkview Hospital through the emergency room, where it was noted that patient was "breathing funny" and had to be placed in restraints because he was grasping at his throat in the ICU. *Id.* at 1286.

[*P28] The following day, the nephrologist saw patient in order to prepare him for in-patient dialysis but did not examine patient's throat or mouth. The day after the nephrologist's visit, patient underwent an emergency intubation, during which a large piece of steak was removed from patient's throat. [***21] Despite the intubation, patient developed an infection at the site and died eight days later. *Id.* at 1287. The administratrix of patient's estate filed suit against Parkview and various health care providers, including the nephrologist, and called as an expert a specialist in internal medicine ("internist") to testify as to the applicable standard of care for the nephrologist under the facts of the case. Nephrologist argued that the MCARE Act required administratrix to present the testimony of a nephrologist to demonstrate that nephrologist breached the standard of care applicable to a nephrologist treating a patient in the context of a nephrology examination, when he failed to address patient's airway blockage. *Id.* at 1291.

[*P29] In addressing the admissibility of the internist's testimony, the *Herbert* panel focused on the language of the MCARE Act requiring that the expert be familiar with the standard of care *for the specific care at issue* and practice in the same or a substantially similar subspecialty which has a substantially similar standard of care *for the specific care at issue*. *Id.* at 1292, quoting 40 P.S. § 1303.512(c)(1) [***22] and (2) (emphasis in *Herbert*). According to the internist, any physician with specialized training and certification in internal medicine, of which nephrology is a subspe-

cialty, should have noted anomalies in patient's behavior and the notes in the chart concerning patient's symptoms and behavior and concluded that patient's respiratory problems needed immediate attention. *Id.* at 1292-1293.

[*P30] As the *Herbert* panel opined, [HN7] "The MCARE Act plainly prefers, and in some cases may require, that expert testimony in professional medical malpractice cases come from witnesses with expertise in the defendant's particular subspecialty." *Id.* at 1294, citing 40 P.S. § 1303.512(c). The *Herbert* panel declined to hold that the Act required that testimony in all cases be so restricted, observing, "The 'same subspecialty' ideal contained in § 1303.512(c)(2) includes an express caveat, reflecting the Legislature's decision to afford the trial court discretion to admit testimony from a doctor with expertise in another specialty that 'has a similar standard of care *for the specific care at issue*.'" *Herbert*, 854 A.2d at 1294, [***23] quoting 40 P.S. § 1303.512(c)(2) (emphasis in *Herbert*).

[*P31] According to *Herbert*, "This reading comports with Pennsylvania courts' historical deference to trial courts' discretion in deciding whether to admit evidence at trial and is consistent with the plain language of the statute itself." *Id.* As this court observed in *Herbert*, "Indeed, the wisdom of restricting expert testimony to that of a nephrologist in this case might credibly be questioned, where 'the specific care at issue' is the *failure* to provide care in the presence of an allegedly clear respiratory problem the likes of which [internist] testified should have been obvious to [nephrologist]." *Id.* (emphasis in *Herbert*).

[*P32] We recognize the analytical distinctions between this case and *Herbert*, as gastroenterology is not a subspecialty of oncology or general surgery. It is, however, a subspecialty of internal medicine, in which Dr. Krutchik is board-certified. [***1021] Furthermore, Dr. Battle's credentials as a general surgeon specializing in, *inter alia*, gastrointestinal surgery, who kept [***24] current with the field of gastroenterology in part by maintaining membership in the American Society of Gastrointestinal Endoscopy, which publishes a journal Dr. Battle received for 30 years, indicate his subspecialty is similar to that of gastroenterologists for the specific care at issue. As a panel of this court recently observed in the context of a psychiatrist whose testimony was excluded when he was called as an expert to testify as to the standard of care applicable to a resident who prescribed intravenous Ativan to treat a patient's anxiety, "It is clear that [HN8] the excluded testimony concerns the standard of care applicable to *any* physician who prescribes Ativan to treat anxiety." *Campbell v. Attanasio*, 2004 PA Super 446, 862 A.2d 1282, 1289 (Pa. Super. 2004) (emphasis in *Campbell*), *appeal denied*, 881 A.2d 818, 2005 Pa. LEXIS 1835, 2005 WL 2043952 (Pa. August 24, 2005), *and appeal denied*, 881 A.2d 818, 2005 Pa. LEXIS 1836, 2005 WL 2043959 (Pa. August 24, 2005).

[*P33] Gastroenterologists claim, however, that because neither of administrator's experts was familiar with an algorithm [***25] compiled by the American Gastroenterological Association as a consensus statement regarding the guideline for examinations when evaluating patients with obscure GI bleeding, it was clear neither was familiar with the standard of care applicable to gastroenterologists. (Appellants' brief at 41.) The algorithm, in the form of a flow chart, posits various scenarios and suggests the appropriate diagnostic test or tool to pursue based on the scenario applicable to the particular patient. (Exhibit D-1, R. at Exhibits envelope, R.R. at 1021a.) According to gastroenterologists, the algorithm, which does not mention ordering a CT scan, constitutes the standard of care for board-certified gastroenterologists; therefore administrator's experts, who were not familiar with the algorithm, were not aware of the applicable standard of care. (Appellants' brief at 47-48.)

[*P34] Our review of both experts' testimony indicates, however, that although they were unfamiliar with the particular journal article to which the algorithm was appended, they were familiar with the purpose of algorithms, which, as Dr. Krutchik testified, are not limitations on what a doctor can do but are guides, which allow [***26] the doctor to use judgment and explore other options outside the algorithm. (Notes of testimony, 11/18/03 at 136.) As Dr. Krutchik also testified, there was much more to the article than the algorithm, concerning other testing, including a CT scan, that should be done as part of a preoperative evaluation, where, as in this case, the bleeding repeated and the tests within the algorithm were unable to determine its cause. (*Id.* at 112, 137.) As Dr. Krutchik observed, a progress note on the hospital chart for May 30, 1998 indicated surgery was contemplated at that time, as it read, "continued slow GI bleed discuss possible need for ileocelectomy." (*Id.* at 141.) It was only because decedent's bleeding stopped the next day that she was discharged.

[*P35] Dr. Krutchik also referred specifically to a table in the same article in which the algorithm appeared with two columns, one for causes of obscure GI bleeding within reach of an upper endoscopy, and one for causes that are beyond reach of an upper endoscopy, as in this case. (*Id.* at 137.) The second cause shown in the relevant column was tumor, footnoting leiomyosarcomas and soft tissue sarcomas. ([***27] *Id.* at 138.)

[*P36] Dr. Battle likewise indicated his familiarity with algorithms as a guide, stating that physicians do not practice medicine by a cookbook or algorithms, but consider anything on a list of differential [***1022] diagnoses and rule

out the most life-threatening first. (Notes of testimony, 11/19/03 at 115.) According to Dr. Battle, the source of the bleeding was established in May of 1998 when both a nuclear medicine bleeding study and a Meckel's scan, performed two days apart, indicated that blood was pooling in the right lower quadrant of the abdomen, in the area of the mid to distal ileum. (*Id.* at 42-43, 48, 66.)

[*P37] As a result, according to Dr. Battle, having ruled out almost all intrinsic causes for the bleeding by performing all of the tests they did, which were within the algorithm, gastroenterologists breached the standard of care by failing to look for an extrinsic cause, such as a small tumor near the source of the bleeding. As Dr. Battle opined, while a really small tumor would not have appeared on a CT scan, a tumor large enough to create bleeding probably would have appeared. (*Id.* at 87.) As Dr. Battle therefore observed, [***28] "The location -- that's the frustrating thing, here the location was diagnosed and the CAT scan would have diagnosed it definitively." (*Id.* at 118.)

[*P38] Dr. Krutchik echoed Dr. Battle's analysis, observing that a differential diagnosis to explain bleeding from the small intestine would include looking for both an intrinsic and an extrinsic tumor. (Notes of testimony, 11/18/03 at 47.) Dr. Krutchik also observed that a two-centimeter tumor outside the bowel would be unlikely to cause deformity inside the bowel, but would cause bleeding, which, like a pin prick, would stop and would not show up on tests of the inner bowel. (*Id.* at 47-48, 123.) Additionally, Dr. Krutchik agreed with Dr. Battle that a tumor large enough to cause bleeding would be at least one centimeter, and would therefore show up on a CT scan. (*Id.* at 129.) Dr. Krutchik also opined that working backward from the size of the tumor in March of 2000, the tumor must have been within the range of one to two centimeters in May of 1998. (*Id.* at 116.)

[*P39] From the foregoing, it is evident that both of administrator's experts were substantially familiar with the applicable [***29] standard of care for the specific care at issue and practiced in a subspecialty with a substantially similar standard of care for the specific care at issue. 40 P.S. § 1303.512(c)(1), and (2). See Gartland v. Rosenthal, 2004 PA Super 134, 850 A.2d 671, 673, 675-676 (Pa.Super. 2004) (opining that a neurologist was qualified to testify as to the standard of care for a radiologist reading a CT scan of the brain where the specific treatment at issue was failure to report on the possibility of a tumor and to recommend an MRI). Additionally, while Drs. Battle and Krutchik were not board-certified gastroenterologists, they were, if not certified by a similar board pursuant to subsection (c)(3), certainly actively involved and/or teaching in a related field of medicine so as to possess sufficient training, experience, and knowledge to provide testimony, pursuant to subsection (e).

[*P40] We also find misplaced gastroenterologists' heavy reliance on Wexler v. Hecht, 2004 PA Super 95, 847 A.2d 95 (Pa.Super. 2004), allocatur granted, 583 Pa. 700, 879 A.2d 1258 (2005). [***30] This court in Wexler found no abuse of discretion in the trial court's decision to preclude the testimony of plaintiff's expert, a podiatrist, in part because a podiatrist does not possess an unrestricted physician's license to practice medicine, as required by 40 P.S. § 1303.512(b)(1). There is no dispute in this case as to administrator's experts' license to practice medicine. n3

n3 We note additionally that this court in Wexler reviewed the trial court's decision and affirmed based on the common law, but then added its discussion of the MCARE Act under the facts of that case. As the Wexler court observed, the trial court did not allow the parties to litigate the question whether the expert's testimony was admissible under the MCARE Act; therefore, the issue was not raised in post-trial motions. Wexler, 847 A.2d at 102.

[**1023] [*P41] Having found no merit to the first part of the first issue gastroenterologists raise, we must necessarily also find no merit [***31] to the second part of that issue: that they are entitled to appellate relief because administrator did not present competent expert evidence. Likewise, we find no merit to the third part of the first issue, claiming entitlement to relief because the verdict was against the overwhelming weight of the evidence and "no two reasonable minds could disagree that, based upon the consensus statement of the American Gastroenterological Association, a CAT scan is not a diagnostic tool which is required by the standard of care for a gastroenterologist performing a work-up for occult and/or obscure bleeding." (Appellants' brief at 5.)

[*P42] We have already addressed the role the algorithm played in this case and find that reasonable minds could, and did, disagree as to whether a single guideline, even a consensus statement, included in a single journal article addressing a complex of issues related to treating obscure/occult bleeding, can be isolated from its context and held forth as the standard of care for a subspecialty. As we have already noted, both Drs. Krutchik and Battle referred to other parts of the same article, which indicated the need for "specific management" for the particular [***32] patient; indeed, even the algorithm directed physicians to "specific management" in every case except where there was no recurrence of

the bleeding. (Notes of testimony, 11/18/03 at 137-138; 11/19/03 at 116; Exhibit D-1, R. at Exhibits envelope, R.R. at 1021a.) As Dr. Battle so poignantly opined:

If you follow this [algorithm] in every instance and you didn't end up doing a CAT scan, everybody like Mrs. Smith is going to die. Everybody with her GI bleeding will die if you stick by that the way you're presenting it. If you don't interpret it the way physicians would interpret it, everybody like Mrs. Smith are [sic] going to die from their tumors, so that is just not acceptable.

Notes of testimony, 11/19/03 at 113.

[*P43] Gastroenterologists' second issue claims they are entitled to a new trial or remittitur based upon the unsupported and excessive jury verdict. As a panel of this court recently opined:

In Tulewicz v. Southeastern Pennsylvania Transportation Authority, 529 Pa. 584, 606 A.2d 425 (1991), [HN9] our Supreme Court articulated the standard for setting aside a verdict as excessive:

The Court is not warranted in setting [***33] aside, reducing, or modifying verdicts for personal injuries unless unfairness, mistake, partiality, prejudice, or corruption is shown, or the damages appear to be grossly exorbitant. The verdict must be clearly and immoderately excessive to justify the granting of a new trial. The amount must not only be greater than that which the court would have awarded, but so excessive as to offend the conscience and judgment of the Court.

Id. at 586, 606 A.2d at 426, quoting Stark v. Lehigh Foundries, 388 Pa. 1, 23, 130 A.2d 123, 135 (1957).

Bennyhoff v. Pappert, 2001 PA Super 365, 790 A.2d 313, 321 (Pa.Super. 2001), *appeal denied*, 573 Pa. 682, 823 A.2d 143 (2003), quoting Toogood v. Rogal, 2000 PA Super 344, 764 A.2d 552, 560 (Pa.Super. 2000), *reversed on other grounds*, 573 Pa. 245, 824 A.2d 1140 (2003).

[**1024] [*P44] We agree with administrator that in this case, gastroenterologists do not cite to a single piece of evidence to support their claim that the verdict was excessive. According to the trial court, "Mrs. Smith, as a result [***34] of Defendant Doctors['] failure to perform a CT scan which would have revealed the mass that was causing her gastrointestinal bleeding, was caused to endure months of interventions, hospitalizations, suffering, further surgery and death." (Trial court opinion, 6/3/04 at 5.) The court therefore opined that it could not find the verdict to be so excessive as to offend the conscience and judgment of the court. (*Id.*)

[*P45] We find record support for the trial court's decision and therefore no abuse of discretion. Decedent was 61 years old when she had her first episode of GI bleeding. According to one of her sons, she was actively involved in the family business, in which she had worked for nine or ten years prior to her illness, as well as in the lives of her four children and seven grandchildren. (Notes of testimony, 11/18/03 at 156-159.) She had a very close bond with one granddaughter in particular, and held herself back from spending more time with her grandchildren. (*Id.* at 158.) She also loved to travel, go to New York to see Broadway plays, and go out to dinner, so much so that she was hard to keep track of. (*Id.*) She was, according to her [***35] son, "a sort of force of the family, force of nature She was very strong, very loving mother and we respected her greatly." (*Id.* at 157.)

[*P46] Decedent's husband of 44 years, administrator herein, introduced into evidence a picture of decedent with her family in May 2000, after she was diagnosed, in which she still appeared healthy. (Notes of testimony, 11/17/03 at 100, Exhibit P-2, R. at Exhibit envelope, R.R. at 1248a.) According to administrator, however, by August, when decedent's symptoms recurred, administrator took her to Sloan-Kettering for some experimental treatment where it was determined the tumor had grown back even larger than the first time, so she underwent a second surgery. (Notes of testi-

mony, 11/17/03 at 119-120.) From that point on, decedent was in a great deal of discomfort, could not eat, and could not sleep well. (*Id.* at 121-122.) She was readmitted to Sloan-Kettering in November, where she remained until two days before her death, when she was released to hospice care at home. During the period March through December 2000, administrator cared for decedent.

[*P47] Son testified that during the years 1998 to 2000, decedent [***36] masked her fear with humor to protect her family. (Notes of testimony, 11/18/03 at 159.) Even after she was diagnosed, when she was in a fairly significant amount of pain, she tried to shield her family. (*Id.* at 161.) According to the medical experts, decedent underwent additional surgeries after the first surgery; and chemotherapy, some of which was experimental. A feeding tube was inserted for nutrition; a nephrostomy tube was inserted for urination; a nasogastric tube was inserted to drain fluids; and a substantial amount of pain medication, which can sedate or induce sleep or coma was administered for comfort during the ten months between decedent's diagnosis and her death. (Notes of testimony, 11/18/03 at 85-90; Plaintiff's Exhibit 22, Discharge Summary from Sloan-Kettering Memorial Hospital, 12/12/00, R. at Exhibit envelope, R.R. at 1268a-1270a.)

[*P48] For all of the foregoing reasons, we affirm the judgment entered in favor of administrator and against gastroenterologists in the amount of \$ 1,077,725.28.

[*P49] [**1025] Judgment affirmed. n4

n4 We have not considered gastroenterologists' post-submission communication, a recent opinion in the form of a memorandum and order filed in the U.S. District Court for the Eastern District of Pennsylvania, because that opinion serves as no more than persuasive authority if we choose to consider it so. See Hess v. Gebhard & Co. Inc., 570 Pa. 148, 161, 808 A.2d 912, 919 (2002) (observing the court was considering "several [HN10] federal decisions that are not binding on this Court, but provide persuasive authority" in that case of first impression).

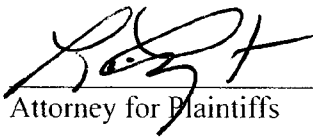
[***37]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION IN LIMINE TO PRECLUDE PROPOSED EXPERT REPORT AND TESTIMONY OF PLAINTIFFS' EXPERT, JACK SCHOCKER, M.D. was served upon counsel for all parties by depositing a true and correct copy thereof, in the United States Mail, postage pre-paid this 27th day of March, 2007, addressed to:

Ronald M. Puntil, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin, PC
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499



Attorney for Plaintiffs

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

BRIDGET NELEN, formerly BRIDGET WILSON and
DONALD NELEN, her Husband,
Plaintiffs

vs.

THE DUBOIS REGIONAL MEDICAL CENTER,
Defendant

vs.

PENN TOWNSHIP RURAL HEALTH CLINIC,
DELA TORRE MEDICAL, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both individually and
t/d/b/a PENN TOWNSHIP RURAL HEALTH CLINIC, and/or
DELA TORRE MEDICAL CLINIC,
Additional Defendants

NO. 04-57-CD

ORDER

AND NOW, this 28th day of March, 2007, upon request from counsel for the parties, it is the ORDER of this Court that the oral argument on Defendant's Motion in Limine to Preclude Testimony is rescheduled from Thursday, March 29, 2007 at 10:00 a.m. at the Clearfield County Courthouse to **Friday, March 30, 2007 at 8:30 a.m. in Courtroom 315 of the Allegheny County Courthouse before Judge John K. Reilly, Jr., Specially Presiding.** This matter will be held in conjunction with the previously scheduled Settlement Conference.

FILED

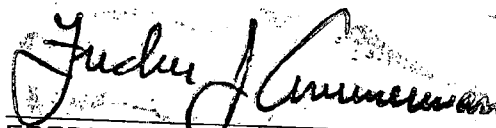
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MAR 28 2007

William A. Shaw
Prothonotary/Clerk of Courts

① Judge Ammerman's
office faxed order
to Atty Pentil - Atty
will notify all
interested parties

ICC Atty's: Boyer, Flinn, Langton
Johnson
Pentil
Penn Twp Rural Health Clinic
RR1, Box 45A
Route 879
Grampian, PA 16838

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

LA

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

BRIDGET NELEN, formerly BRIDGET WILSON, *
and DONALD NELEN, her husband, *
Plaintiffs *

vs. *

NO. 04-57-CD

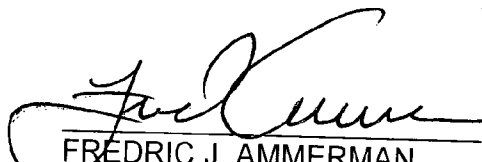
DUBOIS REGIONAL MEDICAL CENTER; PENN *
TOWNSHIP RURAL HEALTH CLINIC; DELA TORRE *
MEDICAL CLINIC; HENRY G. DELA TORRE, M.D.; *
and PHOUNG T. WIRTHS, D.O., as to both *
individually and t/d/b/a PENN TOWNSHIP RURAL *
HEALTH CLINIC and/or DELA TORRE MEDICAL *
CLINIC, *
Defendants *

ORDER

NOW, this 4th day of April, 2007, the Court being in receipt of and having reviewed the faxed Motion for Continuance submitted by counsel on behalf of Defendant Henry G. Dela Torre, M.D., it is the ORDER of this Court that argument on said Motion will be held on the **11th day of April, 2007 at 10:30 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.**

On that date, argument on the Motion for Continuance will be held before and the matter will be decided by the undersigned.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

APR 04 2007

011-50/2
William A. Shaw
Prothonotary/Clerk of Courts
see reverse

DATE: _____

~~_____ You are responsible for serving all appropriate parties.~~

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

~~_____ Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other~~

~~_____ Defendant(s) _____ Defendant(s) Attorney~~

~~_____ Special Instructions:~~

1 GPOEN FAXED TO ATTYS BY Doms,
En FLYNN

R. PUNTIL

D. JOHNSON

4/4/07

ICC mailed to:

Atty Flynn

Atty Puntil

Atty D Johnson

Penn Twp. Rural Health Clinic

RR 1, Box 45A

Route 879

Grampian, PA 16838

LA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC

Defendants.

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION FOR
CONTINUANCE**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Edward C. Flynn, Esq.
Pa ID No. 35198
Livia F. Langton, Esq.
Pa ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

JURY TRIAL DEMANDED

FILED 110
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR CONTINUANCE

Plaintiffs, Bridget Nelen and Donald Nelen, her husband, by and through their undersigned legal counsel, Eckert Seamans Cherin & Mellott, LLC, submit this Opposition to the Motion for Continuance filed by Defendant, Henry G. Dela Torre, M.D. and state as follows:

1. A last minute continuance of this medical malpractice action would result in severe prejudice to Plaintiffs and a waste of judicial resources.
2. Jury selection for this action took place on February 1, 2007 and a jury has been impaneled.
3. Continuing this trial for a period of ninety (90) days as Defendant requests would presumably require the discharge of the jury already impaneled and the selection of a new jury.

4. As indicated in Defendant's Motion for Continuance, Dr. Dela Torre received notice from the MCARE fund that his MCARE coverage for this claim had been denied on January 24, 2007, before jury selection had taken place. If Dr. Dela Torre believed that his position in this case was "severely compromised" pending the outcome of his administrative hearing on the denial of his MCARE coverage, he had sufficient opportunity to request a continuance prior to jury selection, rather than waiting until less than two weeks before commencement of trial.

5. Dr. Dela Torre should not be permitted to delay the trial of Plaintiffs' claims because of his separate and distinct dispute over whether he timely paid his premium to the MCARE Fund.

6. In the event a verdict is entered against Dr. Dela Torre in excess of his \$500,000 primary limits, he would still have adequate time to proceed with his administrative hearing to determine whether the MCARE Fund has properly denied his MCARE coverage for this claim.

7. Moreover, Dr. Dela Torre's assertion that if coverage is reinstated there is a much greater possibility of settling this case is belied by the fact that, at this time, he has not even tendered the \$500,000 primary limits. Under 40 P.S. § 1303.714(e), if Dr. Dela Torre's basic coverage insurer agrees to enter into a settlement with Plaintiffs to the full extent of the primary limits, it could obtain a release on behalf of Dr. Dela Torre from Plaintiffs to the extent of the primary limits, with no effect upon any claim against the MCARE Fund or the duty to continue to defend this claim.

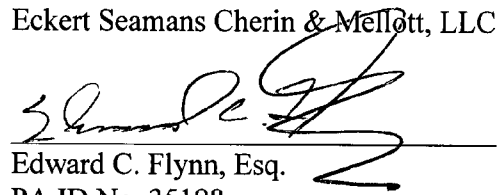
8. In short, it is simply not necessary to delay this trial to Plaintiffs' detriment in order to allow Dr. Dela Torre to resolve his coverage dispute with the MCARE fund.

WHEREFORE, Plaintiffs respectfully request that this Court deny Defendant's Motion for Continuance.

Respectfully submitted,

Eckert Seamans Cherin & Mellott, LLC

Date: 4/4/07



Edward C. Flynn, Esq.

PA ID No. 35198

Livia F. Langton, Esq.

PA ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566-6000

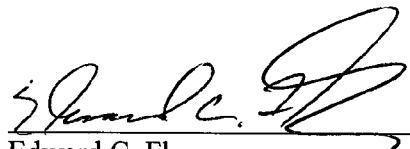
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR CONTINUANCE was
served upon counsel for all parties by depositing a true and correct copy thereof, in the United
States Mail, postage pre-paid this 4th day of April, 2007, addressed to:

Ronald M. Puntl, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499



Edward C. Flynn
Attorney for Plaintiffs

4A

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL CENTER;
PENN TOWNSHIP RURAL HEALTH
CLINIC; DELA TORRE MEDICAL CLINIC;
HENRY G. DELA TORRE, M.D. and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No.: 2004-00057-CD

MOTION FOR CONTINUANCE

FILED ON BEHALF OF DEFENDANT,
HENRY G. DELA TORRE, M.D.

Counsel of Record for this Party:

Ronald M. Punttil, Jr., Esquire
Pa. I.D. #42146

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

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

(412) 803-1140

FILED
0/11:15
APR 11 2007
ICC Aky

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson, and
DONALD NELEN, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 2004-00057-CD

v.

DUBOIS REGIONAL MEDICAL CENTER; PENN
TOWNSHIP RURAL HEALTH CLINIC; DELA
TORRE MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS, D.O., as to
both individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

MOTION FOR CONTINUANCE

AND NOW, comes the Defendant, Henry G. Dela Torre, M.D., by and through his attorneys, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, and RONALD M. PUNTIL, JR., ESQUIRE, and files the within Motion for Continuance and, in support thereof, avers as follows:

1. The instant case is a medical malpractice action in which Plaintiffs allege that the Defendants failed to timely diagnose lung cancer.
2. Dr. Dela Torre has executed a Consent to Settle the case and a settlement offer of \$350,000.00 was made.
3. On or about January 24, 2007, Dr. Dela Torre received notice from the MCARE Fund indicating that Dr. Dela Torre's MCARE coverage in this matter has been denied due to an

alleged untimely payment of the premium. A copy of the correspondence from the MCARE Fund is appended hereto as "Exhibit A."

4. Dr. Dela Torre does not believe that his MCARE payment was untimely and filed the appropriate Request for Administrative Hearing. The administrative law judge has set forth a briefing schedule and time for proposed hearing. A copy of the Order is appended hereto and marked as "Exhibit B".

5. This case is scheduled to commence trial on April 16, 2007. It is believed that the issue regarding Dr. Dela Torre's MCARE coverage will not be resolved prior to trial. Therefore, Dr. Dela Torre's position is severely compromised as there is a possibility of a verdict in excess of his \$500,000.00 primary limits which will not be covered by insurance.

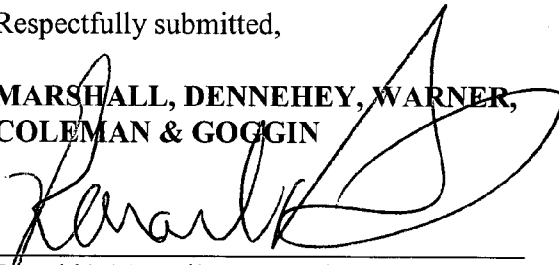
6. Additionally, if Dr. Dela Torre's MCARE coverage is reinstated, there is a much greater possibility of resolving the case without the necessity of trial.

7. Counsel for the hospital and Dr. Wirths join in the Motion for Continuance.

WHEREFORE, this Defendant requests that this Honorable Court continue this case for 90 days to allow resolution of the MCARE coverage for Dr. Dela Torre.

Respectfully submitted,

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



Ronald M. Puntil, Jr., Esquire
Counsel for Henry G. Dela Torre, M.D.



**Medical Care Availability and
Reduction of Error Fund**
PENNSYLVANIA INSURANCE DEPARTMENT

1062 Lancaster Avenue, Suite 15-F
Rosemont, PA 19010

Facsimiles:
Executive Office (717) 705-7341
Legal Office (717) 783-7659
Claim Office (717) 787-0651
Policy Office (717) 705-7342

Rosemont Office:
Telephone (610) 801-2200
Fax (610) 801-2211

January 24, 2007

Henry G. Dela Torre, M.D.
578 Treasure Lake
DuBois, PA 15801

RE: Defendant: Henry G. Dela Torre, M.D.
Claimant: Bridget Nelen

Dear Dr. Dela Torre:

As you are aware, the Mcare Fund received a Form C-416 Claim Report from PMSLIC for you, on this claim.

By letter dated March 17, 2004 to PMSLIC Claims Representative Stephanie Chelius, a copy of which was sent to you, the Mcare Fund "advised that if Mcare accepts this claim as an excess matter, it will do so only under a full reservation of rights to deny Mcare indemnity coverage. Specifically, if the appropriate Remittance Advice and appropriate assessment payment, if any, are not timely forwarded to Mcare upon resolution of the related governmental initiative(s), Mcare indemnity coverage will be denied."

The C-416 reports a date of alleged malpractice of May 1, 2002 and a claim made date of January 21, 2004. This claim is reportedly covered under PMSLIC's January 1, 2004-January 1, 2005 claims made policy.

According to Mcare Fund records, the Remittance Advice and assessment payment for Mcare Fund coverage for the January 1, 2004-January 1, 2005 coverage period were received by the Mcare Fund on July 16, 2004. They were required to have been received by June 30, 2004 in order to have been considered timely.

The Mcare Fund does not cover claims that are made before an untimely remittance advice and assessment payment have been received.

Therefore, we must deny all Mcare Fund coverage for you, for this claim.

By copy of this letter to PMSLIC Claims Representative Stephanie Chelius, we are notifying them we are permanently closing our file.

If you disagree with this determination, you may request an administrative hearing before a hearing officer appointed by the Insurance Commissioner in Harrisburg and require the attendance of all parties. A hearing will be held in the presence of all documents.



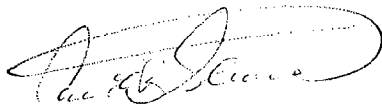
necessary to support your case. Testimony under oath will be taken so that the Insurance Commissioner may render a decision.

You may request a formal administrative hearing by signing in the space provided below and returning this original letter and all original attached documents in their entirety to:

**Lark Tresp
Pennsylvania Medical Care Availability and
Reduction of Error Fund
8th Floor, 30 N. 3rd Street
P.O. Box 12030
Harrisburg, PA 17108**

To be considered timely filed, your request for a formal administrative hearing must be received by the individual identified above no later than 30 days after the date of this letter.

Very truly yours,



Carole Z. Strickland
Claims Manager

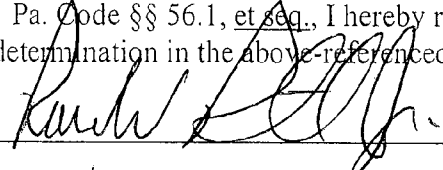
CZS/nmc

cc: Stephanie Chelius, PMSLIC (#339647 03)
Ronald M. Puntl, Jr., Esquire
Carol Hess, Attorney Examiner (#037914-C)
Lark Tresp, Administrative Officer, Claims Administration Support

REQUEST FOR FORMAL ADMINISTRATIVE HEARING

RE: Medical Care Availability and Reduction of Error Fund (Mcare Fund)
Claimant: Bridget Nelen
File #: 037914-C
Service Denied: Coverage

Pursuant to Part II the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1, et seq. and 31 Pa. Code §§ 56.1, et seq., I hereby request a formal administrative hearing on the Mcare Fund's determination in the above-referenced matter.

Sign Name Here: 

Date Sent: 2/2/07

Docket Clerk Date Stamp: _____

RECEIVED
INSURANCE DEPARTMENT

2007 MAR -9 AM 10:30

ADMIN HEARINGS OFFICE

BEFORE THE INSURANCE COMMISSIONER
OF THE
COMMONWEALTH OF PENNSYLVANIA

IN RE: : Pursuant to the Medical Care
Appeal of: : Availability and Reduction of Error
Henry G. Dela Torre, M.D. : (Mcare) Act, Act of March 20, 2002,
c/o Ronald M. Puntl, Jr. : P.L. 154, No. 13
Marshall, Dennehey, Warner, : (40 P.S. §§ 1303.101-1303.910)
Coleman & Goggin :
600 Grant Street, Suite 2900 :
Pittsburgh, PA 15219 :

(Claimant: Bridget Nelen) :

v. :

MEDICAL CARE AVAILABILITY :
AND REDUCTION OF ERROR :
FUND : Docket No. **MM07-02-013**

ORDER

AND NOW, this 9th day of March, 2007, after considering the request for hearing and appeal from the January 24, 2007 determination of the Medical Care Availability And Reduction Of Error Fund (Mcare), **IT IS HEREBY ORDERED:**

1. On or before **March 27, 2007** the appellant shall file a concise statement setting forth the factual and/or legal basis for the disagreement with Mcare's determination. The statement may be in narrative form or in numbered paragraphs, but in either event shall not exceed two pages.

2. The proceedings in this matter will be governed by the Administrative Law, 2 Pa. C.S. §§ 501-508, 701-704, the General Rules of Administrative Practice and

DATE MAILED: March 9, 2007



Procedure, 1 Pa. Code § 31.1 *et seq.* and the Insurance Department's Special Rules of Administrative Practice and Procedure, 31 Pa. Code Chapter 56.

3. A **prehearing telephone conference** initiated by this office is scheduled for **April 17, 2007 at 2:00 p.m.** Each party shall provide the Hearings Administrator a telephone number to be used for the telephone conference on or before **April 13, 2007.**

4. A hearing date shall be determined, if necessary, at the prehearing conference.

5. At the prehearing telephone conference, the parties shall be prepared to discuss settlement, stipulations, witnesses and the documents anticipated for use at the hearing, estimated time for the hearing, special evidentiary or legal issues and other matters relevant to the orderly, efficient and just resolution of this matter.

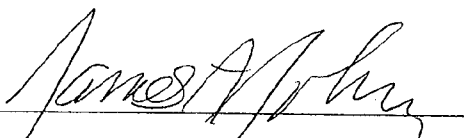
6. No prehearing memoranda or other written submissions are required for the prehearing conference except as requested in paragraph one. However, the parties are encouraged to discuss settlement and possible stipulations pending the conference.

7. Except as established at the prehearing conference, both parties shall appear at the scheduled hearing prepared to offer all relevant testimony or other evidence. EACH PARTY MUST BRING DOCUMENTS, PHOTOGRAPHS, DRAWINGS, CLAIMS, FILES, WITNESSES, ETC., NECESSARY TO SUPPORT THE PARTY'S CASE. A PARTY INTENDING TO OFFER DOCUMENTS FOR PHOTOGRAPHS INTO EVIDENCE SHALL BRING ENOUGH COPIES FOR THE RECORD AND FOR EACH OPPOSING PARTY.

8. Motions preliminary to those at hearing, protests, petitions to intervene, or notices of intervention, if any, must be filed on or before **April 3, 2007** with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102.

9. Answer to petitions to intervene, if any, shall be filed on or before **April 10, 2007**.

10. The Hearings Administrator shall cause notice of the prehearing telephone hearing and due date for preliminary filings to be published in the Pennsylvania Bulletin.


JAMES A. JOHNSON
Presiding Officer

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson, and
DONALD NELEN, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 2004-00057-CD

v.

DUBOIS REGIONAL MEDICAL CENTER; PENN
TOWNSHIP RURAL HEALTH CLINIC; DELA
TORRE MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS, D.O., as to
both individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____, 2007, it is hereby **ORDERED,**
ADJUDGED, and **DECREED** that the above-captioned matter shall be continued from the
April 16, 2007 trial date for 90 days to allow resolution of the MCARE issue for Dr. Dela Torre.

BY THE COURT

_____, J

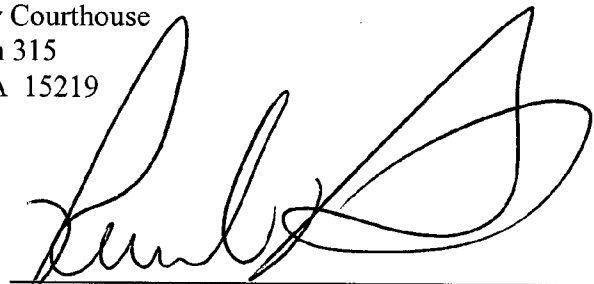
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **MOTION FOR CONTINUANCE**. has been served upon counsel as listed below this 3rd day of April, 2007.

Edward C. Flynn, Esquire
Eckert Seamans, Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiffs)

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499
(Counsel for Dr. Wirths)

Honorable John K. Reilly
Allegheny County Courthouse
Courtroom 315
Pittsburgh, PA 15219

A large, stylized handwritten signature in black ink, likely belonging to Ronald M. Punttil, Jr., is written over a horizontal line.

Ronald M. Punttil, Jr., Esquire
Attorney for Defendant Henry G. Dela
Torre, M.D.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

BRIDGET NELEN, formerly :
BRIDGET WILSON, and DONALD :
NELEN, her husband :

-VS-

No. 04-57-CD

THE DUBOIS REGIONAL :
MEDICAL CENTER, PENN :
TOWNSHIP RURAL HEALTH :
CLINIC, DELA TORRE MEDICAL :
CLINIC, HENRY G. DELA :
TORRE, M.D. and PHOUNG T. :
WIRTHS, D.O. as to both :
individually and t/d/b/a :
PENN TOWNSHIP RURAL HEALTH :
CLINIC and/or DELA TORRE :
MEDICAL CLINIC :

FILED

APR 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

CERT.

FLYNN

Johnson

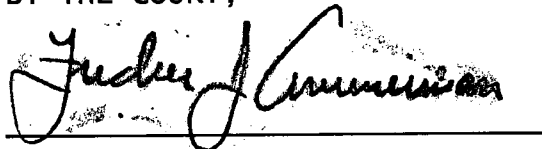
PARTY, JR

Judge Barry

ORDER

AND NOW, this 11th day of April, 2007, following
argument, as will appear of record, relative Defendant
Henry G. Dela Torre's Motion for Continuance of Jury Trial
scheduled to commence on April 16, 2007, it is the ORDER of
this Court that the Motion for Continuance be and is hereby
denied.

BY THE COURT,



President Judge

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC

Defendants.

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

**NOTICE TO ATTEND, TESTIFY AND
PRODUCE**

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Edward C. Flynn, Esq.
Pa ID No. 35198
Livia F. Langton, Esq.
Pa ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

JURY TRIAL DEMANDED

FILED

APR 16 2007

m/11:25/2

William A. Shaw

Prothonotary/Clerk of Courts

1 copy to ATR

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC. and/ or DELA
TORRE MEDICAL CLINIC

Defendants.

NOTICE TO ATTEND, TESTIFY AND PRODUCE

To Defendants: Henry G. Dela Torre, M.D.
Phoung T. Wirths, D.O.

Pursuant to Pennsylvania Rules of Civil Procedure, Rule 234.3, you are directed to attend the trial before The Honorable Judge Reilly, Clearfield County Courthouse, Courtroom One, 230 East Market Street, Clearfield, Pennsylvania 16830, beginning on Monday, April 16, 2007 at 9:00 a.m. to testify in the above case and to remain until excused. Also, you are directed to bring with you and produce your original medical chart for Bridget Nelen.

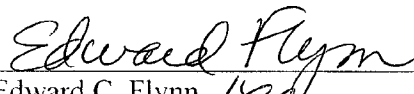
If you fail to attend or to produce the documents required by this Notice you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing NOTICE TO ATTEND, TESTIFY AND PRODUCE was served upon counsel for all parties by depositing a true and correct copy thereof, in the United States Mail, postage pre-paid this 12th day of April, 2007, addressed to:

Ronald M. Puntl, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499



Edward C. Flynn
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No. 2004-00057-CD

STIPULATION TO DISMISS FEWER THAN
ALL DEFENDANTS

Code:

Filed on behalf of DuBois Regional Medical
Center and Phoung T. Wirths, D.O., two of the
defendants

Counsel of Record for These Parties:

David R. Johnson, Esquire
PA I.D. #26409

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

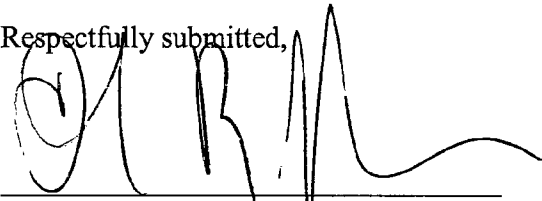
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9/19/13 *62*
APR 27 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

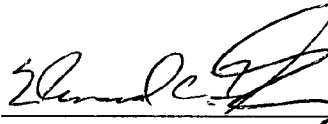
STIPULATION TO DISMISS FEWER THAN ALL DEFENDANTS

NOW COME all parties, by their respective counsel, and stipulate to the dismissal of Phoung T. Wirths, D.O. as a defendant. The parties further stipulate that his name may be removed from the caption. The parties also stipulate to entry of the attached court order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DRJ', with a long horizontal flourish extending to the right.

David R. Johnson, Esquire
Counsel for DuBois Regional Medical
Center and Phoung T. Wirths, D.O.

A handwritten signature in black ink, appearing to read 'Edward C. Flynn', with a long horizontal flourish extending to the right.

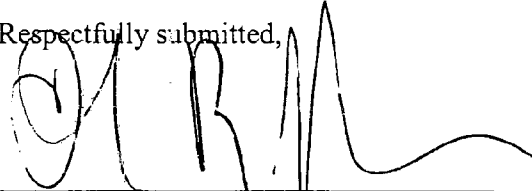
Edward C. Flynn, Esquire
Counsel for plaintiff

Ronald M. Puntl, Esquire
Counsel for Penn Township Rural Health
Clinic, Dela Torre Medical Clinic, Henry G.
Dela Torre, M.D.

STIPULATION TO DISMISS FEWER THAN ALL DEFENDANTS

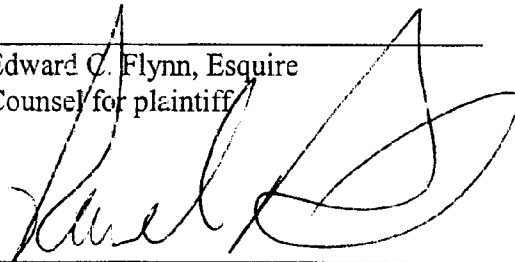
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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'DRJ', with a long horizontal flourish extending to the right.

David R. Johnson, Esquire
Counsel for DuBois Regional Medical
Center and Phoung T. Wirths, D.O.

Edward C. Flynn, Esquire
Counsel for plaintiff

A handwritten signature in black ink, appearing to read 'Ed Flynn', with a large, stylized loop at the end.

Ronald M. Puntl, Esquire
Counsel for Penn Township Rural Health
Clinic, Dela Torre Medical Clinic, Herry G.
Dela Torre, M.D.

FILED

APR 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

Defendants.

) CIVIL DIVISION
)
) No. 2004-00057-CD

ORDER OF COURT

AND NOW, this 26 day of April, 2007, it is hereby

ordered that Phoung T. Wirths, D.O. is dismissed as a defendant in the matter above captioned and the caption should be revised so as to remove his name from it.

BY THE COURT:

John C. Moore J

FILED

APR 27 2007

400

Atty Johnson

⑥

William A. Shaw
Prothonotary/Clerk of Courts

FILED

APR 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/27/07

☒ You are responsible for serving all appropriate parties.

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

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

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET
WILSON and DONALD NELEN, her
husband,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL CLINIC,
HENRY G. DELA TORRE, M.D., and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No. 2004-00057-CD

CERTIFICATE OF SERVICE OF ORDER OF
COURT DATED APRIL 26, 2007

Code:

Filed on behalf of DuBois Regional Medical
Center and Phoung T. Wirths, D.O., two of the
defendants

Counsel of Record for These Parties:

David R. Johnson, Esquire
PA I.D. #26409

Thomas B. Anderson, Esquire
PA I.D. #79990

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

(412) 232-3400

FILED
MAY 11 2007
MAY 02 2007
William A. Shaw
Prothonotary/Clerk of Courts

Defendants.

William L. Breen
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC

Defendants.

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

**PRAECIPE TO SETTLE AND
DISCONTINUE**

Filed on Behalf of Plaintiffs.

Counsel of Record for the Plaintiffs:

Edward C. Flynn, Esq.
Pa. I.D. No. 35198
Livia F. Langton, Esq.
Pa. I.D. No. 91548
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

FILED ICC #1 Cert of
disc issued to
m/12:05 am Amy Langton
JUL 09 2007
LM + copy to c/A

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

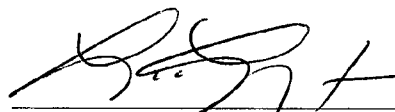
THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

PRAECIPE TO SETTLE AND DISCONTINUE

To: Prothonotary

Please mark the above-captioned action as settled and discontinued, as to all claims and
all parties.



Edward C. Flynn, Esq.
Livia F. Langton, Esq.
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

Dated: July 5, 2007

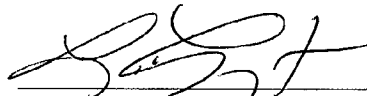
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing PRAECIPE TO SETTLE AND DISCONTINUE was served upon counsel for all parties by depositing a true and correct copy thereof, in the United States Mail, postage pre-paid this 5th day of July, 2007, addressed to:

Ronald M. Puntl, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
2900 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499



Livia F. Langton
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

**Bridget Nelen
Donald Nelen**

Vs.

No. 2004-00057-CD

**DuBois Regional Medical Center
Penn Township Rural Health Clinic
Dela Torre Medical Clinic
Henry G. Dela Torre, M.D.**

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on July 9, 2007, marked:

Settled and discontinued

Record costs in the sum of \$85.00 have been paid in full by Eckert Seamans Cherin & Mellott LLC.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 9th day of July A.D. 2007.



William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

**PLAINTIFFS' PRE-TRIAL
STATEMENT PURSUANT TO PA.
R.C.P. 212.2 AND LOCAL RULE
212.4(e)**

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

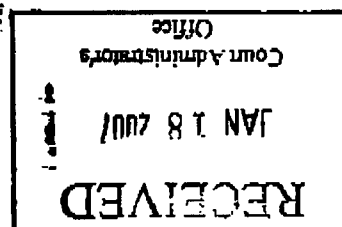
Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Edward C. Flynn, Esq.
Pa ID No. 35198
Livia F. Langton, Esq.
Pa ID No. 91548

Defendants.

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

PLAINTIFFS' PRE-TRIAL STATEMENT
PURSUANT TO PA R.C.P. 212.2 AND LOCAL RULE 212.4e

Plaintiffs Bridget Nelen and Donald Nelen, by and through their counsel Eckert Seamans Cherin & Mellott, LLC, file this Pre-Trial Statement Pursuant to Pa. R.C.P. 212.2 and Local Rule 212.4(e), and in support thereof, state as follows:

1. NARRATIVE STATEMENT OF FACTS

Mrs. Nelen presented to Penn Township Rural Health Clinic on or about November 1, 2000, with complaints of abdominal and back pain, with vomiting. She was seen by Dr. Wirths, who attributed her complaints to a probable ruptured ovarian cyst, and prescribed Tylenol. Later that same day, she presented with continued symptoms to Clearfield Hospital Emergency Room, where she underwent abdominal and chest X-rays. The chest X-ray revealed a density in Mrs. Nelen's right lung. The impression of the radiologist who interpreted the X-ray was that the density represented a probable round pneumonia, but specifically indicated that other pathology,

including pulmonary mass, should be considered. The radiologist further recommended follow-up studies, including a CT of the chest. A copy of the report was sent to Dr. Wirths, who initialed the report. Dr. Wirths has testified that he would have placed the report in the front of Mrs. Nelen's chart.

Mrs. Nelen returned to the clinic for a follow-up visit on November 14, 2000. At that time, she was seen by Dr. Dela Torre. According to Dr. Dela Torre, Mrs. Nelen informed him at the time of that visit that she had gone to the Emergency Room on November 1, and had been diagnosed with probable pneumonia. Dr. Wirths has testified that the November 1 X-ray report would have been in the chart at the time of the November 14 visit. Dr. Dela Torre, on the other hand, does not recall seeing the report. He acknowledged, however, that had he seen the report, he would have arranged for a repeat chest X-ray, and most likely a CT Scan. In any event, Dr. Dela Torre did not order any further follow-up studies, because Mrs. Nelen told him that she had been feeling better.

Mrs. Nelen had several more visits at the Fenn Township Rural Health Clinic over the next two years, for various complaints. On some of those occasions, she saw Dr. Dela Torre, and on other occasions, she saw Dr. Wirths. At no time over this two year period did either Dr. Wirths or Dr. Dela Torre order any follow-up studies as had been recommended by the radiologist in November, 2000.

On October 31, 2002, Mrs. Nelen presented once again to the Clearfield Hospital Emergency Room with complaints of chest pain, radiating into the left arm. A chest x-ray taken at that time revealed a very large 10 cm mass in the middle lobe of Mrs. Nelen's right lung, which was highly suggestive of malignancy. On November 1, 2002, Mrs. Nelen underwent a bronchoscopy, and subsequent pathology confirmed the mass to be squamous cell carcinoma.

Because the tumor was so large by the time it was diagnosed, it was necessary for Mrs. Nelen to undergo pre-operative chemotherapy and radiation. During the several months of chemotherapy and radiation treatments, Mrs. Nelen suffered various side effects and complications, including severe weight loss, appetite suppression, radiation burns, anemia, difficulty swallowing, nausea, blood transfusions, bronchitis and pneumonia. When Mrs. Nelen was finally cleared as a surgical candidate, on or about January 27, 2003, she underwent a complete pneumonectomy, or removal, of her right lung.

Following the pneumonectomy, Mrs. Nelen began a lengthy period of recuperation with extensive medical testing, examination and follow-up appointments. During this time, Mrs. Nelen began to experience headaches. Further studies in July, 2003, revealed a mass in the left frontal lobe of Mrs. Nelen's brain, indicating that the lung cancer had metastasized to her brain. On or about July 28, 2003, a left frontal craniotomy and resection of the brain lesion was performed, followed by whole brain radiation therapy. Again, Mrs. Nelen faced a lengthy recovery period including extensive medical testing, examination and follow-up appointments.

It is Plaintiffs' contention that Defendants were negligent in failing to order the appropriate follow-up studies in a timely manner, which negligence resulted in a two year delay in diagnosis of Mrs. Nelen's lung cancer. Had the cancer been timely diagnosed, it is likely that Mrs. Nelen's treatment would have been limited to removal of one lobe of her lung, rather than the entire lung. Moreover, she would likely not have required any further treatment, the cancer would have been prevented from metastasizing to the brain, and she would most likely have had a high chance for successful cure. As a result of the delay in diagnosis, she suffered the total removal and loss of her right lung, extensive radiation and chemotherapy, and metastatic disease to the brain requiring craniotomy and additional radiation therapy. She has suffered and will

continue to suffer the physical and cognitive effects of the significant treatment that she has been required to undergo. Moreover, the delay in diagnosis has substantially diminished her chances for successful cure and survival.

In defense of these claims, Dr. Wirths and Dr. Dela Torre has each taken the position that the other was responsible for ordering the proper follow-up studies in November, 2000. In essence, although both doctors were members of the same clinic and both treated Mrs. Nelen at various times, Dr. Wirths has claimed that Mrs. Nelen was Dr. Dela Torre's patient at the time of the November 14, 2000 follow-up visit, and Dr. Dela Torre has claimed that she was Dr. Wirth's patient. Defendants have not disputed the consequences of the two year delay in diagnosis.

II. UNUSUAL QUESTIONS OF LAW

Mrs. Nelen's medical expenses were paid by an ERISA Plan, which provides for a right of subrogation. This right of subrogation under an ERISA Plan preempts the anti-subrogation provisions of the MCARE Act that preclude recovery of and subrogation for medical expenses. See 29 U.S.C.S. §1144 and 40 P.S. §1303.508. Therefore, notwithstanding these provisions of the MCARE Act, because any recovery on the part of the Plaintiffs is subject to the subrogation claim, Plaintiffs are entitled to recover medical expenses related to the delay in diagnosis of Mrs. Nelen's lung cancer. See *FMC Corp. v. Holliday*, 498 U.S. 52 (1990).

III. LIST OF WITNESSES

Plaintiffs may call any or all of the following witnesses on the issues of liability or damages at trial:

- | | | |
|----|---------------|-----------------------|
| 1. | Bridget Nelen | Damages and Liability |
| 2. | Donald Nelen | Damages and Liability |
| 3. | Mary Yarger | Damages and Liability |

- | | | |
|-----|--|-----------------------|
| 4. | Valerie Johnston | Damages and Liability |
| 5. | Dawn McCall | Damages and Liability |
| 6. | Doug McCall | Damages and Liability |
| 7. | Friends and Family | Damages and Liability |
| 8. | Dr. Mark R. Shaw | Liability |
| 9. | Dr. Richard G. Williams | Liability |
| 10. | Dr. Henry G. Dela Torre | Damages and Liability |
| 11. | Dr. Phoung T. Wirths | Damages and Liability |
| 12. | Any and all treating physicians identified in the medical records, bills and discovery | Damages and Liability |
| 13. | The Records Custodian(s) for any and all treating practices, hospitals, clinics, etc., to the extent that there is no stipulation in place as to the authenticity of the medical records | Damages and Liability |
| 14. | Representative of Amalgamated Life Insurance Company | Damages |

EXPERT WITNESSES

Plaintiffs may call the following individuals as expert witnesses at trial:

- | | | |
|----|--|-----------------------|
| 1. | Michael P. McGonigal, M.D.
South Hills Family Medicine
1000 Higbee Drive, Suite 104
Bethel Park, PA 15102
<i>Reports Attached</i> | Liability |
| 2. | Jack D. Shocker, M.D.
Center for Cancer Care
620 Howard Avenue
Altoona, PA 16601
<i>Reports Attached</i> | Liability and Damages |
| 3. | Donal F. Kirwan, SPHR
Jay K. Jarrell, SPHR
Forensic Human Resources
413 Sylvania Drive
Pittsburgh, PA 15229
<i>Reports Attached</i> | Damages |

RESERVATIONS

1. Plaintiffs reserve the right to call any witness identified in the course of discovery in this case, identified in documents or medical records produced during the course of discovery, identified in any response, answer, or other pleading, identified in any other party's Pre-Trial Statements, or called by any other party to testify at trial, as permitted by the Court.

2. Plaintiffs reserve the right to call rebuttal or impeachment witnesses as necessary or appropriate, as permitted by the Court.

3. Plaintiffs reserve the right to supplement this Witness List at any time up to and including the time of trial, as permitted by the Court.

4. Plaintiffs reserve the right to call witnesses to authenticate and introduce into evidence photographs, videotapes and/or written records if required by Plaintiff or any other party, as permitted by the Court.

5. Plaintiffs reserve the right to take the testimony of any witness by way of deposition so long as such deposition does not delay the trial of this matter, as permitted by the Court.

IV. SPECIAL DAMAGES

At present, in addition to pain and suffering, emotional distress and the like, Plaintiffs claim the following special damages:

<i>Description</i>	<i>Amount</i>
Medical Bills	\$ 334,790
Past Lost Income	\$ 80,527
<u>Earning Capacity Loss</u>	<u>\$ 207,069</u>
<i>Total</i>	<i>\$ 622,386</i>

V. LIST OF EXHIBITS

Plaintiffs may introduce any or all of the following exhibits at the time of trial:

<u>Exhibit</u>	<u>Description</u>
1.	Allegheny Brain and Spine Surgeons and/or James P. Burke, M.D. medical records and bills including but not limited to all physician and facility medical records
2.	Allegheny Pain Management and/or Michael Drass, M.D. medical records and bills including but not limited to all physician and facility medical records
3.	Altoona Center for Cancer Care medical records and bills including but not limited to all physician and facility medical records
4.	Altoona Hospital medical records and bills including but not limited to all physician and facility medical records
5.	Blair Medical Associates medical records and bills including but not limited to all physician and facility medical records
6.	Cardiovascular & Thoracic Surgery of Altoona, PA and/or DeMarsico medical records and bills including but not limited to all physician and facility medical records
7.	Clearfield Chemo Clinic medical records and bills including but not limited to all physician and facility medical records
8.	Clearfield Hospital medical records and bills including but not limited to all physician and facility medical records
9.	Clearfield Family Medicine Associates and/or James P. Davidson, D.O. medical records and bills including but not limited to all physician and facility medical records
10.	Clear Med Providers and/or Amer S. Khouri, M.D. medical records and bills including but not limited to all physician and facility medical records
11.	Cleveland Clinic and/or Todd D. Rozen, M.D. medical records and bills including but not limited to all physician and facility medical records
12.	Henry G. Dela Torre, M.D. medical records and bills
13.	DuBois Magnetic Imaging Center medical records and bills including but not limited to all physician and facility medical records

14. DuBois Regional Medical Center medical records and bills including but not limited to all physician and facility medical records
15. George C. Mosch, II, M.D. medical records and bills
16. Penn Township Rural Health Clinic medical records and bills including but not limited to all physician and facility medical records
17. Radiation Oncology Group and/or Jack D. Schocker M.D. medical records and bills including but not limited to all physician and facility medical records
18. R&R Radiology, LLC and/or David Obley, M.D. medical records and bills including but not limited to all physician and facility medical records
19. Shadyside Hospital medical records and bills including but not limited to all physician and facility medical records
20. Sheldon Rosenthal, M.D. medical records and bills
21. Quest Diagnostics medical records and bills
22. Phoung T. Wirths, D.O. medical records and bills
23. Medical literature
24. Treatises
25. Demonstrative Exhibits
26. Photographs

RESERVATIONS

1. Plaintiffs reserve the right to use or offer into evidence any exhibit or piece of demonstrative evidence that any other party identifies in their Pre-Trial Statements or that any other party offers at trial, as permitted by the Court.

2. Plaintiffs reserve the right to supplement this Exhibit List at any time up to and including the time of trial, as permitted by the Court.

VI. ESTIMATED TIME FOR TRIAL


Plaintiffs estimate that trial will take 5 days.

VII. LIST OF STIPULATIONS

Counsel have not yet discussed or considered all evidentiary stipulations. However, at a minimum, counsel for Plaintiffs would request that counsel for Defendants stipulate as to the authenticity and admissibility of Mrs. Nelen's medical records, as well as to the amount of medical bills that are recoverable.

Date: 1/17/07

Respectfully submitted,
Eckert Seamans Cherin & Mellott, LLC



Edward C. Flynn, Esq.
PA ID No. 35198
Livia F. Langton, Esq.
PA ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

Attorneys for Plaintiffs

**SOUTH HILLS FAMILY MEDICINE**

November 12, 2006

Edward C. Flynn
Eckert Seamans Cherin & Mellott
U. S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

Dear Mr. Flynn,

I am writing pursuant to your request for me to provide you with a supplemental report concerning your client, Mrs. Bridget Nelen. In this regard I have reviewed deposition transcripts for Dr. Wirths, Dr. Dellatorre, Dr. Shaw and Mrs. Nelen. Additionally I have reviewed the report of Dr. Richard Bruehlman.

My further investigation leads me to conclude that my comments and opinions expressed in my September 21, 2004 report are accurate and remain unaltered. Accordingly, in the remainder of this report, I will elaborate only on additional information.

As you are aware, Mrs. Nelen saw Dr. Wirths on several occasions as her primary family physician including November 1, 2000. After that encounter she presented later that day to Clearfield Hospital's Emergency Department. At that time her chest x-ray revealed a right middle lobe density. Treatment included antibiotics for a suspected pneumonia as well as recommendations for clinical and radiographical follow up. Dr. Wirths has testified that he would have been in receipt of the abnormal chest x-ray report of November 1, 2000 within several days. Also as you are aware, Mrs. Nelen saw Dr. Delatorre on November 14, 2000 and saw Dr. Wirths on September 24, 2001. Also there is clear difference of opinion between Dr. Wirths and Dr. Delatorre concerning which physician was Mrs. Nelen's primary doctor after November 1, 2000. Regardless of who was acting as her primary care physician, both doctors owed clearly defined obligations to this patient. My further comments will focus on the obligations of the two doctors given the circumstance of their patient being a 39 year old smoker with an abnormal chest x-ray.

First Dr. Wirths as her physician on November 1, 2000 had a clear and definite responsibility to review her emergency room care and ensure that appropriate follow up ensued. That obligation included:

- Arranging appropriate clinical and radiological follow up exams

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- Communicating with Mrs. Nelen the serious nature of her condition
- If she failed to follow up, again reminding her of the importance of following this advice.
- Dr. Wirths also had a duty to make sure that Dr. Dellatorre was fully aware of her abnormal chest film.

Dr. Wirths failed to do any of the above. This failure is a clear breach in the acceptable standard of care for a family physician and resulted in an increased risk of harm to Mrs. Nelen.

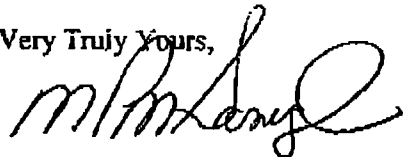
Secondly Dr. Delatorre in seeing Ms. Nelen in follow up of her November 1, 2000 visits with Dr. Wirths and the Emergency Room had an obligation to become familiar with the details of those visits and incorporate that information into his treatment plan.

Dr. Delatorre has stated that if he had been aware of the November 1, 2000 chest x-ray, he would have pursued additional radiological studies. Dr. Dellatorre was aware from his discussions with Mrs. Nelen that she had gone to the Emergency Department on November 1, 2000 and had an abnormal chest x-ray. This fact alone was enough to impose upon him the obligation to obtain a copy of that chest x-ray report and follow through with recommended studies. He failed to familiarize himself with important information and in doing so, violated the acceptable standard of care for a family physician and further increased the risk of harm to Mrs. Nelen.

Both Drs Wirth and Delatorre are responsible for a significant delay in diagnosis of Ms. Nelen's non small cell lung cancer. Within a reasonable degree of medical certainty, this delay resulted in an increased risk of harm to Mrs. Nelen and adversely affected her prognosis.

The opinions I have expressed are based on the information that I have reviewed. Please let me know if new information emerges or if I can be of further assistance in elucidating the medical facts concerning Bridget Nelen.

Very Truly Yours,



Michael P. McGonigal, MD

**SOUTH HILLS FAMILY MEDICINE**

September 21, 2004

W. Patric Boyer
Eckert, Seamans, Cherin & Mellot, LLC
Summit Corporate Center
1001 Corporate Drive Suite 200
Canonsburg, PA 15317

Dear Mr. Boyer,

I am writing regarding your client Ms Bridgette Nelen. In preparation of this report I have reviewed the following records:

- Office records from Drs. Henry Dela Torre and Phoung T. Wirths
- Office notes from Altoona Hospital Center for Cancer Care and Dr. Jack Schocker
- Clearfield Hospital records

At the turn of the century Ms Nelen was a 39 year old female who followed with Dr. Dela Torre as her family physician. She saw Dr. Dela Torre and his partner Dr. Wirths several times in the summer and fall of 2000. On November 1, 2000 a chest x-ray performed as part of an evaluation in Clearfield Hospital's Emergency Room revealed a right middle lobe density. Dr. Dela Torre received a copy of the chest x-ray report which recommended a follow up study. Ms Nelen received antibiotic therapy as an outpatient and returned to Dr. Dela Torre on November 14, 2000, December 12, 2000 and January 23, 2001. Dr. Dela Torre did not order any follow up diagnostic imaging studies.

As you know, two years passed and in November of 2002 she presented to Clearfield Hospital Emergency Room with chest pain. A chest film showed a huge right middle lobe mass. Subsequent evaluation proved the mass to be malignant. Because of the tumor's large size she underwent neoadjuvant chemotherapy and radiation therapy prior to thoracotomy and pneumonectomy on January 23, 2003. Pathology revealed an adenocarcinoma cell type and stage 2 disease.

She did well for five months only to develop a headache and visual disturbance in June 2003. Work up revealed a 2.2 cm left frontal lobe mass which required craniotomy and excision. Pathology showed metastatic tumor from her lung. Subsequently her radiation oncologist Dr. Jack Schocker appropriately prescribed and administered a course of whole brain radiation therapy.

Page 2

To summarize Mr. Boyer, Ms Nelen presented on November 1, 2000 as a 39 year old smoker with a clinically and radiographically atypical pneumonia. Prudent and appropriate medical care would have included both clinical and radiographic reevaluation. If her chest had been reimaged in December 2000 or January 2001, her pulmonary malignancy would have been diagnosed then when her disease was stage 1. Resection at that point would have yielded an 80% chance of cure. Instead Ms Nelen now faces a horribly bleak chance of long term survival.

As family physicians we are trained and taught to follow pulmonary symptoms and abnormal pulmonary imaging studies to their respective clinical and radiologic clearing. Ms Nelen's tragic case illustrates the merit of that teaching.

In conclusion, Ms Nelen absolutely deserved a follow up chest x-ray or ct scan. Dr. Dela Torre did not advise her of this need. His omission has resulted in additional surgery, chemotherapy and radiation therapy as well as giving this young woman a devastatingly poor prognosis. For the reasons stated above, it is my opinion, within a reasonable degree of medical certainty, that the care and treatment offered by Dr. Dela Torre and Dr. Wirths fell below the standard of care required of all family practice physicians.

If I can be of further assistance to you please contact me.

Very Truly Yours,



Michael P. Mconigal, MD

CURRICULUM VITAE

of

Michael P. McGonigal, M.D.

BIOGRAPHICAL

Name:	Michael P. McGonigal, M.D.	Birth Date:	October 14, 1954
Home Address:	292 Justabout Road Venetia, Pennsylvania 15327	Birthplace:	Greenville, PA
		Citizenship:	USA
Business Address:	South Hills Family Medicine, LLC 1000 Higbee Drive Suite 104 Bethel Park, Pennsylvania 15102	Business Phone:	(412) 833-6176
		Business Fax:	(412) 833-6432
Office Locations:	Homestead Office 1800 West Street Homestead, PA 15120	Business Phone:	(412) 462-0506
		Business Fax:	(412) 462-0527

EDUCATION**UNDERGRADUATE:**

1972-1976	University of Virginia	B.A., Biology (Honors)
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GRADUATE:

1976-1980	University of Virginia Medical School	Doctor of Medicine
------------------	--	---------------------------

POST GRADUATE:

1980-1981	Wake Forest University Bowman Gray School of Medicine North Carolina Baptist Hospital	Advisor: David Jackson, M.D. Family Medicine Internship
1981-1983	Wake Forest University Bowman Gray School of Medicine North Carolina Baptist Hospital	Advisor: David Jackson, M.D. Family Medicine Residency

POST RESIDENCY DEGREES:

American Academy of Family Practice, Fellow	1984-Present
American Board of Family Practice, Board Certified	1985-Present
American Board of Family Practice, Geriatrics, Board Certified	1990-Present

PROFESSIONAL LICENSURE:

Pennsylvania Medical License
North Carolina Medical License

MD 030452
25513

SPECIALTY CERTIFICATION:

Fellow, American Academy of Family Practice
American Board of Family Practice
American Board of Geriatrics
Diplomat, American Board of Family Practice

1984-Present
1984-Present
1984-Present
1985-Present

HONORS AND AWARDS:

Atlantic Coast Conference Award for Excellence in Scholarship and Athletics
Captain, University of Virginia Wrestling Team
Atlantic Coast Conference Wrestling Champion
Member of University of Virginia Athletic Committee

1976
1975-1976
1973-1975
1975-1976

MEMBERSHIPS IN PROFESSIONAL AND SCIENTIFIC SOCIETIES:

American Medical Association
American Academy of Family Physicians
Pennsylvania Academy of Family Physicians
Allegheny County Medical Society
Pennsylvania Medical Society
Western PA Association of Primary Care Preceptors,
Teaching Appointment
Chairman, Health Education-Health America HMO
Delegate to 1985 American Academy of Family Practice,
Scientific Assembly
Delegate to 1981 American Academy of Family Practice National
Resident Conference

1976-1998
1980-1998
1983-1998
1983-1998
1983-1998
1983-Present
1984-1987
1985
1981

CLINICAL HOSPITAL PRIVILEGES:

Central Medical Pavilion
Pittsburgh, PA
St. Clair Memorial Hospital
Pittsburgh, PA
South Hills Health System
Jefferson Hospital
University of Pittsburgh Medical Center

1984-1987
1985-1991
1987-Present
1997-Present

PROFESSIONAL APPOINTMENTS:

University of Virginia, Departments of Athletics

Assistant Coach, Wrestling	1976-1980
American Academy of Family Practice National Resident Conference Delegate	1981
Bowman Gray School of Medicine, North Carolina Baptist Hospital Chief Resident, Department of Family Medicine	1982-1983
Health America, Pittsburgh, PA Family Physician, Associate Medical Director	1984-1987
Western Pennsylvania Association of Primary Care Preceptors Teaching Appointment	1985-Present
American Academy of Family Practice Scientific Assembly Delegate	1985

PROFESSIONAL EMPLOYMENT:

South Hills Family Medicine, LLC	1998-Present
Family Practice Medical Associates South	1992-1998
Family Practice, Private Practice Physician	1987-1992
Health America Family Physician	1984-1987
Associate Medical Director (40,000 patient responsibility)	1985-1987
Bowman Gray School of Medicine, North Carolina Baptist Hospital Chief Resident	1982-1983
Bowman Gray School of Medicine, North Carolina Baptist Hospital House Officer, Department of Family Medicine	1980-1983
University of Pittsburgh Medical Center, Pittsburgh, PA Clinical Faculty	1984-Present

COMMUNITY ACTIVITIES:

Big Brother Program Volunteer	1978-1980
	1982-1983
Special Olympics Coach, University of Virginia	1978-1979
Washington County Housing Authority Board Member	1987-1995
Washington County Housing Authority Benefits Committee	1989-1998
Epilepsy Foundation Vice Chairman, Fund Raising	1997-1998
Multiple Sclerosis Society	1996-Present

SPECIAL COMMITTEES AND TASK FORCES:

Health America Professional Education Development Committee Member	1984-1987
Quality Assurance Committee Member	1987
Health Education Committee Member, Chairman	1985-1987
National Committee on Physician Compensation and Incentive, Chairman	1986
Emergency Medical Care Committee	1985-1987
Bowman Gray School of Medicine, Department of Family Medicine Patient Education Committee	1980-1983
Curriculum Committee	1981-1983

Faculty Selection Committee	1982-1983
Allegheny County Medical Society, Medical-legal Committee	1987
Tri-State Health System Co-Chairman	1995-1998
Tri-State Health System Physician's Integration Committee	1995-Present
South Hills Health System	
Utilization Review Committee	1995-Present
Occupational Health Program, Member	1989
Library Committee	1989
Clinical Resource Management Committee, Member	1989-1991
Clinical Resource Management Committee, Chairman	1990-Present
Medical Executive Committee, Member	1989-1990
Clinical Outpatient Services Task Force	1990
Deputy Chief of the Department of Medicine	1991-1992
Jefferson Health System Board Member	1993-Present
Medical Staff Executive Committee	1990-1994
PHO Member	1995-Present
Continuing Medical Education Committee, Chairman	1992-1996
Parent Board Committee Member	1997-Present
PHO Creation and Integration Task Force	1993-1994
Medical Staff Quality Improvement/Physician Involvement Member	1995-1996
Finance Committee	2000-2001
CBO Search Committee	2001
Teaching Appointment	1999-Present
Long Range Strategic Planning Committee	July 2003-Present
Physician - Nurse Liason Committee, Chairman	June 2004-Present
University of Pittsburgh Health System	
Teaching Appointment	1996-Present
Medical Director, Bethel Park Satellite	1997-Present
UPMC Health Plan	
Pharmacy and Therapeutics Committee	1999-Present
Quality Improvement Committee	1998-Present
National Speakers Bureau	
Eli Lilly Pharmaceuticals	2001-Present
Merck Pharmaceuticals	2001-Present
GlaxoSmithKline	2001-Present
Auxilium	2005-Present

UPDATED REPORT

PATIENT: Bridgette Nelen
4008 Splash Dam Rd.
Grampian, PA 16838

DOB: 1/04/1961

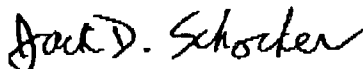
DEPT: 5714

DATE: September 07, 2006

Material regarding the care of Mrs. Nelen was again reviewed. As noted previously, this patient had an abnormal chest x-ray performed on November 1, 2000. The radiologist described an abnormality in the right lung. Such a finding requires follow-up, and it is not acceptable practice to simply observe clinically. Specifically, even if the patient had only pneumonia, a follow-up chest x-ray would be needed to prove that it resolved. In this case, it would have shown that there was no resolution, since a malignant mass was present causing the abnormality. Such a follow-up study should have been performed within several weeks of the first radiograph. This is a basic requirement in caring for an adult patient with an abnormal chest x-ray, especially since the radiologist could not exclude a neoplasm, and this is stated in the report. It was the responsibility of Dr. Wirths to obtain a follow-up chest radiograph. If another physician in the same office was caring for the patient, then this obligation would fall on both physicians. The physicians also have the duty to communicate with each other to make sure that the patient received the proper follow-up care. I also have reviewed the transcripts of the depositions of Dr. Wirths and Dr. Dela Torre, and while they may disagree regarding who had responsibility, the standard of care would place the responsibility on both of them. The subsequent delay in the diagnosis of lung cancer has had a major impact regarding the patient's treatment, and still with her prospect for long term survival.

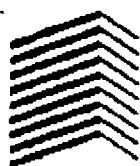
Because of the delay in treatment, the patient required much more extensive therapy. If she was diagnosed in 2000, it probably would have been adequate to perform surgery with removal of one lobe of the lung. It is doubtful that she would have needed any additional treatment, and would have had a fairly high chance for cure. Because of the delay in diagnosis, the patient required extensive treatment with chemotherapy and radiation therapy. Then, she required total removal of the right lung. The patient developed metastatic disease to her brain requiring craniotomy with removal of the tumor and additional radiation therapy to her brain. Even if the patient survives beyond five years from treatment, the patient may also suffer additional consequences because of the extensive treatment that was required. For example, she now only has one lung, making it more difficult for her to breathe. If she ever develops another malignant tumor in the left lung, treatment will be greatly limited because of her surgery on the right side. She may still develop some changes in cognitive function or in cerebellar function because of the radiation therapy to the brain.

In summary, the delay in diagnosis has had a major impact upon this patient's treatment, her present chances for survival, and her ultimately quality of life. These opinions are rendered within a reasonable degree of medical certainty, and reflect the minimum standard of care deserved by a patient.



Jack D. Schocker, M.D.

JDS/ghb



altoona hospital

CENTER FOR CANCER CARE

620 Howard Avenue • Altoona, PA 16601-4899
814 / 889-2400 • 800 / 870-4660 • Fax: 814 / 885-2048

DEPARTMENT OF RADIATION ONCOLOGY

Jack D. Schocker, M.D., *Chairman*

John A. Clement, M.D.

Michael A. Vince, Ph.D.

Gregory M. Price, M.S., DABR

November 05, 2004

W. Patric Boyer
Eckert Seamans
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317

RE: BRIDGETTE NELEN
4008 SPLASH DAM RD
GRAMPIAN, PA 16838
DOB: 1/4/1961
#5714

Dear Mr. Boyer:

I am writing this letter with reference to several recent notes that were sent to me. In your letter dated July 12, 2004, you asked about a mass in the left lung on the x-ray film dated November 1, 2000. In fact, there is no mass in the left lung at that time. The only mass seen is the neoplasm in the right lung, as previously discussed. Next, I received a letter from you dated August 11, 2004, requesting billing records. I have asked my business office manager to prepare a copy of that information and forward it to you. Similarly, I will ask Altoona Hospital's business office to also send a record of charges to you.

Lastly, I just recently received your letter dated October 26, 2004. Clearly, there was a major difference in the type of treatment given to this patient, and the ultimate expected outcome, because of the delay in diagnosis. The chest x-ray done on November 1, 2000, showed a mass in the right lung measuring about 4 cm in size. There was no evidence of any lymph node enlargement seen on the conventional radiograph. Almost certainly, the only treatment needed at that time would have been surgery, and a lobectomy would have been performed. That means removal of a single lobe of the lung, and not the entire lung. There are a number of published studies in the medical literature showing that the chance for cure in cases like this is reasonably good. As just one example, Martini published the results from 598 patients (Journal of Thoracic and Cardiovascular Surgery, Volume 109, pages 120-129, 1995). In that series, the five year survival rate was about 70%. Because of the delay in diagnosis, and the large size of the mass at the time of diagnosis, this patient needed chemotherapy and radiation therapy treatments. Then, she needed a much more extensive surgical procedure. She then developed metastatic brain disease, and it is likely that she never would have had brain metastasis if the diagnosis was made earlier. The metastatic brain disease lead to craniotomy, with major brain surgery, followed by additional radiation therapy. The prognosis in such cases is dramatically decreased, certainly well under 10% survival at five years.

In summary, the patient's delay in diagnosis had a major impact on the treatment given to this treatment, and the chance for cure is dramatically decreased. This can be established based upon numerous studies and by any basic oncologic principle.

Letter to W. Patric Boyer
Page 2
RE: BRIDGETTE NELEN
November 05, 2004

Please contact me if additional information is needed.

Sincerely,



Jack D. Schocker, M.D.

JDS/ghb



altoona hospital

CENTER FOR CANCER CARE

620 Howard Avenue • Altoona, PA 16601-4899
814/946-2400 • 800/870-4660 • FAX: 814/946-2048

DEPARTMENT OF RADIATION ONCOLOGY

Jack D. Schocker, M.D., *Chairman*
John A. Clement, M.D.
Michael A. Vince, Ph.D.
Gregory M. Price, M.S.

July 6, 2004

RE: Bridgette Nelen
DOB: 1/4/61

Mrs. Nelen is a 43-year old white female with a diagnosis of a squamous cell carcinoma of the lung. All of her pertinent medical records were reviewed, including imaging films dating back to November 2000. The patient was seen on a number of occasions by her primary care physicians, Drs. Henry Dela Torre and Phoung T. Wirths (Penn Township Rural Health Clinic), with nonspecific complaints including abdominal discomfort and headache. She also had some difficulty with concentration and with sleeping. On November 1, 2000, the patient was seen in the emergency department at Clearfield Hospital. At that time, a chest x-ray was obtained. In the official report from the radiologist, a density was described in the right middle lobe. It stated that this might "represent a so called round pneumonia; however, other pathology including pulmonary mass should be considered. Follow-up studies are recommended" (underlining added). In addition, in the final sentence of the report, the radiologist stated that "CT study of the chest may be useful at a later date." In fact, no such follow-up studies were performed. The chest x-ray was ordered by Dr. Mark Shaw, and a copy was sent to Dr. Dela Torre. A copy of the written chest x-ray report was received from the patient's chart at Penn Township Rural Health Clinic, and it contains a handwritten note at the bottom stating "is patient on abx? Need F/U." Another note at the bottom of the report, also written in hand states "is on Z-Pak + I.V. antibiotic x2 at ER."

In November 2002, two years after the situation just described, the patient was again seen in the emergency department of Clearfield Hospital. She was having chest pain at the time of that visit. A chest x-ray showed a large mass in the right middle lobe of the lung, at the same location as the previously noted abnormality. Further work-up was then started. A CT study of the chest showed a huge mass involving the right middle lobe of the lung. The patient was seen by Dr. Romeo, who performed bronchoscopy on November 1, 2002. Although no endobronchial lesion was seen, there was narrowing at the level of the right middle lobe bronchus. A transbronchial biopsy was performed, and the pathology report showed squamous cell carcinoma.

The patient was subsequently sent for oncologic evaluation. She was seen in the department of Radiation Oncology at Altoona Hospital. A review of the imaging films showed the large mass in the lung, measuring about 10 cm in size. A PET scan was

RE: Bridgette Nelen

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performed, showing intense uptake at the site of the tumor, but no other evidence of metastatic disease. The case was reviewed with a thoracic surgeon, and it was agreed that the mass was so large, that primary surgical therapy would not be the best initial approach.

The patient was subsequently treated with an intensive course of radiation therapy and concurrent chemotherapy. The tumor showed considerable regression. Ultimately, it was felt that surgical resection would be a reasonable option. The patient was taken to the operating room on January 23, 2003, and a total right pneumonectomy was performed. The remaining tumor was called adenosquamous cell carcinoma, and it was removed with clear margins. A total of 11 lymph nodes were examined, all negative for metastatic disease.

The patient was followed on a regular basis following surgery. She noted headache and some blurring of her vision in June 2003. A CT study of the brain was done on July 8, 2003, and it showed a mass lesion in the left frontal lobe of the brain. This was not seen on a previous study from November 2002. An MR study of the brain was then performed, and it confirmed the presence of a 2.2 cm mass in the left frontal lobe of the brain, with no other abnormality elsewhere in the brain. The patient again underwent oncologic evaluation, and was referred to a neurosurgeon. She underwent craniotomy with decompression of the tumor mass. The pathology report confirmed metastatic disease, consistent with the lung primary. The patient was subsequently given radiation therapy to the brain, with the treatment ending on September 10, 2003.

Based upon review of all the medical records, as summarized above, it is felt that the care given to this patient by her primary care physician in DuBois, Pennsylvania, was clearly outside of acceptable professional standards. Specifically, a written radiology report from November 1, 2000, described an abnormality of major significance. The patient had a long history of cigarette smoking, and malignant tumor would be very high on the list of differential diagnoses. If the finding was related to pneumonia, it would have resolved, and a follow-up study of the chest would have shown improvement. It is for that reason that a follow-up chest x-ray would have been the minimum mandatory requirement, and should have been done within 6-8 weeks. Alternatively, a CT study of the chest could have been done sooner. At that point, the patient had a rather small tumor, and probably would have been amenable to curative treatment with surgery alone. The surgery at that time would probably have been limited to a lobectomy, much less extreme than the surgery ultimately required, and with a rather high chance for cure. By the time this patient was diagnosed with malignancy, she needed to undergo intensive treatment with radiation therapy and chemotherapy. Then, she required a total pneumonectomy, resulting in the loss of her lung. Later, she developed metastatic brain disease. Her chance for cure is now very small. Had this patient been evaluated properly, her treatment would have been much less intense, and her chance for surviving

RE: Bridgette Nelen

Page 3

would have been greatly increased. The care given to her has had a major impact upon her chance of survival and no reasonable excuse can be given to explain such action. It is my opinion that her chances of surviving has gone from 80% to 10% as a result of the delayed treatment.

Based upon this review of the records, and examination of the patient, I believe it can be stated with reasonable certainty that this patient was given care below the standard required from a similarly trained physician in this geographic area.

The opinion expressed above is presented by a physician licensed within the Commonwealth of Pennsylvania, with special training regarding the care and treatment of cancer patients.



Jack D. Schocker, M.D.

CURRICULUM VITAE

July 1, 1995

NAME: Jack David Schocker, M.D.**OFFICE ADDRESS:** 620 Howard Avenue
Altoona, PA 16601**DATE AND PLACE OF BIRTH:** May 9, 1951 — Allentown, Pennsylvania**EDUCATION AND TRAINING:**

Graduated William Allen High School, Allentown, Pennsylvania, 1969

B.A. (with honors), Lehigh University, Bethlehem, Pennsylvania, 1973

M.D. (academic honors), Hahnemann University, Philadelphia, 1977

Internship and Residency, Hahnemann University Hospital, 1977-1981

American Cancer Society Fellow In Clinical Oncology, 1979-1981

PROFESSIONAL CERTIFICATIONS:

Diplomate, National Board Of Medical Examiners

Diplomate, American Board Of Radiology (Certified in Radiation Oncology)

CURRENT PROFESSIONAL APPOINTMENTS:Chairman, Department Of Radiation Oncology, Altoona Hospital,
Altoona, Pennsylvania, 1995 - presentAssistant Clinical Professor Of Radiation Oncology and Nuclear Medicine,
Hahnemann University, Philadelphia, Pennsylvania, 1983 - present**PREVIOUS APPOINTMENT:**Director, Department Of Radiation Oncology, Mercy Regional Health System,
Altoona, Pennsylvania, 1982 - 1995Chairman, Department Of Radiation Oncology, Lehigh Valley Hospital,
Allentown, Pennsylvania, 1988 - 1991**HOSPITAL MEDICAL STAFF MEMBERSHIPS:**

Altoona Hospital, Altoona, Pa.

Mercy Regional Health System, Altoona, Pa.

Nason Hospital, Roaring Spring, Pa.

Memorial Hospital Of Bedford County, Everett, Pa.

Tyrone Hospital, Tyrone, Pa.

Clearfield Hospital, Clearfield, Pa.

Jack D. Schocker, M.D.
Curriculum Vitae
Page 2

SELECTED OTHER PRESENT APPOINTMENTS:

Director, American Cancer Society, Blair County Unit

President, Radiation Oncology Group, P.C.

SELECTED OTHER PAST APPOINTMENTS:

President, Keystone Area Society Of Radiation Oncology

Treasurer, Pennsylvania Oncologic Society

Director, American Cancer Society, Pennsylvania Division

Vice President, American Cancer Society, Blair County Unit

Trustee, Mercy Regional Health System

SELECTED PUBLICATIONS / PRESENTATIONS:

Schocker, J., and Brady, L., "Radiation Therapy For Bone Metastasis".
Clinical Orthopedics and Related Research, September, 1982.

Schocker, J., "Pre-Operative Radiation Therapy For Carcinoma Of the
Rectum and Rectosigmoid", Philadelphia Medicine, December, 1977.

Damjanov, I., and Schocker, J., "Malignant Paraganglioma Of Retro-
peritoneum", Urology, 17: 6 (1981).

Schocker, J., et. al., "Radiation Therapy For Bone Metastases", in
Bone Metastasis, edited by Weis and Gilbert, Hall Medical Publishers, 1981.

Schocker, J., et. al., "Mammography After Definitive Radiotherapy For
Breast Cancer", Presented to the Pennsylvania Radiologic Society, 1979.

Schocker, J., and Brady, L., "Definitive Radiotherapy For Treatment Of
Stages I and II Breast Cancer, presented to the South Carolina Oncology
Group, 1981. Also presented: "Post-operative Irradiation For Breast Cancer".

FORENSIC HUMAN RESOURCES

413 Sylvania Drive
Pittsburgh, PA 15229

Phone: (412) 260-8000

Fax: (412) 364-7221

December 27, 2006

Ms. Livia Langton
Eckert Seamans Cherin & Mellon, LLC
US Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

Dear Ms. Langton:

You recently provided two medical narratives pertaining to your firm's client, Bridget Nelen, and asked that I evaluate their impact on the economic loss to Ms. Nelen. You also asked that I update the economic losses to the present.

I reviewed the medical narratives written by Jack D. Schocker, MD dated September 7, 2006 and by Michael P. McGonigal, MD dated November 12, 2006. Dr. Schocker's narrative provides more detail regarding the impact of Ms. Nelen's course of treatment. That narrative does not change my original opinion that Ms. Nelen is unemployable as a result of the actions at the center of this legal proceeding.

All other facts and assumptions in the July 11, 2005 report remain the same.

Past Lost Income: (October 31, 2002 – December 31, 2006, 4.2 years)

Wages:	(\$14,794 X 4.2 years)	\$62,135
Benefits:	(\$62,135 X 29.6%)	\$18,392
Total Past Lost Income:		\$80,527

Future Lost Earnings Capacity:

Wages:	(\$14,794 X 10.8 years)	\$159,775
Benefits:	(\$159,775 X 29.6%)	\$47,293

Total Future Lost Earnings Capacity: \$207,069

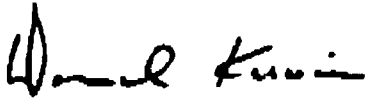
Ms. Nelen's total lost income, both past lost wages and benefits and future lost earnings capacity, is \$287,595, to a reasonable degree of professional certainty.

*Expert Witness in Matters of Employability, Lost Earnings
and Diminished Earning Capacity*

Bridget Nelen

Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read "Donal F. Kirwan". The signature is written in a cursive, flowing style.

Donal F. Kirwan, SPHR

FORENSIC HUMAN RESOURCES
413 Sylvania Drive
Pittsburgh, PA 15229

Phone: (412) 260-8000

Fax: (412) 364-7221

July 11, 2005

Mr. W. Patric Boyer, Esq.
Eckert Seamans Cherin & Mellott, LLC
Summit Corporate Center
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317

Dear Mr. Boyer:

This report has been prepared and is submitted in response to your request for an economic loss evaluation in the case of your client, Bridget K. Nelen.

You asked that we become familiar with your client's background and current circumstances in order to provide an opinion as to the labor economic effects sustained as a result of a diagnosis of squamous cell carcinoma. We interviewed Mrs. Nelen in order to review her educational background and work history. We also reviewed a medical narrative dated July 6, 2004 and November 5, 2004, written by Jack D. Schocker, MD, Chairman of the Center for Cancer Care, Altoona Hospital; and a medical narrative dated September 21, 2004, written by Michael P. McMonigal, MD of South Hills Family Medicine. We also reviewed Ms. Nelen's 2002 W2 from Bayer Clothing Group.

Bridget Nelen was born January 4, 1961 and is currently 44 years old. She completed eleven years of schooling. She did not earn a GED. After leaving school, she worked in a sewing factory before taking four (4) years off at the time of her first marriage. She then went to work at Kent's Sportswear in Curwensville, PA for 17 years. In approximately 1998, she started work at Streamline Fashions in Phillipsburg, PA before beginning work at Bayer Clothing Group in approximately 2000. At Bayer, she was paid on a piecework basis: her 2002 W2 indicates that she earned \$7.11 per hour, or, \$14,794 per year. She indicated that she received employee benefits while working at Bayer which we value at an average rate of 29.6% of her wages. (US Department of Labor, "Employer Costs for Employee Benefits - March 2005" USDL 05-1056, June 16, 2005).

Dr. Schocker notes in the July 2, 2004 narrative that Mrs. Nelen presented to the emergency room at Clearfield Hospital on November 1, 2000, and that a chest X-ray indicated a density in the right middle lobe. "It stated that this might 'represent a so called round pneumonia; however, other pathology including pulmonary mass should be considered. Follow-up studies are recommended.'" He notes that no follow-up studies were performed. In November 2002 he reports that Ms. Nelen was again seen in the Clearfield Hospital emergency room. "A chest x-ray showed a large mass in the right middle lobe of the lung, at the same location as the previously

Mrs. Bridget K. Nelen

Page 2

noted abnormality...The patient was subsequently sent for oncologic evaluation." She was treated with an intensive course of radiation therapy and concurrent chemotherapy and then, on January 23, 2003, underwent a total right pneumonectomy. In June 2003, she returned to the hospital for headache and blurred vision at which time, a CT study of the brain showed a mass lesion in the left frontal lobe of the brain. She underwent a craniotomy and the pathology report confirmed metastatic disease, consistent with the lung primary. He concludes "It is my opinion that her chances of surviving has gone from 80% to 10% as a result of the delayed treatment." In his November 2004 narrative, he states "The prognosis in such cases is dramatically decreased, certainly well under 10% survival at five years."

Mrs. Nelen is concerned about the impact her restrictions will have upon her ability to earn a living. We believe, based on experience in the Human Resources profession, that she is for all intents, unemployable.

The New Worklife Expectancy Tables, Revised 2002, cites the future worklife expectancy of a female who did not graduate high school, age 44, who is unimpaired, that is with no work disability, as 12.3 years. Mrs. Nelen has not worked October 31, 2002, and is incapable of doing so at this time. Born in 1961, the normal Social Security Retirement age is 67, or, 22.5 years of additional worklife.

Past Lost Income: (October 31, 2002 – July 11, 2005, 2.7 years)

Wages: (\$14,794 X 2.7 years)	\$39,903
Benefits: (\$39,903 X 29.6%)	\$11,811
Total Past Lost Income:	\$51,714

Future Lost Earnings Capacity:

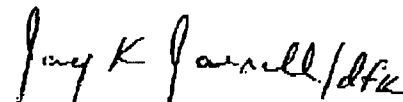
Work to 12.3 years worklife expectancy	
Wages: (\$14,794 X 12.3 years)	\$181,966
Benefits: (\$181,966 X 29.6%)	\$53,862
Total Future Lost Earnings Capacity:	\$235,828

Mrs. Nelen's total future lost income is \$287,542, to a reasonable degree of economic certainty.

Very truly yours,



Donal F. Kirwan, SPHR



Jay K. Jarrell

Accredited Personnel Diplomat (SPHR)

DONAL F. KIRWAN, SPHR

413 Sylvania Drive
Pittsburgh, PA 15229

Tel: (412) 260-8000
Fax: (412) 364-7221

SUMMARY

Human Resources Executive with experience in Forensic Economics providing consulting to the legal community on matters of economic damages relating to lost earnings capacity as well as on matters of employability.

PROFESSIONAL EXPERIENCE**FORENSIC HUMAN RESOURCES****2000 - DATE****Managing Director**

Provide forensic economic consulting services including evaluation of lost earnings capacity and expert testimony of economic damages arising from personal injury, wrongful death and employment discrimination.

KIRWAN CONSULTING GROUP**2002 - DATE****Managing Director**

Provide executive search services to companies. Responsible for client marketing, candidate sourcing, interviews and candidate presentation.

LAROCHE COLLEGE - Pittsburgh, PA**2001- 2002****Adjunct Professor, Recruitment and Placement**

Taught graduate level course on staffing issues and procedures. Topics included: Manpower planning; legal aspects of recruiting and selection; competency-based selection and interviewing;

BOYDEN - Pittsburgh, PA**1999 - 2002****Associate**

Provide executive search services to companies. Responsible for client marketing, candidate sourcing, interviews and candidate presentation. Primary focus is developing clients among Pittsburgh's high tech community, introducing Boyden's capabilities within that market. Responsible for internal IT support.

SONY ELECTRONICS INC. - Mt. Pleasant, PA**1995 - 1999****Staffing Manager, Sony Technology Center-Pittsburgh**

Responsible for managing exempt staffing process, college relations program, the internal posting program and the Employee Referral Program for the 5 manufacturing Business Units of the Sony Technology Center-Pittsburgh. As a member of the Site's HR Management Team, participated in HR decision-making processes. The Team worked with the Business Units to provide guidance, install new programs and update Site policies and procedures. Developed quantitative reports using information from PeopleSoft and Resumix including those showing Site EEO statistics and Time to Hire.

- Played a major role in the growth of this site from 600 to 2900 company members in 5 years.
- Worked with Business Unit clients to determine future manpower needs and developed and implemented the staffing plans to attract sufficient numbers of candidates to meet those needs on a timely basis.
- Investigated resume tracking systems to facilitate customer responsiveness. Recommended the purchase of and directed the installation of Resumix version 4.1, subsequently upgraded to version 5.3. Managed the installation of the new system.
- Designed and implemented the site's employee referral program. Designed the marketing material and the systems to manage the program.
- Represented the Site in community School-to-Work programs.

DONAL F. KIRWAN, SPHR

Page 2

- Participated on a company-wide task force to evaluate and redesign the Corporation's Staffing function.
- Initiated a re-evaluation of the STC-P hiring process to identify a speedier, less costly alternative while still maintaining the integrity, legal defensibility and quality of the process.
- Developed a program of Internet advertising/recruiting to decrease recruiting costs. Initiated Internet recruiting using free Web sites.
- Developed a college recruiting/relations program. Identified schools and professors and initiated contacts to increase Sony's visibility on campus. Arranged campus interview schedules.
- Worked with Business Unit managers to begin an intern program. Anticipated 20 openings for interns for summer 1999.
- Designed and developed Crystal 6.0 reports to manage the Site's staffing process.

PRO-TEM GROUP – Pittsburgh, PA

1994 – 1995

(Start-up firm established to provide Pittsburgh area companies with professional-level contingent employees. Responsible for marketing the firm's services. Interviewed accounting, finance and Human Resources candidates for placement with clients.)

Principal

- Developed and implemented the firm's marketing plan.
- Served as President, Pittsburgh Human Resource Association with a budget of \$200,000. The PHRA provides training services on HR topics and networking opportunities to local Human Resources professionals.

KIRWAN CONSULTING GROUP – Pittsburgh, PA

1992 – 1994

Principal

Provided clients with professional-level recruiting services. Responsible for marketing; sourcing and interviewing candidates; and assisting clients in the selection process.

- As Chairman of a trade association's insurance committee, involved in the negotiations with its health insurance carrier concerning plan design and rating structures. Responsible for oversight and problem resolution.
- Working with the carrier, installed a first-of-its-kind wellness program for the association. Responsible for monitoring its implementation and effectiveness.

THOMPSON, KIRWAN & ROBINSON

1991 – 1992

(A start-up firm providing career transition services to Pittsburgh area companies)

Vice President

Responsible for marketing the firm's services and working with executive clients to develop personal marketing plans and strategies. Developed the marketing strategy, which included organizing a target list of companies based upon revenues and employees; surveying the companies to determine clients' needs; and arranging meetings with the appropriate contacts to introduce the service. Assisted in the design of new services to present to clients.

- Designed and implemented the firm's initial marketing plan.

TEMPORARY ACCOUNTING PERSONNEL

1987 – 1991

President**ACCOUNTING PERSONNEL ASSOCIATES**

1976 – 1991

Vice President

These companies provided both full time and temporary recruiting services to clients. Worked with clients to determine staffing needs; developed recruiting plans; sourced and interviewed candidates; and facilitated the interview and offer processes. Responsible for marketing the firms' services and sourcing candidates. Taught seminar sessions as requested for various professional groups.

DONAL F. KIRWAN, SPHR**Page 3**

- Instrumental in the start of the temporary employment business.
- Developed systems to track candidate activity and to manage both businesses.
- Designed, wrote and installed a multi-user information management system to store and retrieve information on candidates and contacts. Designed and wrote using Informix SQL product, the management reports to track activity levels.
- Served as President of the national affiliation of which APA was a member firm.

U.S. ARMY**1969 - 1975****Captain**

Performed a variety of duties in both command and staff positions.

EDUCATION

MA, Industrial Relations - St. Francis College, Loretto, PA - 1983

BS, Economics - Xavier University, Cincinnati, OH - 1969

PROFESSIONAL CERTIFICATION

Senior Professional Human Resources, Society for Human Resources Management - 1995

MEMBERSHIPS

National Association of Forensic Economics
American Academy of Economic & Financial Experts
Eastern Economic Association
Society for Human Resources Management
Pittsburgh Human Resources Association

DONAL F. KIRWAN, SPHR**Page 4**

Donal F. Kirwan - List of Cases

5/2/2003	Sherie Ellis v. Michael Thompson FD90-05877	Family Court	Allegheny County, PA
10/16/2003	Mary Jo Deep v. Allen Deep 00928DR-02	Domestic Relations	Beaver County, PA
1/27/2004	Jo Lee Hamm & Charles Hamm v. Warren General Hospital, et al. 140-01	Court of Common Pleas	Warren County, PA
3/16/2004	Ann Smith v. Robert Freneau DRS-00500099	Domestic Relations	Somerset County, PA
3/18/2004	Dionne J. Grayson & Jerome M. Jackson, Co-Administrators of the Estate of Delores Parker Jackson, Deceased V. Port Authority of Allegheny County, et al GD-03-12871	Court of Common Pleas	Allegheny County, PA
11/9/2004	Estate of William Ward v. Dubois Regional Medical Center, et al. 404-2000	Court of Common Pleas	Jefferson County, PA
11/12/2004	Donn & Marion Boggs v. Anthony N. Okibi, et al. GD-01-21995	Court of Common Pleas	Allegheny County, PA
11/29/2004	Claudia Piper v. Thomas S. Gustafson GD-02-5034	Court of Common Pleas	Allegheny County, PA
12/9/2004	Rajesh P. Mehta v. City of Pittsburgh (Office of Controller) and Tom Flaherty CA 04-0170	US District Court for the Western District of Pennsylvania	
1/4/2005	Wm E. Gregor v. Mary Favaro 02280 DR 1999	Court of Common Pleas, Domestic Relations Section.	Westmorland County, PA
2/1/05	Sheri and James Fallon v. R.A.H. Associates, Inc. and Heartland Corp. GD-03-024024	Court of Common Pleas	Allegheny County, PA
2/8/05	David J. Birch v. Punxsutawney Electric Motor Manufacturing Co, Ltd/b/a Electro-Mec, Inc. CA 03-2803	Deposition for Defense US District Court for the Western District of Pennsylvania	
2/15/05	Celeste Cook v Arnold Cook FD 02-9974-008	Court of Common Pleas, Family Division	Allegheny County, PA

DONAL F. KIRWAN, SPHR

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3/10/05	Jason Tripp v. Laurie Tripp 10211 of 2003	Court of Common Pleas, Family Division Lawrence County, PA
3/30/05	Robert Davis v. Sharon Lintzenich AD 00-11104	Court of Common Pleas Butler County, PA
4/26/05	Bernard Glad v. Thomas Kearns, MD and Uniontown Hospital No. 587 of 2004 G.D.	Court of Common Pleas Fayette County, PA
6/17/05	JL Carter & Diane Carter, his wife, v. State Farm Insurance 2005-33	UIM Claim Washington County, PA
7/8/05	Robin Tanner v. National City Bureau Claim #2029788	Deposition Fayette County, PA
8/12/05	Gerald Kelley v. CSX Transportation, 00-C-30	Deposition Ohio County Circuit Court, WV
8/16/05	Daniel Kushner v. Horzempa, Rohde 11721 of 2002	Court of Common Pleas Beaver County, PA
10/11/05	James Mazzarini v. PennDOT 10521 of 2002, C.A.	Court of Common Pleas Lawrence County, PA
10/13/05	Robert Shearer, Trustee v. Pamela A. Lee, Defendant 05-27255-MBM	US Bankruptcy Court, Western District of Pennsylvania
10/19/05	Forrest McIver and Evelyn McIver v. Borg-Warner Automotive, et al. AD 2004-176	Court of Common Pleas Crawford County, PA
10/20/05	Michael Livingood v. Cianelli Realty Corporation 2001-1304	Court of Common Pleas Washington County, PA
11/16/05	Chad E. Mahle and Karla K. Mahle v. Eighty-Four Mining Co, et al GD 03-14440	Court of Common Pleas Allegheny County, PA
11/21/05	Susan Rocco and Larry Rocco v. Pennsylvania Brewing Company GD 03-026116	Court of Common Pleas Allegheny County, PA
12/5/05	Paul Marini v. St. Paul Fire & Marine Insurance Company Underinsured Motorist Arbitration	Allegheny County, PA
12/7/05	George Shinko & Mary Ann Shinko, Administrators of the Estate of Keith R. Shinko, deceased v. Robert T. Dunn, MD. 507 of 2003	Court of Common Pleas Westmoreland County, PA

DONAL F. KIRWAN, SPHR**Page 6**

12/13/05	Richard F. Meier v. Alliance Capital Management, LP, et al N.A.S.D. Arbitration Number 04-07633	Newark, NJ
1/9/06	Robin P. Miller v Alexa K. Miller 13 of 1999	Court of Common Pleas, Domestic Relations Section, Westmoreland County, PA
1/11/16	Charles Person and Susan Person, his wife v. Reuss Engineers, Inc, et al. 7656 of 2003	Court of Common Pleas Westmoreland County, PA
2/8/06	Jacob Mayhue v. R. Pazmino; Tipton Medical & Diagnostic Center, Inc, et al No. 2002-GN-5207	Court of Common Pleas Blair County, PA
2/22/06	Arthur D. Gilbert and Michelle R. Gilbert v. David Rogerson, MD 138 Civil 2002	Court of Common Pleas Somerset County, PA
5/3/06	Sherry L. Huchko, Administratrix of the Estate of James M. Huchko, Jr. v Paul E. Frye, MD and Vista Behavioral Health Associates, Inc. GD 04-15754	Court of Common Pleas Allegheny County, PA
6/7/06	Jackson Salisbury v. Kansas Jack, Inc. AD 364-1996	Court of Common Pleas Greene County, PA
6/15/06	Frank Ferguson v. UPMC Health System et al. 2002-3445	Court of Common Pleas Mercer County, PA
7/5/06	Lawrence N. Marlett and Judy A. Marlett v. Warren General Hospital et al. AD 118-2003	Court of Common Pleas Warren County, PA
8/22/06	Robert W. Blose v. Allstate Insurance Company Underinsured Motorist Arbitration	Westmoreland County, PA
9/7/06	Steven G. Burbidge v. Mark Milanovich, Kenneth Stretavski, et al. GD 05-012125	Court of Common Pleas Allegheny County, PA
9/19/06	Carrie M. George and Jeffrey J. George v. Thomas J. Dolgas 11775 CD 2004	Court of Common Pleas Indiana County, PA
9/21/06	Nubia Habay and Jeffrey Habay v. Gina M. Rooker, MD, et al. GD05-22795	Court of Common Pleas Allegheny County, PA
10/10/06	Donna L. Stellato v. Kelly Lynn Zickafoos AD # 2004-804	Court of Common Pleas Crawford County, PA
10/19/06	Annette Blamar Steadle v. Eric Lee Steadle, Defendant 223 of 2003	Court of Common Pleas Westmoreland County, PA

DONAL F. KIRWAN, SPHR

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11/3/06 Justyn Siarry v. Latrobe Area Hospital Gynecological Associates
73 of 2004 Court of Common Pleas Westmoreland County, PA

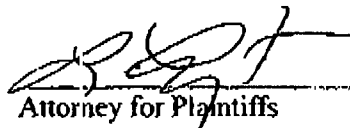
11/15/06 Michelle Opalcnik v. Westmoreland Obstetrics & Gynecology, Inc., et al.
GD02-00314 Court of Common Pleas Allegheny County, PA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing PLAINTIFFS' PRE-TRIAL STATEMENT PURSUANT TO PA R.C.P. 212.2 AND LOCAL RULE 212.4e was served upon counsel for all parties by depositing a true and correct copy thereof, in the United States Mail, postage pre-paid this 17th day of January, 2007, addressed to:

Ronald M. Puntil, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin, PC
US Steel Tower
600 Grant Street, Suite 2900
Pittsburgh, PA 15219

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499



Attorney for Plaintiffs

Judge
Reilly

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

BRIDGET NELEN, formerly :
BRIDGET WILSON, and DONALD :
NELEN, her husband :

-VS-

No. 04-57-CD

THE DUBOIS REGIONAL :
MEDICAL CENTER, PENN :
TOWNSHIP RURAL HEALTH :
CLINIC, DELA TORRE MEDICAL :
CLINIC, HENRY G. DELA :
TORRE, M.D. and PHOUNG T. :
WIRTHS, D.O. as to both :
individually and t/d/b/a :
PENN TOWNSHIP RURAL HEALTH :
CLINIC and/or DELA TORRE :
MEDICAL CLINIC :

O R D E R

AND NOW, this 11th day of April, 2007, following
argument, as will appear of record, relative Defendant
Henry G. Dela Torre's Motion for Continuance of Jury Trial
scheduled to commence on April 16, 2007, it is the ORDER of
this Court that the Motion for Continuance be and is hereby
denied.

BY THE COURT,

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

/S/ Fredric J Ammerman

APR 11 2007

President Judge

Attest.


Clerk of Courts

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN

A PROFESSIONAL CORPORATION www.marshalldennehey.com

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

Direct Dial: 412-803-1152
Email: rmpuntil@mdwec.com

April 3, 2007

VIA FACSIMILE AND U.S. MAIL

Edward C. Flynn, Esquire
Eckert Seamans, Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219

Re: **Bridget Nelen and Donald Nelen v. Henry G. Dela Torre, M.D.**
Our File No.: 16243-00452

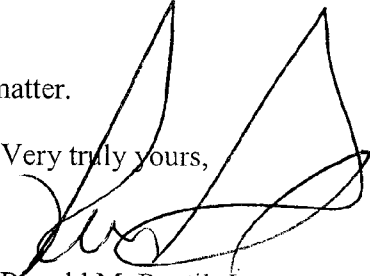


Dear Mr. Flynn:

Enclosed please find a copy of our Motion for Continuance in the above matter. I am forwarding a copy of this motion to Judge Reilly's chambers and once we receive a date for presentation, we will notify you accordingly.

Thank you for your attention to this matter.

Very truly yours,


Ronald M. Punttil, Jr.

RMP:sad

Enclosure

cc: David R. Johnson, Esquire (w/enclosure)
Honorable John K. Reilly (w/enclosure)

\\12_A\LIAB\RMPUNTIL\CORR\454748\SADORSEY\16243\00452

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL CENTER;
PENN TOWNSHIP RURAL HEALTH
CLINIC; DELA TORRE MEDICAL CLINIC;
HENRY G. DELA TORRE, M.D. and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No.: 2004-00057-CD

MOTION FOR CONTINUANCE

FILED ON BEHALF OF DEFENDANT,
HENRY G. DELA TORRE, M.D.

Counsel of Record for this Party:

Ronald M. Puntil, Jr., Esquire
Pa. I.D. #42146

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

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

(412) 803-1140

alleged untimely payment of the premium. A copy of the correspondence from the MCARE Fund is appended hereto as "Exhibit A."

4. Dr. Dela Torre does not believe that his MCARE payment was untimely and filed the appropriate Request for Administrative Hearing. The administrative law judge has set forth a briefing schedule and time for proposed hearing. A copy of the Order is appended hereto and marked as "Exhibit B".

5. This case is scheduled to commence trial on April 16, 2007. It is believed that the issue regarding Dr. Dela Torre's MCARE coverage will not be resolved prior to trial. Therefore, Dr. Dela Torre's position is severely compromised as there is a possibility of a verdict in excess of his \$500,000.00 primary limits which will not be covered by insurance.

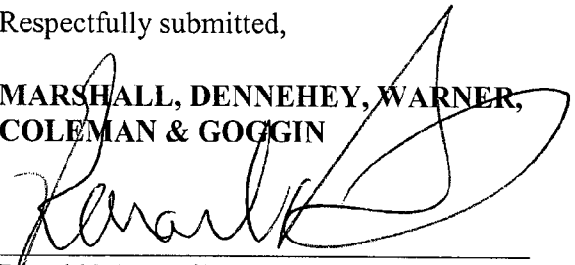
6. Additionally, if Dr. Dela Torre's MCARE coverage is reinstated, there is a much greater possibility of resolving the case without the necessity of trial.

7. Counsel for the hospital and Dr. Wirths join in the Motion for Continuance.

WHEREFORE, this Defendant requests that this Honorable Court continue this case for 90 days to allow resolution of the MCARE coverage for Dr. Dela Torre.

Respectfully submitted,

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



Ronald M. Puntil, Jr., Esquire
Counsel for Henry G. Dela Torre, M.D.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson, and
DONALD NELEN, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 2004-00057-CD

v.

DUBOIS REGIONAL MEDICAL CENTER; PENN
TOWNSHIP RURAL HEALTH CLINIC; DELA
TORRE MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS, D.O., as to
both individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

MOTION FOR CONTINUANCE

AND NOW, comes the Defendant, Henry G. Dela Torre, M.D., by and through his attorneys, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, and RONALD M. PUNTIL, JR., ESQUIRE, and files the within Motion for Continuance and, in support thereof, avers as follows:

1. The instant case is a medical malpractice action in which Plaintiffs allege that the Defendants failed to timely diagnose lung cancer.
2. Dr. Dela Torre has executed a Consent to Settle the case and a settlement offer of \$350,000.00 was made.
3. On or about January 24, 2007, Dr. Dela Torre received notice from the MCARE Fund indicating that Dr. Dela Torre's MCARE coverage in this matter has been denied due to an



**Medical Care Availability and
Reduction of Error Fund**
PENNSYLVANIA INSURANCE DEPARTMENT

1062 Lancaster Avenue, Suite 15-F
Rosemont, PA 19010

Facsimiles:
Executive Office (717) 705-7341
Legal Office (717) 783-7659
Claim Office (717) 787-0651
Policy Office (717) 705-7342

Rosemont Office:
Telephone (610) 801-2200
Fax (610) 801-2211

January 24, 2007

Henry G. Dela Torre, M.D.
578 Treasure Lake
DuBois, PA 15801

RE: Defendant: Henry G. Dela Torre, M.D.
Claimant: Bridget Nelen

Dear Dr. Dela Torre:

As you are aware, the Mcare Fund received a Form C-416 Claim Report from PMSLIC for you, on this claim.

By letter dated March 17, 2004 to PMSLIC Claims Representative Stephanie Chelius, a copy of which was sent to you, the Mcare Fund "advised that if Mcare accepts this claim as an excess matter, it will do so only under a full reservation of rights to deny Mcare indemnity coverage. Specifically, if the appropriate Remittance Advice and appropriate assessment payment, if any, are not timely forwarded to Mcare upon resolution of the related governmental initiative(s), Mcare indemnity coverage will be denied."

The C-416 reports a date of alleged malpractice of May 1, 2002 and a claim made date of January 21, 2004. This claim is reportedly covered under PMSLIC's January 1, 2004-January 1, 2005 claims made policy.

According to Mcare Fund records, the Remittance Advice and assessment payment for Mcare Fund coverage for the January 1, 2004-January 1, 2005 coverage period were received by the Mcare Fund on July 16, 2004. They were required to have been received by June 30, 2004 in order to have been considered timely.

The Mcare Fund does not cover claims that are made before an untimely remittance advice and assessment payment have been received.

Therefore, we must deny all Mcare Fund coverage for you, for this claim.

By copy of this letter to PMSLIC Claims Representative Stephanie Chelius, we are notifying them we are permanently closing our file.

If you disagree with this determination, you may request an administrative hearing before a hearing officer appointed by the Insurance Commissioner. A hearing will be held in Harrisburg and require the attendance of the claimant and the production of all documents.



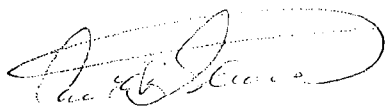
necessary to support your case. Testimony under oath will be taken so that the Insurance Commissioner may render a decision.

You may request a formal administrative hearing by signing in the space provided below and returning this original letter and all original attached documents in their entirety to:

**Lark Tresp
Pennsylvania Medical Care Availability and
Reduction of Error Fund
8th Floor, 30 N. 3rd Street
P.O. Box 12030
Harrisburg, PA 17108**

To be considered timely filed, your request for a formal administrative hearing must be received by the individual identified above no later than 30 days after the date of this letter.

Very truly yours,



Carole Z. Strickland
Claims Manager

CZS/nmc

cc: Stephanie Chelius, PMSLIC (#339647 03)
Ronald M. Punttil, Jr., Esquire
Carol Hess, Attorney Examiner (#037914-C)
Lark Tresp, Administrative Officer, Claims Administration Support

REQUEST FOR FORMAL ADMINISTRATIVE HEARING

RE: Medical Care Availability and Reduction of Error Fund (Mcare Fund)
Claimant: Bridget Nelen
File #: 037914-C
Service Denied: Coverage

Pursuant to Part II the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1, et seq. and 31 Pa. Code §§ 56.1, et seq., I hereby request a formal administrative hearing on the Mcare Fund's determination in the above-referenced matter.

Sign Name Here: _____

Date Sent: _____

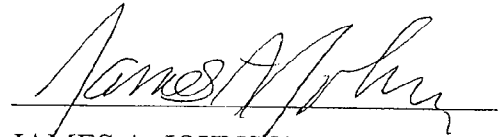
2/2/07

Docket Clerk Date Stamp: _____

8. Motions preliminary to those at hearing, protests, petitions to intervene, or notices of intervention, if any, must be filed on or before **April 3, 2007** with the Hearings Administrator, Administrative Hearings Office, Capitol Associates Building, Room 200, 901 North Seventh Street, Harrisburg, PA 17102.

9. Answer to petitions to intervene, if any, shall be filed on or before **April 10, 2007**.

10. The Hearings Administrator shall cause notice of the prehearing telephone hearing and due date for preliminary filings to be published in the Pennsylvania Bulletin.


JAMES A. JOHNSON
Presiding Officer

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson, and
DONALD NELEN, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 2004-00057-CD

v.

DUBOIS REGIONAL MEDICAL CENTER; PENN
TOWNSHIP RURAL HEALTH CLINIC; DELA
TORRE MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS, D.O., as to
both individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____, 2007, it is hereby **ORDERED,**
ADJUDGED, and **DECREED** that the above-captioned matter shall be continued from the
April 16, 2007 trial date for 90 days to allow resolution of the MCARE issue for Dr. Dela Torre.

BY THE COURT

_____, J

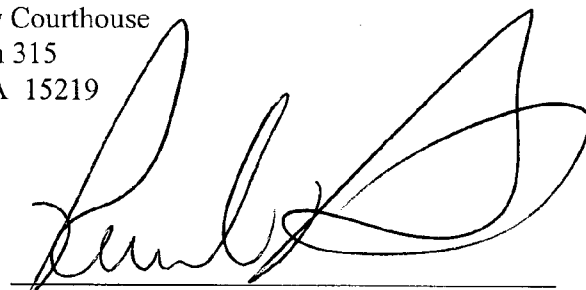
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **MOTION FOR CONTINUANCE**, has been served upon counsel as listed below this 3rd day of April, 2007.

Edward C. Flynn, Esquire
Eckert Seamans, Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiffs)

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499
(Counsel for Dr. Wirths)

Honorable John K. Reilly
Allegheny County Courthouse
Courtroom 315
Pittsburgh, PA 15219

A large, stylized handwritten signature in black ink, likely belonging to Ronald M. Puntil, Jr., is written over a horizontal line.

Ronald M. Puntil, Jr., Esquire
Attorney for Defendant Henry G. Dela
Torre, M.D.

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	3958
CONNECTION TEL	918147657649
CONNECTION ID	
ST. TIME	04/03 14:54
USAGE T	03'08
PGS. SENT	12
RESULT	OK



FAX

TO:

Judge John K. Reilly, Jr.
fax: 814-765-7649

FROM:

Claine Zeyza
phone: 412-350-4434

DATE:

4-3-07

NO. PAGES:

12 (including cover)



FAX

TO: Judge John K. Reilly, Jr.
fax: 814-765-7649

FROM: Claine Zeyza
phone: 412-350-4434

DATE: 4-3-07

NO. PAGES: 12 (including cover)



Ronald L. Marshall, Jr., Esquire
Marshall, Dennehey, Warner
Coleman & Goggin
Suite 2900, 600 Grant Street
Pittsburgh, PA 15219

Honorable John K. Reilly
Allegheny County Courthouse
Courtroom 518
Pittsburgh, PA 15219

Attention: Elaine

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson,
and DONALD NELEN, her husband,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL CENTER;
PENN TOWNSHIP RURAL HEALTH
CLINIC; DELA TORRE MEDICAL CLINIC;
HENRY G. DELA TORRE, M.D. and
PHOUNG T. WIRTHS, D.O., as to both
individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA
TORRE MEDICAL CLINIC,

Defendants.

CIVIL DIVISION

No.: 2004-00057-CD

DEFENDANT'S PRETRIAL STATEMENT

**Filed on behalf of Defendant, Henry G. Dela
Torre, M.D.**

Counsel of Record for this Party:

Ronald M. Punttil, Jr., Esquire
Pa. I.D. #42146

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

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

(412) 803-1140

RECEIVED

JAN 18 2007

Court Administrator's
Office

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly Bridget Wilson, and
DONALD NELEN, her husband,

CIVIL DIVISION

Plaintiffs,

No.: 2004-00057-CD

v.

DUBOIS REGIONAL MEDICAL CENTER; PENN
TOWNSHIP RURAL HEALTH CLINIC; DELA
TORRE MEDICAL CLINIC; HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS, D.O., as to
both individually and t/b/d/a PENN TOWNSHIP
RURAL HEALTH CLINIC and/or DELA TORRE
MEDICAL CLINIC,

Defendants.

DEFENDANT'S PRETRIAL STATEMENT

AND NOW, comes the Defendant, Henry G. Dela Torre, M.D., by and through his attorneys, MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, and RONALD M. PUNTIL, JR., ESQUIRE, and files the within Pretrial Narrative Statement and, in support thereof, avers as follows:

I. NARRATIVE STATEMENT

The Plaintiff, Bridget Nelen, presented to the Penn Township Clinic on or about August 18, 2000. At that time, she was seen by Dr. Wirths. Mrs. Nelen was complaining of "shakiness for 1 ½ years", along with urinary frequency, difficulty concentrating, and some emotional problems. She provided a history of smoking one pack of cigarettes per day for 25 years. Physical examination was essentially normal with lungs noted as being "quite clear." Dr. Wirths placed the patient on Xanax and ordered blood work for possible alcohol abuse.

The Plaintiff returned in September of 2000 complaining of continued depression and anxiety, as well as shakiness in her right hand. At that time, Dr. Wirths referred the patient to

Dr. Osgood, a neurosurgeon in Altoona. Dr. Osgood evaluated the patient in September and noted that he believed she suffered from benign tremor. He made no treatment recommendations. The patient was seen by Dr. Wirths in the clinic on November 2, 2000. At that time, she was complaining of stomach pain, pain between her shoulder blades, nausea, and vomiting. Dr. Wirths diagnosed her pain as being consistent with a ruptured right ovarian cyst but did not believe she had any significant problems and provided her with Tylenol #3 for pain.

The patient's symptoms worsened and she presented to the Emergency Room at Clearfield Hospital in the evening of November 1, 2000. She still had epigastric pain and vomiting. The Emergency Room physician ordered abdominal and chest x-rays. The Emergency Room physician diagnosed her as suffering from possible pneumonia and provided Zithromax, as well as IV antibiotics. The impression of the x-ray indicated, "very probable round pneumonia in the right middle lobe. Follow up studies are recommended after medical treatment.

The x-ray report in the patient's chart was initialed by Dr. Wirths. It was also noted that the patient was contacted and advised the secretary that she had received antibiotics from the Emergency Room physician.

Dr. Dela Torre's first contact with the patient occurred on November 14, 2000. She was complaining of headaches which had been fairly constant for approximately two years. She also had shakiness in her hands. Dr. Dela Torre noted that the patient had been to the Emergency Room and was diagnosed with pneumonia. His note states, "She was sent to the ER and was diagnosed with very probably pneumonia in the right middle lobe." He also noted that the patient was seen by Dr. Osgood and he diagnosed her as suffering from a benign tremor. Dr. Dela Torre did counsel the patient to stop smoking. Dr. Dela Torre's physical exam was essentially within normal limits. The lungs were clear, however, she did have some tremors in

her right hand. At that time, his impression was benign tremor and headaches and, therefore, he prescribed Neurontin and referred the patient for an MRI.

Dr. Dela Torre saw the Plaintiff on December 14, 2000 and January 23, 2001 at those visits there were no significant complaints of chest pain or breathing difficulties. Or lung problems

The Plaintiff was next seen by Dr. Wirths on September 24, 2001 and January 28, 2002. His physical examination revealed that the lungs were clear with no significant problems. Dr. Wirths recommended that the Plaintiff return to the clinic in two days for evaluation by Dr. Dela Torre.

The patient was evaluated by Dr. Dela Torre on January 30, 2002. He noted that she was feeling better, but was still constipated. Physical examination showed some rhonchi in the lungs which Dr. Dela Torre attributed to the patient's long history of cigarette smoking. His assessment was chronic constipation, chronic respiratory problems, and tremor. He recommended an enema and liquid diet, as well as possible referral to the acupuncturist.

Dr. Dela Torre's last evaluation of the patient occurred on May 1, 2002. At that time, she was complaining of possible menopause. She continued to have headaches and photophobia. The patient was fairly upset and Dr. Dela Torre offered to refer her to any physician for further evaluation. He recommended the Cleveland Clinic and arranged for an evaluation with a neurologist at the Cleveland Clinic. Dr. Dela Torre once again counseled the patient to stop smoking. Dr. Dela Torre diagnosed the Plaintiff with migraine headaches and anxiety. He also considered a possible hormonal imbalance and a personality disorder. At that time, he recommended Imitrex for headaches, as well as Xanax. He also ordered a thyroid profile and other blood work, as well as an MRI.

The patient did undergo the MRI on May 8, 2002. The report showed possible lacunar infarct and changes consistent with small vessel disease. This is consistent with her smoking history. Dr. Dela Torre recommended that the patient stop smoking, take Ecotrin for possible stroke, increase fluids, and exercise. Dr. Dela Torre had no further contact with the patient after reviewing the MRI results.

The patient was eventually seen again at the Clearfield Hospital Emergency Room on November 1 2002. A subsequent x-ray revealed a pulmonary mass and she was later referred to an oncologist who diagnosed lung cancer.

Dr. Dela Torre denies that he was negligent in the treatment of the patient.

II. EXHIBITS

1. Any and all pleadings, Answers to Interrogatories, Responses to Requests for Production of Documents and all items exchanged in discovery for the subject litigation.
2. Diagrams of the human anatomy;
3. Deposition transcript of Henry G. Dela Torre, M.D., taken on October 19, 2004;
4. Deposition transcript of Bridget Nelen, taken on October 19, 2004;
5. Deposition transcript of Phoung T. Wirths, D.O., taken on October 19, 2004;
6. Deposition transcript of Ms Nellen., taken in March 2005.
7. Deposition transcript of Mark Shaw, D.O., taken on November 11, 2005;
8. Any and all medical records of the Plaintiff, Bridget Nelen, including:
 - a. Medical records of Defendants,
 - b. Medical records of Clearfield Hospital;
 - c. Medical records of Jack D. Shocker, M.D.
 - d. Medical records of Henry G. Dela Torre, D.O.
 - e. Medical records of James Davidson, D.O.

- f. Medical records of Dr. Osgood;
 - g. Medical records of Dr. Kinosian
9. Any and all exhibits identified in Plaintiffs' Pretrial Statement.

III. WITNESSES

A. Liability Witnesses

- 1. Henry G. Dr. Dela, D.O.;
- 2. Phoung T. Wirths, D.O.;
- 3. Bridget Nelen;
- 4. Donald Nelen;
- 5. Mark Shaw, M.D.;
- 6. Office personnel of Grampian Medical Clinic;
- 7. Individuals identified in discovery;
- 8. Representative of Clearfield Hospital;
- 9. Jack D. Shocker, M.D.;
- 10. James Davidson, D.O.;
- 11. Dr. Osgood; and
- 12. Dr. Kinosian.

B. Medical/Damage Witnesses

- 1. As set forth in the liability portion of this Pretrial Statement.
- 2. Records custodians of medical providers listed in liability portion of this Pretrial

Statement.

C. Expert Witnesses

- 1. Lee H. McCormick, M.D.
McCormick Medical Associates
2708 Brownsville Road
Pittsburgh, PA 15227
(Curriculum vitae and expert report are attached)

IV. LEGAL THEORY UPON WHICH DEFENSE IS PREDICATED

Defendant denies that his conduct resulted in any injuries or damages alleged for reasons set forth in the accompanying report.

V. DESCRIPTION OF DAMAGES CLAIMED

Defendant denies that his conduct caused any of the damages claimed by Plaintiffs.

VI. EXTRAORDINARY EVIDENTIARY PROBLEMS

None anticipated.

VII. STIPULATIONS

None at this time.

VIII. SPECIAL POINTS FOR CHARGE

None anticipated at this time. Defendant's Requested Points for Charge will be submitted to the trial court at the close of evidence.

IX. ESTIMATED TIME FOR TRIAL

Defendant estimates approximately two days to rebut the Plaintiffs' case-in-chief and a total trial time of four to five days.

X. RESERVATION OF RIGHTS

1. Defendant reserves the right to call as witnesses on the issue of liability, damages and/or condition, any person identified or otherwise referred to by any other party or witness in Answers to Interrogatories, deposition testimony and/or any Pretrial Statement filed by any other party.

2. Defendant reserves the right to call as witnesses on the issue of liability, damages and/or condition, any and all persons named within the instant Pretrial Statement without regard to any classification as to liability, damage and/or condition.

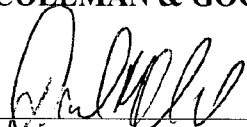
3. Defendant reserves the right to present any impeaching and/or contradicting evidence, including witnesses not otherwise identified herein.

4. Defendant reserves the right to amend and/or supplement this Pretrial Statement to include any information which may be received and discovered as a result of discovery matters pending but not yet completed.

5. Defendant reserves the right to otherwise amend and/or supplement this Pretrial Statement at any time up to time of trial.

Respectfully submitted,

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


for Ronald M. Puntill, Jr., Esquire
Counsel for Henry G. Dela Torre, M.D.

McCORMICK MEDICAL ASSOCIATES

2708 Brownsville Road
Pittsburgh, PA 15227

(412) 883-6330
Fax (412) 883-3277

Lee H. McCormick, M.D.

December 19, 2006

Ronald M. Puntill, Jr., Esquire
Marshall, Dennehey, Warner, Coleman & Goggin
Suite 2900, U.S. Steel Tower
500 Grant Street
Pittsburgh PA 15219

RE: Bridget Nelen and Donald Nelen v. Henry G. Dela Torre, M.D.
Your File No.: 16243-00452

Mr. Puntill:

I have reviewed the various materials you have provided regarding the above captioned case, including Plaintiffs Complaint in Civil Action, various medical records of Bridget Nelen, deposition transcripts of Bridget Nelen, Phoung T. Wirths, D.O., and Henry G. Dela Torre, M.D., as well as expert reports of Jack D. Shocker, M.D., Michael P. McGonigan, M.D. and Richard D. Bruchlman, M.D. At your request, I offer the following comments.

Bridget Nelen was a patient of the Penn Township Clinic in Grampian, PA. Dr. Dela Torre and Dr. Wirths had separate practices at the clinic but frequently saw one another's patients. Mrs. Nelen had previously seen Dr. Wirths on 8/18/00 and 9/1/00, and presented on 11/1/00 because of abdominal pain. Dr. Wirths diagnosed a ruptured ovarian cyst and treated her with reassurance and analgesic medication. Her pain persisted and she was apparently unhappy with Dr. Wirths' management, so she presented to Clearfield Hospital Emergency Room later that day. As part of her evaluation she had a chest x-ray, which was interpreted as: "Very probable round pneumonia in the right middle lobe. Follow up studies are recommended after medical treatment. CT study of the chest may be useful at a later date."

It is unclear when Dr. Wirths received the report of that chest x-ray, but he made the following notation on the report: "is pt. on abx? Need f/u". One of his staff members responded with the notation "Is on z-pak + IV antibiotic X2 at ER". There is no evidence in the medical record that Dr. Wirths made any specific recommendations or arrangements for follow up.

Mrs. Nelen's next contact with the Clinic was on 11/14/2000, and, in keeping with her pattern of seeing whichever doctor was available, she was seen by Dr. Dela Torre. The report of the chest x-ray taken in Clearfield Hospital Emergency Room was apparently not available to Dr. Dela Torre at the time of that visit. The medical record states that she was there for follow up, but reported that she felt much better. It appears that

the bulk of the office visit was devoted to her concerns about headaches and tremors. Although Mrs. Nelen in her deposition (a retrospective recollection of that visit) states that she reported an ongoing cough, Dr. Dela Torre's contemporary report of that visit makes no mention of cough.

Mrs. Nelen's subsequent visits at the Clinic were on 1/23/01 (allergic rhinosinusitis) with Dr. Dela Torre, 9/24/01 (viral syndrome) with Dr. Wirths, 1/28/02 (constipation) with Dr. Wirths and 1/30/02 (chronic constipation) and 5/1/02 (migraine headache, chronic anxiety) with Dr. Dela Torre. On 10/31/02 she again presented to Clearfield Hospital Emergency Room because of chest pain, and evaluation at that time revealed lung cancer.

It has been alleged that Dr. Dela Torre was negligent in failing to order follow up chest x-rays and in delay in diagnosis of lung cancer.

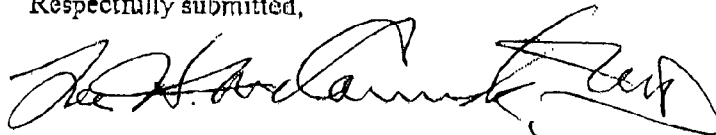
The medical records show that Mrs. Nelen saw both Dr. Dela Torre and Dr. Wirths, depending upon who was available at the time she needed medical care. It appears that the first time that Dr. Dela Torre saw Mrs. Nelen was on 11/14/00. Since she had been seen on three previous occasions (8/18/00, 9/1/00, and 11/1/00) by Dr. Wirths, Dr. Dela Torre appropriately assumed that Dr. Wirths was Mrs. Nelen's primary physician. Therefore, he assumed that he was providing episodic care on 11/14/00. Although the visit was ostensibly for "follow up", it appears that Mrs. Nelen was more concerned about other problems, and did state that she was feeling better. She made no complaints referable to her recent diagnosis of pneumonia; specifically, there is no mention of fever, cough, chest pain or any other symptoms one might reasonably expect from an ongoing pulmonary problem. The medical record of that visit is clear that Mrs. Nelen was primarily concerned about her headaches and tremors. Dr. Dela Torre did address the previous diagnosis of pneumonia, noting that the presentation was muscle aches and nausea, and stating his opinion that it was likely that she had a viral syndrome, vomited and aspirated, causing the pneumonia. There is no mention on that visit that the diagnosis was a "round" pneumonia, and he apparently did not have available the x-ray report from her Emergency Room visit. Since she reported feeling better, he spent the majority of the office visit addressing her major concerns of headaches and tremors.

The radiologist who interpreted Mrs. Nelen's chest x-ray recommended follow up. It is clear that was an appropriate recommendation. What is not clear is whose responsibility it was to initiate the follow up. Since Dr. Wirths was Mrs. Nelen's primary physician, and since Dr. Wirths was the one who received the chest x-ray report, it is my opinion that Dr. Wirths was the one who was responsible for ordering the follow up. Indeed, Dr. Wirths' handwritten note on the chest x-ray report says "need f/u (follow up)". That notation, however, does not meet the standard of care. He should have specified what follow up was needed, when it was needed, and should either have contacted Mrs. Nelen himself to inform her or directed one of his office staff to do so. When Dr. Dela Torre saw Mrs. Nelen on 11/14/00, he assumed he was simply covering for Dr. Wirths and therefore did not have primary responsibility for her care. Since she reported feeling better, made no complaints of cough or chest pain and was more concerned about headaches and tremors, it was not unreasonable for Dr. Dela Torre to assume that there were no unresolved issues from her recent illness.

In summary, it is my opinion that Dr. Dela Torre's care of Mrs. Nelen was appropriate and met the accepted standard of care. He believed that he was providing episodic care for another physician's patient. He addressed the issues that appeared to be most important to her at that time. She reported feeling better and he assumed that her previous illness was now resolved. He did not have access to the report of her chest x-ray; that report was seen by Dr. Wirths and should have been followed up by him.

The opinions expressed have been reached with a reasonable degree of medical certainty.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lee H. McCormick", with a stylized flourish at the end.

Lee H. McCormick, M.D.

CURRICULUM VITAE



NAME: Lee Hamilton McCormick

BIRTH DATE: August 19, 1933

ADDRESS: **HOME:** 194 Southvue Drive
Pittsburgh, Pennsylvania 15236-2025
Telephone: (412) 885-4088
Email: lmcormick@pol.net

OFFICE: 2708 Brownsville Road
Pittsburgh, Pennsylvania 15227
Telephone: (412) 885-6330
Fax: (412) 885-3277
Web page: <http://www.drmmcormick.yourmd.com>

LICENSURE: Pennsylvania, MD-026803-L, 1959

CERTIFICATION: American Board of Family Practice, 1977
Recertified 1984, 1991, 1997
American Society of Addiction Medicine, 1986
(Formerly American Medical Society on Alcoholism And Other Drug Dependencies)
Recertified 1996

EDUCATION: M.D., 1958, University of Pittsburgh, Pittsburgh, PA
B.A., 1956, Washington & Jefferson College, Washington, PA
Graduated 1951, Charleroi High School, Charleroi, PA

POSTGRADUATE TRAINING: Internship, 1958-1959, South Side Hospital, Pittsburgh, PA
Residency, 1963-1964, Internal Medicine, Montefiore Hospital,
Pittsburgh, PA

PRACTICE EXPERIENCE:	Family Practice	1970-Present
		1959-1961
	Chronic Disease, Full Time	1964-1970
	John J. Kane Hospital	
	Pittsburgh, PA	
	Emergency Room	1961-1963
	Braddock General Hospital	
	Braddock, PA	
	Addiction Medicine	1971-2000

**HOSPITAL
APPOINTMENTS
AND OFFICES
HELD:**

SOUTH HILLS HEALTH SYSTEM	1977-Present
(Jefferson Hospital)	
Medical Director,	1977-2000
Drug & Alcohol Recovery Services	
Chairman, Quality Assurance Committee	1985-1988
President, Medical Staff	1983-1984
Vice President, Medical Staff	1981-1982
Chairman, Credentials Committee	1981-1982
Chairman, Bylaws Committee	1981-1982
	1991-1994
Secretary/Treasurer, Medical Staff	1979-1980
Chairman, Continuing Medical Education Committee	1979-1980

ST. CLAIR MEMORIAL HOSPITAL	1997-Present
------------------------------------	---------------------

BRADDOCK HOSPITAL	1986-1997
Medical Director, Chemical Abuse Services	1986-1997

UNIVERSITY OF PITTSBURGH MEDICAL CENTER	1995-1996
Clinical Assistant Professor, Psychiatry	1995-1996
Director, Addiction Treatment Program Development	1995-1996

ST. FRANCIS MEDICAL CENTER	1994-1996
Associate Medical Director, Center for Chemical Dependency Treatment	1994-1996

ST. JOSEPH'S HOSPITAL	1970-1977
Chairman, Family Practice Department	1976
Chairman, Medical Records Committee	1975

JOHN J. KANE HOSPITAL	1964-1970
President, Medical Staff	1967-1970
Secretary, Medical Staff	1965-1967
Medical Director, Inhalation Therapy Dept.	1965-1970
Clinical Director, Restorative Services Dept.	1966-1970

**PROFESSIONAL
POSITIONS
HELD:**

Medical Director, Glenbeigh Family Center, Pittsburgh, PA	1985-1987
Medical Director, Whittaker Health Services of Pa., Pittsburgh, PA	1984-1985

Medical Director, Medical Weight Management of Pittsburgh	1989-1990
Co-Medical Director, Greenbriar Treatment Center, Washington, PA	1992-1994
Member, Pennsylvania Attorney General's Medical/Legal Advisory Board on Drug Abuse	1989-1995
Medical Director, Prime Medical Group, P.C.	1994-1998
Editorial Advisory Board, NAMSS Journal	1995-1996
Member, Credentials Committee, Keystone Health Plan West	1995-1997
Member, Medicine Quality Sub-Committee, Keystone Health Plan West	1995-1997
Member, Congestive Heart Failure ad hoc Committee, HealthAmerica	1996-1997
Member, Work Group on Accreditation Issues For Small and Rural Hospitals, Joint Commission on Accreditation of Healthcare Organizations	1995-1998
Regional Medical Director, MED3000	1998
Member, Pennsylvania Attorney General's Ad Hoc Task Force on Domestic Violence	1998
Editorial Board, <i>Physician's News Digest</i>	1999
Medical Director, Medical Solutions, Inc.	1999-Present

**PROFESSIONAL
SOCIETY
MEMBERSHIP:**

AMERICAN MEDICAL ASSOCIATION	
Governing Council, Hospital (Organized)	
Medical Staff Section	
Member at Large	1990-1992
Chair	1992-1996
Chair, Committee on Operations, HMSS	1987
Committee on Late Resolutions, HMSS	1984 June
	1988 Dec.
	1989 June
	Chair 1989 Dec.
	1997
Chair, Ad Hoc Committee on Restructuring OMSS	
Technical Advisory Committee on Health System Reform	1992-1994
AMA Managed Care Partnership	1993-1995
Vice Chair, Macy Foundation Task Force on MD/DO Accreditation, Certification And Licensure	1995-1996

Selection Team, Federation Coordinating Team	1996
Member, State Advisory Committee on E&M Documentation Guidelines	1998
Member, Environment of Care Committee, American Medical Accreditation Program	1999

PENNSYLVANIA MEDICAL SOCIETY

Past President	1998-1999
President	1997-1998
President-Elect	1996-1997
Vice President	1995-1996
Executive Committee	1995-1998
Finance Committee	1996-1997
Board of Trustees	1986-1995
Chair, Hospital Medical Staff Section	1984-1988
Council on Medical Practice	1985-1986
Chair, Drug Abuse Task Force	1987-1992
Alternate Delegate to AMA	1987-1989
Delegate to AMA	1990-Present
Vice Chair, PA Delegation	1998-Present
Committee on Long Range Strategy and Communications	1989-1990
KePRO Oversight Committee	1989-1993
Chair, Committee to Nominate Members to KePRO Board	1990-1992
Chair, Committee on Organization and Operation of Board	1993
Advisory Committee, Physicians Health Programs	1992-1994
Board of Directors, Drug Free Pennsylvania	1998
Medical Assistance Advisory Committee	1990-1999
Chair, Committee on Strategic Planning	1999
PMS-Pa. Bar Assn. Joint Committee	1999-2000
	2000-Present

ALLEGHENY COUNTY MEDICAL SOCIETY

Board of Directors	1984-1995
Chair	1995
Substance Abuse Committee	1980-1993
Delegate to Pennsylvania Medical Society	1985-1986
Treasurer	1988
Secretary	1989-1991
Vice President	1992
President-Elect	1993
President	1994

AMERICAN SOCIETY OF ADDICTION MEDICINE

Medical care in Recovery Committee 1988-1994
Alternate Member, Board of Directors 1997-1999

PENNSYLVANIA SOCIETY OF ADDICTION MEDICINE

President 1996-1997

AMERICAN ACADEMY OF FAMILY PHYSICIANS

Fellow 1978

HONORS:

Listed in *Best Doctors in America: Northeast Region*,
1996-1997, Addiction Medicine
Distinguished Service Award, Washington & Jefferson College
Alumni Association, 1998
United Mental Health Volunteer Award, South Hills Health
System, 2000

**COMMUNITY
ACTIVITIES:**

Speakers Bureau
Allegheny County Medical Society
South Hills Health System
Development Council, Washington & Jefferson College 1983-1985
Pre Health Professions Advisory Committee, Washington & Jefferson College 1986-Present
Chair 1990-1997
Mt. Lebanon Junior Baseball Association 1966-1974
President 1970-1972
Board of Directors, Mt. Lebanon Recreation Center 1967-1969
Church Council, Good Shepherd Lutheran Church, 1967-1969
Scott Township, PA
Board of Elders, Good Shepherd Lutheran Church 2000
Of South Hills, Whitehall, PA

**PERSONAL AND
PROFESSIONAL
REFERENCES:**

Furnished upon request

October, 2001

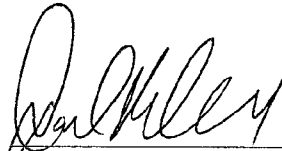
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
DEFENDANT'S PRETRIAL NARRATIVE have been served upon counsel as listed below
this 17th day of January, 2007.

Edward C. Flynn, Esquire
Eckert Seamans, Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
(Attorney for Plaintiffs)

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, P.C.
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499
(Counsel for Dr. Wirths)

Honorable Fred Ammerman
Clearfield County Courthouse
One North 2nd Street
Clearfield, PA 16830



Ronald M. Puntil, Jr., Esquire
Attorney for Defendant Henry G. Dela
Torre, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly BRIDGET WILSON CIVIL DIVISION

and DONALD NELEN, her husband,

No. 2004-00057-CD

Plaintiffs,

vs.

PRETRIAL STATEMENT

DUBOIS REGIONAL MEDICAL CENTER,
PENN TOWNSHIP RURAL HEALTH CLINIC,
DELA TORRE MEDICAL CLINIC, HENRY G.
DELA TORRE, M.D., and PHOUNG T. WIRTHS,
D.O., as to both individually and t/d/b/a PENN
TOWNSHIP RURAL HEALTH CLINIC, and/or
DELA TORRE MEDICAL CLINIC,

Defendants.

Code:

Filed on behalf of DuBois Regional Medical Center
and Phoung T. Wirths, M.D., two of the defendants

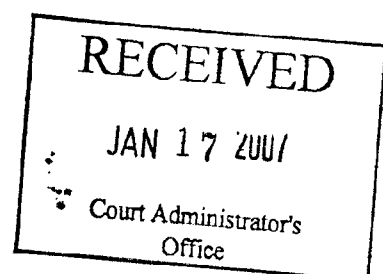
Counsel of Record for This Party:

David R. Johnson, Esquire
PA I.D. #26409

Brad R. Korinski, Esquire
PA I.D. #86831

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

(412) 232-3400



PRETRIAL STATEMENT

NOW COME Phoung T. Wirths, M.D. and DuBois Regional Medical Center, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following pretrial statement pursuant to all applicable rules of civil procedure.

I. NARRATIVE STATEMENT OF THE FACTS

In this lawsuit, plaintiffs allege that the defendants failed to properly recognize and treat signs and symptoms of wife-plaintiff's lung cancer from approximately November of 2000 through November 2002. The evidence in this case will establish that neither DuBois Regional Medical Center nor Phoung T. Wirths, M.D. are liable to plaintiffs under any of the theories of liability stated in the complaint. The evidence will further prove that, at all times relevant, Dr. Wirths acted in accordance with the standards of care governing his professional and specialty of practice. The evidence will also prove that the alleged injuries and damages sustained by wife-plaintiff do not arise from the contended professional malpractice of Dr. Wirths nor from any acts of omission or commission by DuBois Regional Medical Center as a corporate entity.

To the contrary, in rendering medical treatment to wife-plaintiff as her primary care physician during a limited four month span of time, Dr. Wirths acted in a careful, prudent manner, consistent with the best interests of wife-plaintiff. Each time he encountered wife-plaintiff, Dr. Wirths rendered appropriate attention to her complaints. Particularly as to the at-issue chest x-ray of November 1, 2000, Dr. Wirths correctly reviewed that radiographic study, confirmed wife-plaintiff's treatment course to that point, and recommended additional follow-up care. However, subsequent to November 1, 2000, wife-plaintiff determined she no longer wanted Dr. Wirths to serve as her primary care physician. After such time, wife-plaintiff's medical care fell outside the control of Dr. Wirths. Indeed, while criticizing Dr. Wirths for her poor health outcome, wife-plaintiff choose not to maintain a continuity of care and did not afford Dr. Wirths the opportunity to treat her and to eventually ascertain the etiology of her allegedly ongoing health complaints.

And, the evidence in this case will also show that wife-plaintiff has not incurred any substantial medical bills or medical treatment beyond that which she would have naturally incurred had her condition been apprehended at an earlier date; in like manner, any form of earlier diagnosis would not have significantly altered wife-plaintiff's medical outcome or health prognosis - which, in any event, is generally favorable as to present vitality and future outlook. To the extent that plaintiff attempts to argue that an early diagnosis of her cancer would have materially altered her treatment course, such opinions are speculative as to both the timing of the alleged misdiagnosis and the alteration of the medical care purportedly caused.

At the time of the events giving rise to this lawsuit, wife-plaintiff, then aged 39, had been a chronic, pack-a-day smoker since the age of 14, who steadfastly resisted the entreaties of her medical providers to cease her nicotine habit because of its adverse affects on her health. Indeed, even during the two years wife-plaintiff complains she did not receive proper treatment from the defendants and suffered from breathing/chest problems, her smoking continued unabated.

Wife-plaintiff's initial visit with Dr. Wirths occurred on August 18, 2000. She did not mention any complaints of chest discomfort or breathing troubles, instead her problems focused upon urinary incontinence and mental health issues including depression. Wife-plaintiff next saw Dr. Wirths on September 1, 2000 for follow up for her depression and anxiety. She complained of tremors in her right hand which she attributed to her anti-depressive medication. No other health issues were reported.

At her appointment on November 1, 2000, wife-plaintiff complained of neck and back pain, vomiting and abdominal discomfort. Dr. Wirths performed an appropriate physical exam and assessed lower right quadrant pain. Her also ordered blood tests and recommended that she follow-up as needed.

Later in the day of November 1, 2000, wife-plaintiff, without contacting Dr. Wirths, visited the emergency room at Clearfield Hospital for her continued abdominal pain. In conjunction with her exam, she received a chest x-ray. According to the report of her treating physician, Dr. Mark Shaw, his interpretation of the x-ray was that it showed, "the presence of a probable round pneumonia in the right middle lobe. However, a mass cannot be totally ruled out." At Clearfield Hospital, wife-plaintiff was

prescribed antibiotics for the suspected pneumonia. Dr. Shaw also explained to her the possibility that she could have a mass in her lung and thus emphasized to her the need to secure an additional chest x-ray in 10-14 days. Despite having been told this significant information, wife-plaintiff never made a request for a further chest x-rays.

Thereafter, Dr. Wirths received and reviewed the chest x-ray report from November 1, 2000 and recommended follow-up care. Importantly, after that date, wife-plaintiff, of her own volition, did not return to Dr. Wirths' care - choosing instead to treat with his colleague, co-defendant, Dr. Dela Torre. From that point forward, she considered Dr. Dela Torre - not Dr. Wirths - to be her primary care physician, and she proceeded to see him repeatedly over an approximate two year period. Subsequent to her switching of physicians, Dr. Wirths saw wife-plaintiff on only two occasions, both of which (on September 4, 2001 and January 28, 2002) were for purposes completely unrelated to problems with her respiratory tract and/or lungs.

Dr. Wirths had no reasonable basis to believe that wife-plaintiff was not being properly treated and cared for by her other healthcare providers. After she had just seen Dr. Wirths, wife-plaintiff went to the emergency room of Clearfield Hospital. Her follow-up from that visit was with Dr. Dela Torre, not Dr. Wirths, although Dr. Wirths had been the one who saw the x-ray report and instructed his office to have her make an office appointment. Once wife-plaintiff requested that her primary care be with Dr. Dela Torre, and not Dr. Wirths, the office staff made the appointment with Dr. Dela Torre, and changed the internal office records to reflect that this transfer had occurred. Plaintiff then had her follow-up visit with Dr. Della Torre, but, at the time of that visit, plaintiff negligently failed to disclose all the information that she had been given at Clearfield Hospital. Thus, the complaints of left-sided chest pain - for which plaintiff went to Clearfield Hospital - were never even communicated to Dr. Wirths.

On October 31, 2002, wife-plaintiff returned to Clearfield Hospital and a repeat chest-x-ray revealed a large mass in the right lung field, which a biopsy then confirmed as a malignant. Wife-plaintiff was then diagnosed with "infiltrating moderately differentiated squamous cell carcinoma" in her right lung. She subsequently underwent radiation and chemotherapy, followed by the removal of the affected

lung. In the summer of 2003, she had a brain metastasis of the cancer which was successfully treated through surgical excision and radiation therapy. Wife-plaintiff's present condition is noted by her physicians to be medically stable, and her cancer had not spread or returned.

The evidence and testimony will establish that, even though the illness that befell wife-plaintiff is a serious one, its occurrence is not indicative of a breach of the standard of care by her healthcare providers, particularly Dr. Phoung T. Wirths and DuBois Regional Medical Center. To the contrary, the facts and medical records establish that at no time during her visits with Dr. Wirths did wife-plaintiff evidence any clinical signs, symptoms or complaints about her lungs, respiratory system or general health such that Dr. Wirths should have suspected that she was suffering from lung carcinoma, or which should have caused him to doubt or question the findings and treatment recommendations of other involved healthcare providers upon whom he trusted and relied. Indeed, at all times relevant, Dr. Wirths utilized appropriate clinical judgment in his treatment of wife-plaintiff and did not in any way deviate from the standard of care applicable to family practice physicians in similar circumstances.

The evidence and testimony will also show that wife-plaintiff's subsequent medical treatment, outcome and prognosis would have been troublesome under any circumstances, and would not have been materially altered even if her diagnosis had been made at an earlier time. And, to the extent that her diagnosis could have been made sooner, it could not have been so made by Dr. Wirths, since wife-plaintiff selected to actively treat with another physician. Moreover, the evidence and testimony will demonstrate that wife-plaintiff bears substantial responsibility for her outcome, in that: she refused to give up smoking; she did not fully and frankly communicate her healthcare problems to her physicians; and she never adhered to the instructions of Dr. Shaw concerning additional chest x-rays. Thus, all of the evidence and testimony will illustrate that wife-plaintiff's injuries occurred despite the Dr. Phoung T. Wirths exercising appropriate due care. And, there is no evidence that DuBois Regional Medical Center, the alleged employer/principal of Dr. Wirths and the co-defendant physician, Dr. Dela Torre, committed any independent act of professional negligence to cause harm to plaintiffs. The evidence will establish the abundant contributory negligence on the part of wife-plaintiff.

Finally, the evidence and testimony will establish that, based upon the available medical records and the deposition testimony, the residual injuries and damages being claimed by wife-plaintiff are exaggerated and speculative. First, any residual injuries or disabilities presently experienced stand as the natural outcome of wife-plaintiff's medical condition and have not been caused by the negligence of these defendants, Dr. Wirths or DuBois Regional Medical Center. Second, the evidence and testimony will show that wife-plaintiff has had the ability to resume the semblance of a normal life, with the concomitant opportunity to engage in many of the activities and pursuits which she enjoyed prior to the diagnosis of her illness. To the extent wife-plaintiff claims an inability to participate in the workforce, this is a consequence of her underlying illness and cannot be attributed to the defendants. The evidence and testimony will also prove that there is little factual basis for husband-plaintiff's claim for loss of consortium, since any detriment to the marital relationship would have been naturally occasioned by wife-plaintiff's lung cancer regardless of the conduct of any of the defendants. In any event, the testimony will show that both plaintiffs continue to participate in a generally pleasant relationship and union.

II. EXHIBITS

1. The medical records of Bridget Nelen from the following facilities/treatment providers.

- (a) Altoona Hospital
- (b) Dr. James Burke
- (c) Dr. Arthur DeMarsico
- (d) Dr. Jack Shocker
- (e) Dr. James P. Davidson
- (f) Clearfield Family Medicine
- (d) Clearfield Clinic
- (e) Dr. Todd Rozen
- (f) Dr. Mark Stillman
- (g) Clearfield Hospital
- (h) DuBois Regional Medical Center/Penn Township Rural Health Clinic
- (i) Dr. Phoung T. Wirths
- (j) Dr. Henry Dela Torre
- (k) The Cleveland Clinic
- (l) Dr. Ralph Cardamone
- (m) Ernest Jones, M.D.
- (n) Amer Khouri, M.D.
- (o) Bruno Romeo, M.D.
- (p) Mark Shaw, M.D.

2. Radiographs, x-rays, CT scans, ultrasounds, MRIs and imaging films pertaining to wife-plaintiff's medical treatment.
3. Wife-plaintiff's employment records.
4. Income and tax documents from plaintiffs.
5. Excerpts of depositions
6. Charts and diagrams with regard to evidentiary issues.
7. Any documents used as an exhibit in any deposition taken in this case.
8. Curriculum vitae of Richard Bruehlman, M.D.
9. Report of Richard Bruehlman, M.D.
10. Any and all exhibits listed in plaintiffs' pretrial statements.
11. Any and all exhibits listed in the pretrial statements filed by any defendant.
12. Any and all documents referred to in the expert reports filed by plaintiffs.
13. Documents and materials from wife-plaintiff's Social Security Disability File.
14. Any expert reports proffered on behalf of Dr. Dela Torre.
15. Curriculum vitae of any experts proffered by or on behalf of Dr. Dela Torre.
16. Curriculum vitae of Dr. Wirths
17. Any and all documents produced during discovery by any party.
18. Anatomical models and diagrams, which may be enlarged as needed for illustrative purposes.

III. WITNESSES

All witnesses may be called as to liability or damages.

1. Phoung T. Wirths, M.D., defendant
2. Henry Dela Torre, M.D., co-defendant
3. Bridget Nelen, plaintiff
4. Donald Nelen, plaintiff
5. Mark Shaw, D.O., c/o Clearfield Hospital
6. Richard Bruehlman, M.D.

5548 Route 8

Gibsonia, PA

(To testify in accordance with his expert report dated December 14, 2006, attached hereto as exhibit A, together with his CV, attached hereto as exhibit B).

7. Dale and Valerie Johnston
33 Tubbs Road, Curwensville, PA
8. Alex and Mary Kay Yarger
Orange Road, Houtzdale, PA
9. Jack D. Shocker, M.D., c/o Altoona Hospital
10. Any expert witness identified on the pretrial statement of co-defendant, Dr. Dela Torre (to testify as an expert witness pursuant to the reports supplied by co-defendant)
11. Any records custodian or other person necessary to authenticate any of the exhibits listed above.
12. Any individuals who rendered healthcare treatments to wife-plaintiff are potential witnesses to testify at trial.

IV. LEGAL THEORY

These defendants believe that there is no basis upon which plaintiffs should be able to recover in this case, given the evidence that will be presented.

V. DAMAGES

Plaintiffs allege injuries related to wife-plaintiff's diagnosis of lung cancer, the removal of her right lung and the metastasizing of that cancer to her brain. It is defendants' position that there are no damages to be recovered because the standard of care was met and there was no causal negligence. Wife-plaintiff would have suffered considerable injuries because of the grave nature of her existing medical condition. Moreover, the economic damages being sought are exaggerated and without credible factual foundation.

VI. EVIDENTIARY ISSUES

Defendants will file motions in limine to preclude expert testimony against Dr. Wirths to the extent that plaintiffs intend to offer expert liability opinions against Dr. Wirths which do not conform to requirements of the Pennsylvania M-Care Act. Defendants may also file motions in limine, depending

upon the pretrial disclosures of plaintiffs, to preclude plaintiffs from pursuing liability theories plead in the complaint which lack the support of expert opinion, or, conversely, to prohibit plaintiffs from offering liability opinions at trial which do not have a predicate foundation in the complaint.

VII. STIPULATIONS

None as yet.

VIII. POINTS FOR CHARGE

To be provided.

IX. ESTIMATED TIME FOR TRIAL

3-5 days.

X. RESERVATIONS

1. Defendants have listed potential exhibits in recognition of their obligation to advise all parties of potential exhibits, depending upon what may transpire at trial. However, by identifying any exhibit, defendant does not waive any objections to the admissibility, relevancy or authenticity of said exhibit.

2. Defendants may utilize all or part of any exhibit identified above, including complete documents or excerpts thereof, as well as all or part of the files or collections of documents listed as exhibits.

3. Defendants reserve the right to call any witness for purposes of impeachment or rebuttal, regardless of whether such persons are listed in any pretrial statement.

4. Defendants reserve the right to introduce any exhibit for purposes of impeachment or rebuttal, regardless of whether the exhibit is listed on any pretrial statement.

5. Defendants reserve the right to call as a witness any person listed on the pretrial statement of any other party, and for this reason only, incorporates by reference the witness lists on any pretrial statement filed by the other parties.

6. Defendants reserve the right to introduce into evidence any exhibit listed on any pretrial statement filed by any party, and for this reason only incorporates the exhibit list on any pretrial statement

filed by any other party. In doing so, defendants specifically do not waive any objection to any exhibits listed.

7. Defendants may utilize enlargements, overheads or projected images of all or parts of any exhibit.

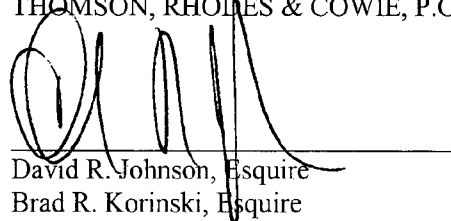
8. Defendants may prepare charts or diagrams before or during trial and have the same marked and introduced as exhibits.

9. Defendants have endeavored to identify all potential witnesses, so as to notify all parties. Defendants do not represent that they control those persons on that witness list, and defendants may or may not actually call said witnesses at time of trial.

10. Defendants reserve the right to amend and/or supplement this pretrial statement depending on the results of any discovery activity yet to be conducted in this litigation.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.

A handwritten signature in dark ink, appearing to be 'D. R. Johnson', is written over a horizontal line.

David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Phoung T. Wirths, M.D. and
DuBois Regional Medical Center, two of the
defendants

December 14, 2005

Renaissance Family Practice
5548 Route 8
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David R. Johnson, Esquire
Thomson Rhodes and Cowie
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

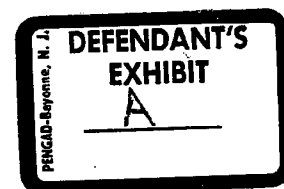
RE: Bridget Nelen, formerly Bridget Wilson and Donald Nelen, her husband
vs. DuBois Regional Medical Center, Penn Township Rural Health Clinic,
Dela Torre Medical Clinic, Henry G. Dela Torre, M.D., and Phoung T.
Wirths, D.O., as to both individually and t/d/b/a Penn Township Rural
Health Clinic, and /or Dela Torre Medical Clinic.
In the Court of Common Pleas of Clearfield County, Pennsylvania, Civil
Division. No. 2004-00057-CD.
Your File No. 13588

Dear Mr. Johnson,

At the request of your paralegal, Debbie Durkin, I have reviewed materials
pertaining to the matter of Nelen v. Dela Torre and Wirths, et al. These documents
include Plaintiffs' Complaint, the Answer and New Matter, various medical records
pertaining to the medical care of Bridget Nelen, and deposition transcripts of Bridget
Nelen, Henry G. Dela Torre, M.D., Phoung T. Wirths, D.O. and Mark Shaw, D.O. I also
reviewed the expert reports of Michael P. Mconigal, M.D. (9/21/04) and Jack D. Shocker,
M.D. (7/6/04 and 11/5/04)). Ms. Durkin asked me to express an opinion as to the care
rendered to Bridget Nelen by Dr. Wirths.

Bridget Nelen (then Bridget Wilson, born 1/4/61) was 39 years old on 8/18/00
when she consulted Phoung T. Wirths, D.O., for complaints that included shakiness,
urinary frequency and incontinence, and symptoms of depression including frequent
crying, difficulty concentrating and difficulty sleeping. Dr. Wirths noted the social
history which included smoking and previously heavy alcohol use. Her physical
examination was normal. Dr. Wirths ordered blood work, but my copy of the records
does not include any lab studies from this date. He prescribed Celexa, Xanax and Kegel
exercises.

Bridget Nelen next visited Dr. Wirths on 9/1/00 for follow up of her depression
and anxiety. She complained of tremor, especially in her right hand when attempting to
write and fatigue made worse by Xanax. Again, her physical examination was normal.
Dr. Wirths elected to continue Celexa and bedtime Xanax and referred her to a
neurologist for evaluation of the tremor.



On 11/1/00, Bridget Nelen consulted Dr. Wirths about abdominal pain that had begun earlier that morning. Dr. Wirths obtained the history of this acute illness, as well as a history of a prior appendectomy. Dr. Wirths examined her and found her to be "slightly tender in the right lower quadrant". A urine dipstick analysis revealed no evidence of urinary tract infection or hematuria. Dr. Wirths thought that her presentation was most consistent with a ruptured ovarian cyst and prescribed Tylenol #3.

Later in the day on 11/1/00, Bridget Nelen visited the emergency room at Clearfield Hospital, where she was evaluated by Mark Shaw, D.O. for continued abdominal pain. Part of that evaluation included a chest x-ray. According to Dr. Shaw's dictation, the x-ray "showed the presence of a probable round pneumonia in the right middle lobe. However, a mass cannot be totally ruled out." He treated her with intravenous Rocephin and Zithromax and discharged her on oral Zithromax. He advised her to follow up with her primary care physician in 2 to 3 days, and a repeat chest x-ray in 10 to 14 days. In his deposition, Dr. Shaw recalled advising Bridget Nelen of the possibility that the chest x-ray revealed a "mass" rather than pneumonia (page 17) and the need for a follow up chest x-ray (page 18).

Richard G. Williams, M.D. reviewed the 11/1/00 chest x-ray as "Very probable round pneumonia in the right middle lobe" and stated "follow up studies are recommended after medical treatment" to rule out the presence of a pulmonary mass lesion. In an undated notation on the typed report, Dr. Wirths wrote "Is pt on Abx? Need F/U". Office staff noted "Is on Z pak + IV antibiotic x 2 at ER".

In her deposition, Bridget Nelen indicated that she was dissatisfied with her encounters with Dr. Wirths (page 27), so she scheduled follow up with Dr. Henry Dela Torre on 11/14/00. From that point forward, she considered Dr. Dela Torre her primary care physician (page 37 of her deposition transcript). On 11/14/00, Dr. Dela Torre reviewed her history and noted "She went to the ER and was diagnosed with very probable pneumonia in the right middle lobe." He also noted "Pt feels a lot better" and "Pt is over it right now." From his note, her chief concerns at that visit appeared to be persistent tremors of the right hand and daily headaches. He ordered a MRI of the brain and prescribed Neurontin. He made no notation of repeating the chest x-ray or ordering a CT scan of the chest.

Dr. Dela Torre saw Bridget Nelen again on 12/14/00 for follow up of her tremors and headaches, and on 1/23/01 for "allergic rhinosinusitis". She then saw Dr. Wirths on 9/24/01 for "viral syndrome" and on 1/28/02 for constipation, fever and URI symptoms. Dr. Wirths advised her to see Dr. Dela Torre in 2 days for reevaluation. On 1/30/01 Bridget Nelen saw Dr. Dela Torre again for the tremor, constipation, "chronic respiratory problems" that included "frequent coughing spells" and fatigue. He thought "her energetics" might be "deficient" and recommended acupuncture. Her final visit with Dr. Dela Torre on 5/1/02 included complaints of continued headaches, moodiness, fatigue and a sensation of feeling cold. Dr. Dela Torre ordered blood work a MRI of the brain.

Bridget Nelen returned to the emergency department of Clearfield Hospital on 10/31/02 for complaints of left sided chest discomfort. A repeat chest x-ray revealed a large mass in the right mid-lung field. Transbronchial biopsy yielded "infiltrating moderately differentiated squamous cell carcinoma." She has since received treatment with concurrent radiation and chemotherapy, followed by right total pneumonectomy. In the summer 2003 she had a brain metastasis treated with craniotomy and radiation therapy. Her subsequent treatment is beyond the scope of my report.

My review of the records and transcripts that you have sent me indicate that on or about 11/1/00, Bridget Nelen decided that Dr. Wirths should no longer serve as her primary care physician, and that she would seek follow up care after her emergency room visit from Dr. Dela Torre. Dr. Wirths did review the 11/1/00 chest x-ray report, had his staff confirm that Bridget Nelen was receiving antibiotic therapy, and recommended follow up. All of these actions were within the standard of care for a family physician reviewing a report of a chest x-ray obtained at an emergency room.

At the visit on 11/14/00, Dr. Dela Torre relied on her interval history and his physical examination to determine that she had fully recovered from pneumonia. He evaluated her again one month later and twice in 2002, including the 1/30/02 visit during which she complained of "frequent coughing spells." Dr. Dela Torre's decision whether to obtain a follow up chest x-ray or chest CT after the emergency room visit, or rely on his physical examination, was beyond the control of Dr. Wirths.

Dr. Wirths saw Bridget Nelen for complaints unrelated to the lower respiratory tract on 9/4/01 and 1/28/02. At the second of these visits he recommended follow up with Dr. Dela Torre, an indication that both Dr. Wirths and Bridget Nelen considered Dr. Dela Torre her primary physician. Given that, as well as the acute nature of these visits and the complaints that were documented, it is understandable that Dr. Wirths did not address the 11/1/00 chest x-ray abnormality on either date.

In summary, the documents and transcripts that I have reviewed refute Plaintiffs' allegations that actions or inactions by Dr. Wirths contributed to the delay in diagnosis of Bridget Nelen's right lung carcinoma. He met applicable standards of care for a family physician.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruehlman", with a stylized flourish at the end.

Richard D. Bruehlman, M.D., F.A.A.F.P.

CURRICULUM VITAE

Richard Dean Bruehlman, M.D.

Born June 28, 1956 in Wilmington, Delaware. Married to Patricia M. McGuire, M.D. on June 21, 1980. Two children: Luke Bruehlman (born February 15, 1985) and Alyssa Bruehlman (born July 20, 1988).

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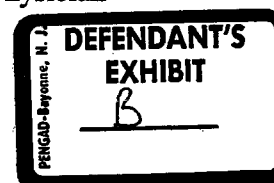
E-mail: waits4snow@msn.com

EDUCATION AND TRAINING

1974 - 1978	University of Delaware Newark, Delaware	B.A. Biology and Psychology
1978 - 1982	Jefferson Medical College Philadelphia, Pennsylvania	M.D.
1982 - 1985	St. Margaret Memorial Hospital Family Practice Residency Program Pittsburgh, Pennsylvania	Residency in Family Practice

WORK EXPERIENCE

1983 - 1985 1987 - 1990	St. Margaret Memorial Hospital Pittsburgh, Pennsylvania	Emergency Room Physician
1985 - 1986	Penslow Family Health Center Holly Ridge, North Carolina	Family Physician National Health Service Corps
1986	Randolph N.H.S.C. Practice Asheboro, North Carolina	Family Physician National Health Service Corps
1987 - 1996	Glenshaw Medical Associates Glenshaw, Pennsylvania Gibsonia, Pennsylvania	Family Physician



1996 – present	Renaissance Family Practice Gibsonia, Pennsylvania	Family Physician
1987 - present	UPMC-St. Margaret Family Practice Residency	Preceptor/faculty member
1987 - present	Pine-Richland School District Gibsonia, Pennsylvania	School Physician

POSITIONS AND COMMITTEES

1984 - 1985	St. Margaret Memorial Hospital Pittsburgh, Pennsylvania	Chief Resident – Family Practice
1991 – 2001	Keystone Health Plan West Highmark Blue Cross/Shield	Member- Quality Improvement Committee
1993 - present	Highmark Blue Cross/Shield	Member and Chair Pharmacy and Therapeutics Committee
1994 - present	University of Pittsburgh School of Medicine	Clinical Instructor in Family Medicine and Epidemiology
1994 - 2002	UPMC-St. Margaret	Chairman, Department of Family Practice and Pediatrics
1996 - present	Renaissance Family Practice	Medical Director
1997 - 1999	TriState Health System St. Margaret PHO	Medical Director
1998 – 2001	Highmark Blue Cross/Shield	Member – Highmark Imaging Advisory Committee
1998 – 2001	UPMC-St. Margaret Family Practice Residency	Director, Family Health Centers
1999 – present	UPMC-St. Margaret Family Practice Residency	Coordinator, Grand Rounds
2002 - present	UPMC-St. Margaret Family Practice Residency	Director, Community Preceptors
1999 – 2001	University of Pittsburgh School of Medicine	Member – Department of Family Practice Chair Search Committee
2004-present	McMaster University	Sentinel Reader

BOARD CERTIFICATION

1985	American Board of Family Practice
1991, 1997, 2003	Recertification, American Board of Family Practice
1993 - 2003	Certificate of Added Qualifications in Sports Medicine

MEDICAL LICENSURE

1983 - present	Commonwealth of Pennsylvania
1983 - present	Drug Enforcement Administration

HOSPITAL PRIVILEGES

1987 - present	UPMC-St. Margaret Pittsburgh, Pennsylvania	Department of Family Practice and Pediatrics
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HONORS

1977	University of Delaware	Richard M. Johnson Memorial Award (Biology)
1978	University of Delaware	Paynter Prize (Pre-medical)
1978	University of Delaware	Phi Beta Kappa
1981	Jefferson Medical College	Alpha Omega Alpha
1984	St. Margaret Memorial Hospital Family Practice Residency	Mead Johnson Award for Graduate Education in Family Practice
1992	American Academy of Family Physicians	Fellow
1995, 1997	UPMC-St. Margaret Family Practice Residency	Family Physician Preceptor of the Year
2004	Allegheny County Medical Society	Ralph C. Wilde Award
2005-06	Best Doctors in America	Listing for best family doctors in Western Pennsylvania

PROFESSIONAL ORGANIZATIONS

American Academy of Family Physicians

Allegheny County Medical Society

PUBLICATIONS

Bruehlman, R. "Atrial fibrillation during flexible sigmoidoscopy in a 36-year-old male." Journal of the American Board of Family Practice. 1995; 8: 403-4.

Brown, C., Dunbar-Jacob, J, Palenchar, D., Kelleher, K., Bruehlman, R., Sereika, S. and Thase, M. "Primary care patients' personal illness models for depression: a preliminary investigation." Family Practice. 2001; 18: 314-20.

Santibanez, T., Norwalk, M., Zimmerman, R., Bruehlman, R. "Effects of the year 200 influenza vaccine delay on elderly patients' attitudes and behaviors." Preventive Medicine. 2003; 37: 417-23.

Nowalk, M., Zimmerman, R., Cleary, S. and Bruehlman, R. "Missed opportunities to vaccinate older adults in primary care." Journal of the American Board of Family Practice. 2005; 18: 20-27.

Brown, C., Battista, D., Bruehlman, R., Sereika, S., Thase, M., Dunbar-Jacob, J. "Beliefs about antidepressant medications in primary care: relationship to self-reported adherence." Medical Care. 2005;43: 1203-07.

RESEARCH

"Depression Symptom Management Study", Western Psychiatric Institute and Clinic and National Institute of Mental Health. Co-investigator.

PRESENTATIONS

"Preparticipation Evaluation for the High School Athlete", UPMC-St. Margaret Family Practice Residency, various times.

"How to Live to Be 100", University of Pittsburgh/St. Margaret's Family Practice Refresher Course, June 1995.

"Strategies to Prevent Liability", University of Pittsburgh/UPMC-St. Margaret Family Practice Refresher Course, June 1999.

"Medical/Legal Issues for the Family Physician", University of Pittsburgh/UPMC St.-Margaret Family Practice Refresher Course, June 2000.

"Real Cases from the Medicolegal World", University of Pittsburgh/UPMC-St. Margaret Family Practice Refresher Course, June 2001. Co-presenter.

"Spirituality in Medicine", UPMC-St. Margaret Family Practice Residency Grand Rounds, April 2002. Co-presenter.

"Approach to the Difficult/Angry Patient", University of Pittsburgh/UPMC-St. Margaret Family Practice Refresher Course, June 2002. Co-presenter.

"Physician, Heal Thyself", University of Pittsburgh/UPMC-St. Margaret Family Practice Refresher Course, June 2003.

"A Day in the Life of a Family Physician in the USA", Family Medicine Symposium, Osh and Bishkek, Kyrgyzstan, October 2003. Panel.

"Pharmaceutical Update", given in various family health centers in Bishkek, Osh, and Jalal-Abad, Kyrgyzstan, October 2003.

"Spirituality in Medicine", University of Pittsburgh/UPMC-St. Margaret Family Practice Refresher Course, June 2004. Co-presenter.

"Day in the Life of Family Physicians in the USA", Family Medicine Symposium, Tbilisi State Medical University, Tbilisi, Georgia, November 2004. Panel.

"Precepting in the U.S. and Improving Precepting Skills", Family Medicine Symposium, Tbilisi State Medical University, Tbilisi, Georgia, November 2004. Co-presenter.

"Polypharmacy Reduction", University of Pittsburgh/UPMC-St. Margaret Family Practice Refresher Course, June 2005. Co-presenter.

"Polypharmacy", UPMC-St. Margaret Hospital Patient Safety Conference, September 1, 2005. Co-presenter.

"Pharmaceutical Update", Oblast Clinical Hospital, Khodjent, Tajikistan, October 17, 2005. Co-presenter.

"Day in the Life of Family Physicians in the USA", Family Medicine Symposium, Dushanbe, Tajikistan, October 20, 2005. Panel.

"Family Medicine Residencies in the USA and the Role of Residents", Family Medicine Symposium, Dushanbe, Tajikistan, October 20, 2005. Moderator.

"Precepting in the US and Improving Preceptor Teaching Skills", Family Medicine Symposium, Dushanbe, Tajikistan, October 20, 2005. Co-presenter.

INTERNATIONAL EXPERIENCE

Physicians with Heart/Heart to Heart International airlift to Kyrgyzstan, October 2003

Physicians with Heart/Heart to Heart International airlift to Georgia, Oct/Nov 2004

Physicians with Heart/Heart to Heart International airlift to Tajikistan, October 2005

COMMUNITY SERVICE

1996 - present	YMCA Camp Kon-O-Kwee/Spencer	Medical consultant to the camp infirmary
1997 - present	YMCA Camp Kon-O-Kwee/Spencer	Board of Directors
2001 – present	Adopt an HT Roadway Hampton Township	Litter control
2002 – present	St. Mary of the Assumption Church Glenshaw, Pennsylvania	Greeter

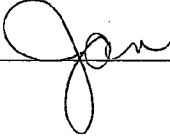
AVOCATIONS

Swimming, bicycling, running, backpacking and alpine skiing

Revised 12/13/05

CERTIFICATE OF SERVICE

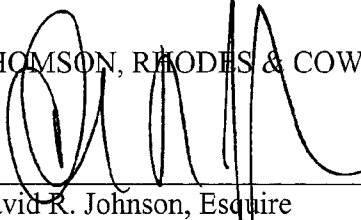
I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 16th day of


_____, 2007:

W. Patric Boyer, Esquire
Eckert, Seamans, Cherin & Mellott, LLC
1001 Corporate Drive
Suite 200
Canonsburg, PA 15317

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

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for DuBois Regional Medical Center, one
of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,
4008 Splash Dam Road
Grampian, PA 16838

CIVIL DIVISION -- LAW

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER;
100 Hospital Avenue
DuBois, PA 15801

**PLAINTIFFS' PRE-TRIAL
STATEMENT PURSUANT TO PA.
R.C.P. 212.2 AND LOCAL RULE
212.4(e)**

and

PENN TOWNSHIP RURAL HEALTH
CLINIC, DELA TORRE MEDICAL
CLINIC, HENRY G. DELA TORRE, M.D.
and PHOUNG T. WIRTHS, D.O. as to both
individually and t/d/b/a PENN TOWNSHIP
RURAL HEALTH CLINIC, and/ or DELA
TORRE MEDICAL CLINIC
RR #1, Box 45A
Route 879
Grampian, PA 16838

Filed on Behalf of Plaintiffs

Counsel of Record for these Parties:

Edward C. Flynn, Esq.
Pa ID No. 35198
Livia F. Langton, Esq.
Pa ID No. 91548

Defendants.

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

JURY TRIAL DEMANDED

RECEIVED

JAN 18 2007

Court Administrator's
Office

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRIDGET NELEN, formerly
BRIDGET WILSON and
DONALD NELEN, her husband,

CIVIL DIVISION

NO. 2004-00057-CD

Plaintiffs,

vs.

THE DUBOIS REGIONAL MEDICAL
CENTER, PENN TOWNSHIP RURAL
HEALTH CLINIC, DELA TORRE
MEDICAL CLINIC, HENRY G. DELA
TORRE, M.D. and PHOUNG T. WIRTHS,
D.O. as to both individually and t/d/b/a
PENN TOWNSHIP RURAL HEALTH
CLINIC, and/ or DELA TORRE MEDICAL
CLINIC

Defendants.

PLAINTIFFS' PRE-TRIAL STATEMENT
PURSUANT TO PA R.C.P. 212.2 AND LOCAL RULE 212.4e

Plaintiffs Bridget Nelen and Donald Nelen, by and through their counsel Eckert Seamans Cherin & Mellott, LLC, file this Pre-Trial Statement Pursuant to Pa. R.C.P. 212.2 and Local Rule 212.4(e), and in support thereof, state as follows:

I. NARRATIVE STATEMENT OF FACTS

Mrs. Nelen presented to Penn Township Rural Health Clinic on or about November 1, 2000, with complaints of abdominal and back pain, with vomiting. She was seen by Dr. Wirths, who attributed her complaints to a probable ruptured ovarian cyst, and prescribed Tylenol. Later that same day, she presented with continued symptoms to Clearfield Hospital Emergency Room, where she underwent abdominal and chest X-rays. The chest X-ray revealed a density in Mrs. Nelen's right lung. The impression of the radiologist who interpreted the X-ray was that the density represented a probable round pneumonia, but specifically indicated that other pathology,

including pulmonary mass, should be considered. The radiologist further recommended follow-up studies, including a CT of the chest. A copy of the report was sent to Dr. Wirths, who initialed the report. Dr. Wirths has testified that he would have placed the report in the front of Mrs. Nelen's chart.

Mrs. Nelen returned to the clinic for a follow-up visit on November 14, 2000. At that time, she was seen by Dr. Dela Torre. According to Dr. Dela Torre, Mrs. Nelen informed him at the time of that visit that she had gone to the Emergency Room on November 1, and had been diagnosed with probable pneumonia. Dr. Wirths has testified that the November 1 X-ray report would have been in the chart at the time of the November 14 visit. Dr. Dela Torre, on the other hand, does not recall seeing the report. He acknowledged, however, that had he seen the report, he would have arranged for a repeat chest X-ray, and most likely a CT Scan. In any event, Dr. Dela Torre did not order any further follow-up studies, because Mrs. Nelen told him that she had been feeling better.

Mrs. Nelen had several more visits at the Penn Township Rural Health Clinic over the next two years, for various complaints. On some of those occasions, she saw Dr. Dela Torre, and on other occasions, she saw Dr. Wirths. At no time over this two year period did either Dr. Wirths or Dr. Dela Torre order any follow-up studies as had been recommended by the radiologist in November, 2000.

On October 31, 2002, Mrs. Nelen presented once again to the Clearfield Hospital Emergency Room with complaints of chest pain, radiating into the left arm. A chest x-ray taken at that time revealed a very large 10 cm mass in the middle lobe of Mrs. Nelen's right lung, which was highly suggestive of malignancy. On November 1, 2002, Mrs. Nelen underwent a bronchoscopy, and subsequent pathology confirmed the mass to be squamous cell carcinoma.

Because the tumor was so large by the time it was diagnosed, it was necessary for Mrs. Nelen to undergo pre-operative chemotherapy and radiation. During the several months of chemotherapy and radiation treatments, Mrs. Nelen suffered various side effects and complications, including severe weight loss, appetite suppression, radiation burns, anemia, difficulty swallowing, nausea, blood transfusions, bronchitis and pneumonia. When Mrs. Nelen was finally cleared as a surgical candidate, on or about January 27, 2003, she underwent a complete pneumonectomy, or removal, of her right lung.

Following the pneumonectomy, Mrs. Nelen began a lengthy period of recuperation with extensive medical testing, examination and follow-up appointments. During this time, Mrs. Nelen began to experience headaches. Further studies in July, 2003, revealed a mass in the left frontal lobe of Mrs. Nelen's brain, indicating that the lung cancer had metastasized to her brain. On or about July 28, 2003, a left frontal craniotomy and resection of the brain lesion was performed, followed by whole brain radiation therapy. Again, Mrs. Nelen faced a lengthy recovery period including extensive medical testing, examination and follow-up appointments.

It is Plaintiffs' contention that Defendants were negligent in failing to order the appropriate follow-up studies in a timely manner, which negligence resulted in a two year delay in diagnosis of Mrs. Nelen's lung cancer. Had the cancer been timely diagnosed, it is likely that Mrs. Nelen's treatment would have been limited to removal of one lobe of her lung, rather than the entire lung. Moreover, she would likely not have required any further treatment, the cancer would have been prevented from metastasizing to the brain, and she would most likely have had a high chance for successful cure. As a result of the delay in diagnosis, she suffered the total removal and loss of her right lung, extensive radiation and chemotherapy, and metastatic disease to the brain requiring craniotomy and additional radiation therapy. She has suffered and will

continue to suffer the physical and cognitive effects of the significant treatment that she has been required to undergo. Moreover, the delay in diagnosis has substantially diminished her chances for successful cure and survival.

In defense of these claims, Dr. Wirths and Dr. Dela Torre has each taken the position that the other was responsible for ordering the proper follow-up studies in November, 2000. In essence, although both doctors were members of the same clinic and both treated Mrs. Nelen at various times, Dr. Wirths has claimed that Mrs. Nelen was Dr. Dela Torre's patient at the time of the November 14, 2000 follow-up visit, and Dr. Dela Torre has claimed that she was Dr. Wirth's patient. Defendants have not disputed the consequences of the two year delay in diagnosis.

II. UNUSUAL QUESTIONS OF LAW

Mrs. Nelen's medical expenses were paid by an ERISA Plan, which provides for a right of subrogation. This right of subrogation under an ERISA Plan preempts the anti-subrogation provisions of the MCARE Act that preclude recovery of and subrogation for medical expenses. *See* 29 U.S.C.S. §1144 and 40 P.S. §1303.508. Therefore, notwithstanding these provisions of the MCARE Act, because any recovery on the part of the Plaintiffs is subject to the subrogation claim, Plaintiffs are entitled to recover medical expenses related to the delay in diagnosis of Mrs. Nelen's lung cancer. *See FMC Corp. v. Holliday*, 498 U.S. 52 (1990).

III. LIST OF WITNESSES

Plaintiffs may call any or all of the following witnesses on the issues of liability or damages at trial:

- | | | |
|----|---------------|-----------------------|
| 1. | Bridget Nelen | Damages and Liability |
| 2. | Donald Nelen | Damages and Liability |
| 3. | Mary Yarger | Damages and Liability |

4.	Valerie Johnston	Damages and Liability
5.	Dawn McCall	Damages and Liability
6.	Doug McCall	Damages and Liability
7.	Friends and Family	Damages and Liability
8.	Dr. Mark R. Shaw	Liability
9.	Dr. Richard G. Williams	Liability
10.	Dr. Henry G. Dela Torre	Damages and Liability
11.	Dr. Phoung T. Wirths	Damages and Liability
12.	Any and all treating physicians identified in the medical records, bills and discovery	Damages and Liability
13.	The Records Custodian(s) for any and all treating practices, hospitals, clinics, etc., to the extent that there is no stipulation in place as to the authenticity of the medical records	Damages and Liability
14.	Representative of Amalgamated Life Insurance Company	Damages

EXPERT WITNESSES

Plaintiffs may call the following individuals as expert witnesses at trial:

- | | | |
|----|--|-----------------------|
| 1. | Michael P. McGonigal, M.D.
South Hills Family Medicine
1000 Higbee Drive, Suite 104
Bethel Park, PA 15102
<i>Reports Attached</i> | Liability |
| 2. | Jack D. Shocker, M.D.
Center for Cancer Care
620 Howard Avenue
Altoona, PA 16601
<i>Reports Attached</i> | Liability and Damages |
| 3. | Donal F. Kirwan, SPHR
Jay K. Jarrell, SPHR
Forensi Human Resources
413 Sylvania Drive
Pittsburgh, PA 15229
<i>Reports Attached</i> | Damages |

RESERVATIONS

1. Plaintiffs reserve the right to call any witness identified in the course of discovery in this case, identified in documents or medical records produced during the course of discovery, identified in any response, answer, or other pleading, identified in any other party's Pre-Trial Statements, or called by any other party to testify at trial, as permitted by the Court.

2. Plaintiffs reserve the right to call rebuttal or impeachment witnesses as necessary or appropriate, as permitted by the Court.

3. Plaintiffs reserve the right to supplement this Witness List at any time up to and including the time of trial, as permitted by the Court.

4. Plaintiffs reserve the right to call witnesses to authenticate and introduce into evidence photographs, videotapes and/or written records if required by Plaintiff or any other party, as permitted by the Court.

5. Plaintiffs reserve the right to take the testimony of any witness by way of deposition so long as such deposition does not delay the trial of this matter, as permitted by the Court.

IV. SPECIAL DAMAGES

At present, in addition to pain and suffering, emotional distress and the like, Plaintiffs claim the following special damages:

<i>Description</i>	<i>Amount</i>
Medical Bills	\$ 334,790
Past Lost Income	\$ 80,527
<u>Earning Capacity Loss</u>	<u>\$ 207,069</u>
<i>Total</i>	\$ 622,386

V. LIST OF EXHIBITS

Plaintiffs may introduce any or all of the following exhibits at the time of trial:

<u>Exhibit</u>	<u>Description</u>
1.	Allegheny Brain and Spine Surgeons and/or James P. Burke, M.D. medical records and bills including but not limited to all physician and facility medical records
2.	Allegheny Pain Management and/or Michael Drass, M.D. medical records and bills including but not limited to all physician and facility medical records
3.	Altoona Center for Cancer Care medical records and bills including but not limited to all physician and facility medical records
4.	Altoona Hospital medical records and bills including but not limited to all physician and facility medical records
5.	Blair Medical Associates medical records and bills including but not limited to all physician and facility medical records
6.	Cardiovascular & Thoracic Surgery of Altoona, PA and/or DeMarsico medical records and bills including but not limited to all physician and facility medical records
7.	Clearfield Chemo Clinic medical records and bills including but not limited to all physician and facility medical records
8.	Clearfield Hospital medical records and bills including but not limited to all physician and facility medical records
9.	Clearfield Family Medicine Associates and/or James P. Davidson, D.O. medical records and bills including but not limited to all physician and facility medical records
10.	Clear Med Providers and/or Amer S. Khouri, M.D. medical records and bills including but not limited to all physician and facility medical records
11.	Cleveland Clinic and/or Todd D. Rozen, M.D. medical records and bills including but not limited to all physician and facility medical records
12.	Henry G. Dela Torre, M.D. medical records and bills
13.	DuBois Magnetic Imaging Center medical records and bills including but not limited to all physician and facility medical records

14. DuBois Regional Medical Center medical records and bills including but not limited to all physician and facility medical records
15. George C. Mosch, II, M.D. medical records and bills
16. Penn Township Rural Health Clinic medical records and bills including but not limited to all physician and facility medical records
17. Radiation Oncology Group and/or Jack D. Schocker M.D. medical records and bills including but not limited to all physician and facility medical records
18. R&R Radiology, LLC and/or David Obley, M.D. medical records and bills including but not limited to all physician and facility medical records
19. Shadyside Hospital medical records and bills including but not limited to all physician and facility medical records
20. Sheldon Rosenthal, M.D. medical records and bills
21. Quest Diagnostics medical records and bills
22. Phoung T. Wirths, D.O. medical records and bills
23. Medical literature
24. Treatises
25. Demonstrative Exhibits
26. Photographs

RESERVATIONS

1. Plaintiffs reserve the right to use or offer into evidence any exhibit or piece of demonstrative evidence that any other party identifies in their Pre-Trial Statements or that any other party offers at trial, as permitted by the Court.

2. Plaintiffs reserve the right to supplement this Exhibit List at any time up to and including the time of trial, as permitted by the Court.

VI. ESTIMATED TIME FOR TRIAL

Plaintiffs estimate that trial will take 5 days.

VII. LIST OF STIPULATIONS

Counsel have not yet discussed or considered all evidentiary stipulations. However, at a minimum, counsel for Plaintiffs would request that counsel for Defendants stipulate as to the authenticity and admissibility of Mrs. Nelen's medical records, as well as to the amount of medical bills that are recoverable.

Date: _____

1/17/07

Respectfully submitted,
Eckert Seamans Cherin & Mellott, LLC



Edward C. Flynn, Esq.
PA ID No. 35198
Livia F. Langton, Esq.
PA ID No. 91548

Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
(412) 566.6000

Attorneys for Plaintiffs



SOUTH HILLS FAMILY MEDICINE

November 12, 2006

Edward C. Flynn
Eckert Seamans Cherin & Mellott
U. S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

Dear Mr. Flynn,

I am writing pursuant to your request for me to provide you with a supplemental report concerning your client, Mrs. Bridget Nelen. In this regard I have reviewed deposition transcripts for Dr. Wirths, Dr. Dellatorre, Dr. Shaw and Mrs. Nelen. Additionally I have reviewed the report of Dr. Richard Bruehlman.

My further investigation leads me to conclude that my comments and opinions expressed in my September 21, 2004 report are accurate and remain unaltered. Accordingly, in the remainder of this report, I will elaborate only on additional information.

As you are aware, Mrs. Nelen saw Dr. Wirths on several occasions as her primary family physician including November 1, 2000. After that encounter she presented later that day to Clearfield Hospital's Emergency Department. At that time her chest x-ray revealed a right middle lobe density. Treatment included antibiotics for a suspected pneumonia as well as recommendations for clinical and radiographical follow up. Dr. Wirths has testified that he would have been in receipt of the abnormal chest x-ray report of November 1, 2000 within several days. Also as you are aware, Mrs. Nelen saw Dr. Delatorre on November 14, 2000 and saw Dr. Wirths on September 24, 2001. Also there is clear difference of opinion between Dr. Wirths and Dr. Delatorre concerning which physician was Mrs. Nelen's primary doctor after November 1, 2000. Regardless of who was acting as her primary care physician, both doctors owed clearly defined obligations to this patient. My further comments will focus on the obligations of the two doctors given the circumstance of their patient being a 39 year old smoker with an abnormal chest x-ray.

First Dr. Wirths as her physician on November 1, 2000 had a clear and definite responsibility to review her emergency room care and ensure that appropriate follow up ensued. That obligation included:

- Arranging appropriate clinical and radiological follow up exams

Page 2

- Communicating with Mrs. Nelen the serious nature of her condition
- If she failed to follow up, again reminding her of the importance of following this advice.
- Dr. Wirths also had a duty to make sure that Dr. Dellatorre was fully aware of her abnormal chest film.

Dr. Wirths failed to do any of the above. This failure is a clear breach in the acceptable standard of care for a family physician and resulted in an increased risk of harm to Mrs. Nelen.

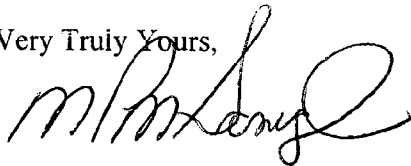
Secondly Dr. Delatorre in seeing Ms. Nelen in follow up of her November 1, 2000 visits with Dr. Wirths and the Emergency Room had an obligation to become familiar with the details of those visits and incorporate that information into his treatment plan.

Dr. Delatorre has stated that if he had been aware of the November 1, 2000 chest x-ray, he would have pursued additional radiological studies. Dr. Dellatorre was aware from his discussions with Mrs. Nelen that she had gone to the Emergency Department on November 1, 2000 and had an abnormal chest x-ray. This fact alone was enough to impose upon him the obligation to obtain a copy of that chest x-ray report and follow through with recommended studies. He failed to familiarize himself with important information and in doing so, violated the acceptable standard of care for a family physician and further increased the risk of harm to Mrs. Nelen.

Both Drs Wirth and Delatorre are responsible for a significant delay in diagnosis of Ms. Nelen's non small cell lung cancer. Within a reasonable degree of medical certainty, this delay resulted in an increased risk of harm to Mrs. Nelen and adversely affected her prognosis.

The opinions I have expressed are based on the information that I have reviewed. Please let me know if new information emerges or if I can be of further assistance in elucidating the medical facts concerning Bridget Nelen.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'M. McGonigal', written over the typed name.

Michael P. McGonigal, MD



SOUTH HILLS FAMILY MEDICINE

September 21, 2004

W. Patric Boyer
Eckert, Seamans, Cherin & Mellot, LLC
Summit Corporate Center
1001 Corporate Drive Suite 200
Canonsburg, PA 15317

Dear Mr. Boyer,

I am writing regarding your client Ms Bridgette Nelen. In preparation of this report I have reviewed the following records:

- Office records from Drs. Henry Dela Torre and Phoung T. Wirths
- Office notes from Altoona Hospital Center for Cancer Care and Dr. Jack Schocker
- Clearfield Hospital records

At the turn of the century Ms Nelen was a 39 year old female who followed with Dr. Dela Torre as her family physician. She saw Dr. Dela Torre and his partner Dr. Wirths several times in the summer and fall of 2000. On November 1, 2000 a chest x-ray performed as part of an evaluation in Clearfield Hospital's Emergency Room revealed a right middle lobe density. Dr. Dela Torre received a copy of the chest x- ray report which recommended a follow up study. Ms Nelen received antibiotic therapy as an outpatient and returned to Dr. Dela Torre on November 14, 2000, December 12, 2000 and January 23, 2001. Dr. Dela Torre did not order any follow up diagnostic imaging studies.

As you know, two years passed and in November of 2002 she presented to Clearfield Hospital Emergency Room with chest pain. A chest film showed a huge right middle lobe mass. Subsequent evaluation proved the mass to be malignant. Because of the tumor's large size she underwent neoadjuvant chemotherapy and radiation therapy prior to thoracotomy and pneumonectomy on January 23, 2003. Pathology revealed an adenoquamous cell type and stage 2 disease.

She did well for five months only to develop a headache and visual disturbance in June 2003. Work up revealed a 2.2 cm left frontal lobe mass which required craniotomy and excision. Pathology showed metastatic tumor from her lung. Subsequently her radiation oncologist Dr. Jack Schocker appropriately prescribed and administered a course of whole brain radiation therapy.

Page 2

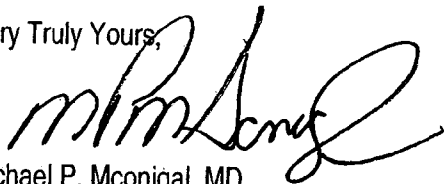
To summarize Mr. Boyer, Ms Nelen presented on November 1, 2000 as a 39 year old smoker with a clinically and radiographically atypical pneumonia. Prudent and appropriate medical care would have included both clinical and radiographic reevaluation. If her chest had been reimaged in December 2000 or January 2001, her pulmonary malignancy would have been diagnosed then when her disease was stage 1. Resection at that point would have yielded an 80% chance of cure. Instead Ms Nelen now faces a horribly bleak chance of long term survival.

As family physicians we are trained and taught to follow pulmonary symptoms and abnormal pulmonary imaging studies to their respective clinical and radiologic clearing. Ms Nelen's tragic case illustrates the merit of that teaching.

In conclusion, Ms Nelen absolutely deserved a follow up chest x-ray or ct scan. Dr. Dela Torre did not advise her of this need. His omission has resulted in additional surgery, chemotherapy and radiation therapy as well as giving this young woman a devastatingly poor prognosis. For the reasons stated above, it is my opinion, within a reasonable degree of medical certainty, that the care and treatment offered by Dr. Dela Torre and Dr. Wirths fell below the standard of care required of all family practice physicians.

If I can be of further assistance to you please contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'm. p. mconigal', written in a cursive style.

Michael P. Mconigal, MD

CURRICULUM VITAE

of

Michael P. McGonigal, M.D.

BIOGRAPHICAL

Name:	Michael P. McGonigal, M.D.	Birth Date:	October 14, 1954
Home Address:	292 Justabout Road Venetia, Pennsylvania 15327	Birthplace:	Greenville, PA
		Citizenship:	USA
Business Address:	South Hills Family Medicine, LLC 1000 Higbee Drive Suite 104 Bethel Park, Pennsylvania 15102	Business Phone:	(412) 833-6176
		Business Fax:	(412) 833-6432
Office Locations:	Homestead Office 1800 West Street Homestead, PA 15120	Business Phone:	(412) 462-0506
		Business Fax:	(412) 462-0527

EDUCATION

UNDERGRADUATE:

1972-1976	University of Virginia	B.A., Biology (Honors)
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GRADUATE:

1976-1980	University of Virginia Medical School	Doctor of Medicine
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POST GRADUATE:

1980-1981	Wake Forest University Bowman Gray School of Medicine North Carolina Baptist Hospital	Advisor: David Jackson, M.D. Family Medicine Internship
1981-1983	Wake Forest University Bowman Gray School of Medicine North Carolina Baptist Hospital	Advisor: David Jackson, M.D. Family Medicine Residency

POST RESIDENCY DEGREES:

American Academy of Family Practice, Fellow	1984-Present
American Board of Family Practice, Board Certified	1985-Present
American Board of Family Practice, Geriatrics, Board Certified	1990-Present

PROFESSIONAL LICENSURE:

Pennsylvania Medical License	MD 030452
North Carolina Medical License	25513

SPECIALTY CERTIFICATION:

Fellow, American Academy of Family Practice	1984-Present
American Board of Family Practice	1984-Present
American Board of Geriatrics	1984-Present
Diplomat, American Board of Family Practice	1985-Present

HONORS AND AWARDS:

Atlantic Coast Conference Award for Excellence in Scholarship and Athletics	1976
Captain, University of Virginia Wrestling Team	1975-1976
Atlantic Coast Conference Wrestling Champion	1973-1975
Member of University of Virginia Athletic Committee	1975-1976

MEMBERSHIPS IN PROFESSIONAL AND SCIENTIFIC SOCIETIES:

American Medical Association	1976-1998
American Academy of Family Physicians	1980-1998
Pennsylvania Academy of Family Physicians	1983-1998
Allegheny County Medical Society	1983-1998
Pennsylvania Medical Society	1983-1998
Western PA Association of Primary Care Preceptors,	
Teaching Appointment	1983-Present
Chairman, Health Education-Health America HMO	1984-1987
Delegate to 1985 American Academy of Family Practice,	
Scientific Assembly	1985
Delegate to 1981 American Academy of Family Practice National	1981
Resident Conference	

CLINICAL HOSPITAL PRIVILEGES:

Central Medical Pavilion	
Pittsburgh, PA	1984-1987
St. Clair Memorial Hospital	
Pittsburgh, PA	1985-1991
South Hills Health System	1987-Present
Jefferson Hospital	
University of Pittsburgh Medical Center	1997-Present

PROFESSIONAL APPOINTMENTS:

University of Virginia, Departments of Athletics

Assistant Coach, Wrestling	1976-1980
American Academy of Family Practice National Resident Conference Delegate	1981
Bowman Gray School of Medicine, North Carolina Baptist Hospital Chief Resident, Department of Family Medicine	1982-1983
Health America, Pittsburgh, PA Family Physician, Associate Medical Director	1984-1987
Western Pennsylvania Association of Primary Care Preceptors Teaching Appointment	1985-Present
American Academy of Family Practice Scientific Assembly Delegate	1985

PROFESSIONAL EMPLOYMENT:

South Hills Family Medicine, LLC	1998-Present
Family Practice Medical Associates South	1992-1998
Family Practice, Private Practice Physician	1987-1992
Health America Family Physician	1984-1987
Associate Medical Director (40,000 patient responsibility)	1985-1987
Bowman Gray School of Medicine, North Carolina Baptist Hospital Chief Resident	1982-1983
Bowman Gray School of Medicine, North Carolina Baptist Hospital House Officer, Department of Family Medicine	1980-1983
University of Pittsburgh Medical Center, Pittsburgh, PA Clinical Faculty	1984-Present

COMMUNITY ACTIVITIES:

Big Brother Program Volunteer	1978-1980
	1982-1983
Special Olympics Coach, University of Virginia	1978-1979
Washington County Housing Authority Board Member	1987-1995
Washington County Housing Authority Benefits Committee	1989-1998
Epilepsy Foundation Vice Chairman, Fund Raising	1997-1998
Multiple Sclerosis Society	1996-Present

SPECIAL COMMITTEES AND TASK FORCES:

Health America Professional Education Development Committee Member	1984-1987
Quality Assurance Committee Member	1987
Health Education Committee Member, Chairman	1985-1987
National Committee on Physician Compensation and Incentive, Chairman	1986
Emergency Medical Care Committee	1985-1987
Bowman Gray School of Medicine, Department of Family Medicine Patient Education Committee	1980-1983
Curriculum Committee	1981-1983

Faculty Selection Committee	1982-1983
Allegheny County Medical Society, Medical-legal Committee	1987
Tri-State Health System Co-Chairman	1995-1998
Tri-State Health System Physician's Integration Committee	1995-Present
South Hills Health System	
Utilization Review Committee	1995-Present
Occupational Health Program, Member	1989
Library Committee	1989
Clinical Resource Management Committee, Member	1989-1991
Clinical Resource Management Committee, Chairma	1990-Present
Medical Executive Committee, Member	1989-1990
Clinical Outpatient Services Task Force	1990
Deputy Chief of the Department of Medicine	1991-1992
Jefferson Health System Board Member	1993-Present
Medical Staff Executive Committee	1990-1994
PHO Member	1995-Present
Continuing Medical Education Committee, Chairman	1992-1996
Parent Board Committee Member	1997-Present
PHO Creation and Integration Task Force	1993-1994
Medical Staff Quality Improvement/Physician Involvement Member	1995-1996
Finance Committee	2000-2001
CEO Search Committee	2001
Teaching Appointment	1999-Present
Long Range Strategic Planning Committee	July 2003-Present
Physician - Nurse Liason Committee, Chairman	June 2004-Present
University of Pittsburgh Health System	
Teaching Appointment	1996-Present
Medical Director, Bethel Park Satellite	1997-Present
UPMC Health Plan	
Pharmacy and Therapeutics Committee	1999-Present
Quality Improvement Committee	1998-Present
National Speakers Bureau	
Eli Lilly Pharmaceuticals	2001-Present
Merck Pharmaceuticals	2001-Present
GlaxoSmithKline	2001-Present
Auxillium	2005-Present

UPDATED REPORT

PATIENT: Bridgette Nelen
4008 Splash Dam Rd.
Grampian, PA 16838

DOB: 1/04/1961

DEPT: 5714

DATE: September 07, 2006

Material regarding the care of Mrs. Nelen was again reviewed. As noted previously, this patient had an abnormal chest x-ray performed on November 1, 2000. The radiologist described an abnormality in the right lung. Such a finding requires follow-up, and it is not acceptable practice to simply observe clinically. Specifically, even if the patient had only pneumonia, a follow-up chest x-ray would be needed to prove that it resolved. In this case, it would have shown that there was no resolution, since a malignant mass was present causing the abnormality. Such a follow-up study should have been performed within several weeks of the first radiograph. This is a basic requirement in caring for an adult patient with an abnormal chest x-ray, especially since the radiologist could not exclude a neoplasm, and this is stated in the report. It was the responsibility of Dr. Wirths to obtain a follow-up chest radiograph. If another physician in the same office was caring for the patient, then this obligation would fall on both physicians. The physicians also have the duty to communicate with each other to make sure that the patient received the proper follow-up care. I also have reviewed the transcripts of the depositions of Dr. Wirths and Dr. Dela Torre, and while they may disagree regarding who had responsibility, the standard of care would place the responsibility on both of them. The subsequent delay in the diagnosis of lung cancer has had a major impact regarding the patient's treatment, and still with her prospect for long term survival.

Because of the delay in treatment, the patient required much more extensive therapy. If she was diagnosed in 2000, it probably would have been adequate to perform surgery with removal of one lobe of the lung. It is doubtful that she would have needed any additional treatment, and would have had a fairly high chance for cure. Because of the delay in diagnosis, the patient required extensive treatment with chemotherapy and radiation therapy. Then, she required total removal of the right lung. The patient developed metastatic disease to her brain requiring craniotomy with removal of the tumor and additional radiation therapy to her brain. Even if the patient survives beyond five years from treatment, the patient may also suffer additional consequences because of the extensive treatment that was required. For example, she now only has one lung, making it more difficult for her to breathe. If she ever develops another malignant tumor in the left lung, treatment will be greatly limited because of her surgery on the right side. She may still develop some changes in cognitive function or in cerebellar function because of the radiation therapy to the brain.

In summary, the delay in diagnosis has had a major impact upon this patient's treatment, her present chances for survival, and her ultimately quality of life. These opinions are rendered within a reasonable degree of medical certainty, and reflect the minimum standard of care deserved by a patient.



Jack D. Schocker, M.D.

JDS/ghb



altoona hospital

CENTER FOR CANCER CARE

620 Howard Avenue • Altoona, PA 16601-4899
814 / 889-2400 • 800 / 870-4660 • Fax: 814 / 889-2048

DEPARTMENT OF RADIATION ONCOLOGY

Jack D. Schocker, M.D., *Chairman*

John A. Clement, M.D.

Michael A. Vince, Ph.D.

Gregory M. Price, M.S., DABR

November 05, 2004

W. Patric Boyer
Eckert Siemens
1001 Corporate Dr., Suite 200
Canonsburg, PA 15317

RE: BRIDGETTE NELEN
4008 SPLASH DAM RD
GRAMPIAN, PA 16838
DOB: 1/4/1961
#5714

Dear Mr. Boyer:

I am writing this letter with reference to several recent notes that were sent to me. In your letter dated July 12, 2004, you asked about a mass in the left lung on the x-ray film dated November 1, 2000. In fact, there is no mass in the left lung at that time. The only mass seen is the neoplasm in the right lung, as previously discussed. Next, I received a letter from you dated August 11, 2004, requesting billing records. I have asked my business office manager to prepare a copy of that information and forward it to you. Similarly, I will ask Altoona Hospital's business office to also send a record of charges to you.

Lastly, I just recently received your letter dated October 26, 2004. Clearly, there was a major difference in the type of treatment given to this patient, and the ultimate expected outcome, because of the delay in diagnosis. The chest x-ray done on November 1, 2000, showed a mass in the right lung measuring about 4 cm in size. There was no evidence of any lymph node enlargement seen on the conventional radiograph. Almost certainly, the only treatment needed at that time would have been surgery, and a lobectomy would have been performed. That means removal of a single lobe of the lung, and not the entire lung. There are a number of published studies in the medical literature showing that the chance for cure in cases like this is reasonably good. As just one example, Martini published the results from 598 patients (Journal of Thoracic and Cardiovascular Surgery, Volume 109, pages 120-129, 1995). In that series, the five year survival rate was about 70%. Because of the delay in diagnosis, and the large size of the mass at the time of diagnosis, this patient needed chemotherapy and radiation therapy treatments. Then, she needed a much more extensive surgical procedure. She then developed metastatic brain disease, and it is likely that she never would have had brain metastasis if the diagnosis was made earlier. The metastatic brain disease lead to craniotomy, with major brain surgery, followed by additional radiation therapy. The prognosis in such cases is dramatically decreased, certainly well under 10% survival at five years.

In summary, the patient's delay in diagnosis had a major impact on the treatment given to this treatment, and the chance for cure is dramatically decreased. This can be established based upon numerous studies and by any basic oncologic principle.

Letter to W. Patric Boyer
Page 2
RE: BRIDGETTE NELEN
November 05, 2004

Please contact me if additional information is needed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jack Schocker".

Jack D. Schocker, M.D.

JDS/ghb



altoona hospital

CENTER FOR CANCER CARE

620 Howard Avenue • Altoona, PA 16601-4899
814 / 946-2400 • 800 / 870-4660 • Fax: 814 / 946-2048

DEPARTMENT OF RADIATION ONCOLOGY

Jack D. Schocker, M.D., *Chairman*
John A. Clement, M.D.
Michael A. Vince, Ph.D.
Gregory M. Price, M.S.

July 6, 2004

RE: Bridgette Nelen
DOB: 1/4/61

Mrs. Nelen is a 43-year old white female with a diagnosis of a squamous cell carcinoma of the lung. All of her pertinent medical records were reviewed, including imaging films dating back to November 2000. The patient was seen on a number of occasions by her primary care physicians, Drs. Henry Dela Torre and Phoung T. Wirths (Penn Township Rural Health Clinic), with nonspecific complaints including abdominal discomfort and headache. She also had some difficulty with concentration and with sleeping. On November 1, 2000, the patient was seen in the emergency department at Clearfield Hospital. At that time, a chest x-ray was obtained. In the official report from the radiologist, a density was described in the right middle lobe. It stated that this might "represent a so called round pneumonia; however, other pathology including pulmonary mass should be considered. Follow-up studies are recommended" (underlining added). In addition, in the final sentence of the report, the radiologist stated that "CT study of the chest may be useful at a later date." In fact, no such follow-up studies were performed. The chest x-ray was ordered by Dr. Mark Shaw, and a copy was sent to Dr. Dela Torre. A copy of the written chest x-ray report was received from the patient's chart at Penn Township Rural Health Clinic, and it contains a handwritten note at the bottom stating "is patient on abx? Need F/U." Another note at the bottom of the report, also written in hand states "is on Z-Pak + I.V. antibiotic x2 at ER."

In November 2002, two years after the situation just described, the patient was again seen in the emergency department of Clearfield Hospital. She was having chest pain at the time of that visit. A chest x-ray showed a large mass in the right middle lobe of the lung, at the same location as the previously noted abnormality. Further work-up was then started. A CT study of the chest showed a huge mass involving the right middle lobe of the lung. The patient was seen by Dr. Romeo, who performed bronchoscopy on November 1, 2002. Although no endobronchial lesion was seen, there was narrowing at the level of the right middle lobe bronchus. A transbronchial biopsy was performed, and the pathology report showed squamous cell carcinoma.

The patient was subsequently sent for oncologic evaluation. She was seen in the department of Radiation Oncology at Altoona Hospital. A review of the imaging films showed the large mass in the lung, measuring about 10 cm in size. A PET scan was

performed, showing intense uptake at the site of the tumor, but no other evidence of metastatic disease. The case was reviewed with a thoracic surgeon, and it was agreed that the mass was so large, that primary surgical therapy would not be the best initial approach.

The patient was subsequently treated with an intensive course of radiation therapy and concurrent chemotherapy. The tumor showed considerable regression. Ultimately, it was felt that surgical resection would be a reasonable option. The patient was taken to the operating room on January 23, 2003, and a total right pneumonectomy was performed. The remaining tumor was called adenosquamous cell carcinoma, and it was removed with clear margins. A total of 11 lymph nodes were examined, all negative for metastatic disease.

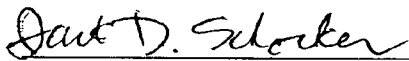
The patient was followed on a regular basis following surgery. She noted headache and some blurring of her vision in June 2003. A CT study of the brain was done on July 8, 2003, and it showed a mass lesion in the left frontal lobe of the brain. This was not seen on a previous study from November 2002. An MR study of the brain was then performed, and it confirmed the presence of a 2.2 cm mass in the left frontal lobe of the brain, with no other abnormality elsewhere in the brain. The patient again underwent oncologic evaluation, and was referred to a neurosurgeon. She underwent craniotomy with decompression of the tumor mass. The pathology report confirmed metastatic disease, consistent with the lung primary. The patient was subsequently given radiation therapy to the brain, with the treatment ending on September 10, 2003.

Based upon review of all the medical records, as summarized above, it is felt that the care given to this patient by her primary care physician in DuBois, Pennsylvania, was clearly outside of acceptable professional standards. Specifically, a written radiology report from November 1, 2000, described an abnormality of major significance. The patient had a long history of cigarette smoking, and malignant tumor would be very high on the list of differential diagnoses. If the finding was related to pneumonia, it would have resolved, and a follow-up study of the chest would have shown improvement. It is for that reason that a follow-up chest x-ray would have been the minimum mandatory requirement, and should have been done within 6-8 weeks. Alternatively, a CT study of the chest could have been done sooner. At that point, the patient had a rather small tumor, and probably would have been amenable to curative treatment with surgery alone. The surgery at that time would probably have been limited to a lobectomy, much less extreme than the surgery ultimately required, and with a rather high chance for cure. By the time this patient was diagnosed with malignancy, she needed to undergo intensive treatment with radiation therapy and chemotherapy. Then, she required a total pneumonectomy, resulting in the loss of her lung. Later, she developed metastatic brain disease. Her chance for cure is now very small. Had this patient been evaluated properly, her treatment would have been much less intense, and her chance for surviving

would have been greatly increased. The care given to her has had a major impact upon her chance of survival and no reasonable excuse can be given to explain such action. It is my opinion that her chances of surviving has gone from 80% to 10% as a result of the delayed treatment.

Based upon this review of the records, and examination of the patient, I believe it can be stated with reasonable certainty that this patient was given care below the standard required from a similarly trained physician in this geographic area.

The opinion expressed above is presented by a physician licensed within the Commonwealth of Pennsylvania, with special training regarding the care and treatment of cancer patients.



Jack D. Schocker, M.D.

CURRICULUM VITAE

July 1, 1995

NAME: Jack David Schocker, M.D.

OFFICE ADDRESS: 620 Howard Avenue
Altoona, PA 16601

DATE AND PLACE OF BIRTH: May 9, 1951 -- Allentown, Pennsylvania

EDUCATION AND TRAINING:

Graduated William Allen High School, Allentown, Pennsylvania, 1969

B.A. (with honors), Lehigh University, Bethlehem, Pennsylvania, 1973

M.D. (academic honors), Hahnemann University, Philadelphia, 1977

Internship and Residency, Hahnemann University Hospital, 1977-1981

American Cancer Society Fellow In Clinical Oncology, 1979-1981

PROFESSIONAL CERTIFICATIONS:

Diplomate, National Board Of Medical Examiners

Diplomate, American Board Of Radiology (Certified in Radiation Oncology)

CURRENT PROFESSIONAL APPOINTMENTS:

Chairman, Department Of Radiation Oncology, Altoona Hospital,
Altoona, Pennsylvania, 1995 - present

Assistant Clinical Professor Of Radiation Oncology and Nuclear Medicine,
Hahnemann University, Philadelphia, Pennsylvania, 1983 - present

PREVIOUS APPOINTMENT:

Director, Department Of Radiation Oncology, Mercy Regional Health System,
Altoona, Pennsylvania, 1982 - 1995

Chairman, Department Of Radiation Oncology, Lehigh Valley Hospital,
Allentown, Pennsylvania, 1988 - 1991

HOSPITAL MEDICAL STAFF MEMBERSHIPS:

Altoona Hospital, Altoona, Pa.

Mercy Regional Health System, Altoona, Pa.

Nason Hospital, Roaring Spring, Pa.

Memorial Hospital Of Bedford County, Everett, Pa.

Tyrone Hospital, Tyrone, Pa.

Clearfield Hospital, Clearfield, Pa.

SELECTED OTHER PRESENT APPOINTMENTS:

Director, American Cancer Society, Blair County Unit

President, Radiation Oncology Group, P.C.

SELECTED OTHER PAST APPOINTMENTS:

President, Keystone Area Society Of Radiation Oncology

Treasurer, Pennsylvania Oncologic Society

Director, American Cancer Society, Pennsylvania Division

Vice President, American Cancer Society, Blair County Unit

Trustee, Mercy Regional Health System

SELECTED PUBLICATIONS / PRESENTATIONS:

Schocker, J., and Brady, L., "Radiation Therapy For Bone Metastasis",
Clinical Orthopedics and Related Research, September, 1982.

Schocker, J., "Pre-Operative Radiation Therapy For Carcinoma Of the
Rectum and Rectosigmoid", Philadelphia Medicine, December, 1977.

Damjanov, I., and Schocker, J., "Malignant Paraganglioma Of Retro-
peritoneum", Urology, 17: 6 (1981).

Schocker, J., et. al., "Radiation Therapy For Bone Metastases", in
Bone Metastasis , edited by Weis and Gilbert, Hall Medical Publishers, 1981.

Schocker, J., et. al. , "Mammography After Definitive Radiotherapy For
Breast Cancer", Presented to the Pennsylvania Radiologic Society, 1979.

Schocker, J., and Brady, L., "Definitive Radiotherapy For Treatment Of
Stages I and II Breast Cancer, presented to the South Carolina Oncology
Group, 1981. Also presented: "Post-operative Irradiation For Breast Cancer".

FORENSIC HUMAN RESOURCES

413 Sylvania Drive
Pittsburgh, PA 15229

Phone: (412) 260-8000

Fax: (412) 364-7221

December 27, 2006

Ms. Livia Langton
Eckert Seamans Cherin & Mellott, LLC
US Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219

Dear Ms. Langton:

You recently provided two medical narratives pertaining to your firm's client, Bridget Nelen, and asked that I evaluate their impact on the economic loss to Ms. Nelen. You also asked that I update the economic losses to the present.

I reviewed the medical narratives written by Jack D. Schocker, MD dated September 7, 2006 and by Michael P. McGonigal, MD dated November 12, 2006. Dr. Schocker's narrative provides more detail regarding the impact of Ms. Nelen's course of treatment. That narrative does not change my original opinion that Ms. Nelen is unemployable as a result of the actions at the center of this legal proceeding.

All other facts and assumptions in the July 11, 2005 report remain the same.

Past Lost Income: (October 31, 2002 – December 31, 2006, 4.2 years)

Wages:	(\$14,794 X 4.2 years)	\$62,135
Benefits:	(\$62,135 X 29.6%)	\$18,392
Total Past Lost Income:		\$80,527

Future Lost Earnings Capacity:

Wages:	(\$14,794 X 10.8 years)	\$159,775
Benefits:	(\$159,775 X 29.6%)	\$47,293
Total Future Lost Earnings Capacity:		\$207,069

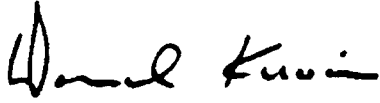
Ms. Nelen's total lost income, both past lost wages and benefits and future lost earnings capacity, is \$287,595, to a reasonable degree of professional certainty.

*Expert Witness in Matters of Employability, Lost Earnings
and Diminished Earning Capacity*

Bridget Nelen

Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read "Donal Kirwan". The signature is fluid and cursive, with the first name "Donal" and last name "Kirwan" clearly distinguishable.

Donal F. Kirwan, SPHR

FORENSIC HUMAN RESOURCES

413 Sylvania Drive
Pittsburgh, PA 15229

Phone: (412) 260-8000

Fax: (412) 364-7221

July 11, 2005

Mr. W. Patric Boyer, Esq.
Eckert Seamans Cherin & Mellott, LLC
Summit Corporate Center
1001 Corporate Drive, Suite 200
Canonsburg, PA 15317

Dear Mr. Boyer:

This report has been prepared and is submitted in response to your request for an economic loss evaluation in the case of your client, Bridget K. Nelen.

You asked that we become familiar with your client's background and current circumstances in order to provide an opinion as to the labor economic effects sustained as a result of a diagnosis of squamous cell carcinoma. We interviewed Mrs. Nelen in order to review her educational background and work history. We also reviewed a medical narrative dated July 6, 2004 and November 5, 2004, written by Jack D. Schocker, MD, Chairman of the Center for Cancer Care, Altoona Hospital; and a medical narrative dated September 21, 2004, written by Michael P. McMonigal, MD of South Hills Family Medicine. We also reviewed Ms. Nelen's 2002 W2 from Bayer Clothing Group.

Bridget Nelen was born January 4, 1961 and is currently 44 years old. She completed eleven years of schooling. She did not earn a GED. After leaving school, she worked in a sewing factory before taking four (4) years off at the time of her first marriage. She then went to work at Kent's Sportswear in Curwensville, PA for 17 years. In approximately 1998, she started work at Streamline Fashions in Phillipsburg, PA before beginning work at Bayer Clothing Group in approximately 2000. At Bayer, she was paid on a piecework basis: her 2002 W2 indicates that she earned \$7.11 per hour, or, \$14,794 per year. She indicated that she received employee benefits while working at Bayer which we value at an average rate of 29.6% of her wages. (US Department of Labor, "Employer Costs for Employee Benefits - March 2005" USDL 05-1056, June 16, 2005).

Dr. Schocker notes in the July 2, 2004 narrative that Mrs. Nelen presented to the emergency room at Clearfield Hospital on November 1, 2000, and that a chest X-ray indicated a density in the right middle lobe. "It stated that this might 'represent a so called round pneumonia; however, other pathology including pulmonary mass should be considered. Follow-up studies are recommended.'" He notes that no follow-up studies were performed. In November 2002 he reports that Ms. Nelen was again seen in the Clearfield Hospital emergency room. "A chest x-ray showed a large mass in the right middle lobe of the lung, at the same location as the previously

noted abnormality... The patient was subsequently sent for oncologic evaluation." She was treated with an intensive course of radiation therapy and concurrent chemotherapy and then, on January 23, 2003, underwent a total right pneumonectomy. In June 2003, she returned to the hospital for headache and blurred vision at which time, a CT study of the brain showed a mass lesion in the left frontal lobe of the brain. She underwent a craniotomy and the pathology report confirmed metastatic disease, consistent with the lung primary. He concludes "It is my opinion that her chances of surviving has gone from 80% to 10% as a result of the delayed treatment." In his November 2004 narrative, he states "The prognosis in such cases is dramatically decreased, certainly well under 10% survival at five years."

Mrs. Nelen is concerned about the impact her restrictions will have upon her ability to earn a living. We believe, based on experience in the Human Resources profession, that she is for all intents, unemployable.

The New Worklife Expectancy Tables, Revised 2002, cites the future worklife expectancy of a female who did not graduate high school, age 44, who is unimpaired, that is with no work disability, as 12.3 years. Mrs. Nelen has not worked October 31, 2002, and is incapable of doing so at this time. Born in 1961, the normal Social Security Retirement age is 67, or, 22.5 years of additional worklife.

Past Lost Income: (October 31, 2002 – July 11, 2005, 2.7 years)

Wages:	(\$14,794 X 2.7 years)	\$39,903
Benefits:	(\$39,903 X 29.6%)	\$11,811
Total Past Lost Income:		\$51,714

Future Lost Earnings Capacity:

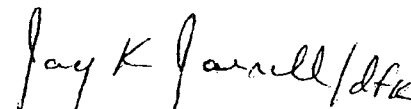
Work to 12.3 years worklife expectancy	
Wages:	(\$14,794 X 12.3 years) \$181,966
Benefits:	(\$181,966 X 29.6%) <u>\$53,862</u>
Total Future Lost Earnings Capacity:	\$235,828

Mrs. Nelen's total future lost income is \$287,542, to a reasonable degree of economic certainty.

Very truly yours,



Donal F. Kirwan, SPHR



Jay K. Jarrell

Accredited Personnel Diplomate (SPHR)

DONAL F. KIRWAN, SPHR

413 Sylvania Drive
Pittsburgh, PA 15229

Tel: (412) 260-8000
Fax: (412) 364-7221

SUMMARY

Human Resources Executive with experience in Forensic Economics providing consulting to the legal community on matters of economic damages relating to lost earnings capacity as well as on matters of employability.

PROFESSIONAL EXPERIENCE

FORENSIC HUMAN RESOURCES

2000 – DATE

Managing Director

Provide forensic economic consulting services including evaluation of lost earnings capacity and expert testimony of economic damages arising from personal injury, wrongful death and employment discrimination.

KIRWAN CONSULTING GROUP

2002 – DATE

Managing Director

Provide executive search services to companies. Responsible for client marketing, candidate sourcing, interviews and candidate presentation.

LAROCHE COLLEGE – Pittsburgh, PA

2001- 2002

Adjunct Professor, Recruitment and Placement

Taught graduate level course on staffing issues and procedures. Topics included: Manpower planning; legal aspects of recruiting and selection; competency-based selection and interviewing;

BOYDEN - Pittsburgh, PA

1999 – 2002

Associate

Provide executive search services to companies. Responsible for client marketing, candidate sourcing, interviews and candidate presentation. Primary focus is developing clients among Pittsburgh's high tech community, introducing Boyden's capabilities within that market. Responsible for internal IT support.

SONY ELECTRONICS INC. – Mt. Pleasant, PA

1995 – 1999

Staffing Manager, Sony Technology Center-Pittsburgh

Responsible for managing exempt staffing process, college relations program, the internal posting program and the Employee Referral Program for the 5 manufacturing Business Units of the Sony Technology Center-Pittsburgh. As a member of the Site's HR Management Team, participated in HR decision-making processes. The Team worked with the Business Units to provide guidance, install new programs and update Site policies and procedures. Developed quantitative reports using information from PeopleSoft and Resumix including those showing Site EEO statistics and Time to Hire.

- Played a major role in the growth of this site from 600 to 2900 company members in 3 years.
- Worked with Business Unit clients to determine future manpower needs and developed and implemented the staffing plans to attract sufficient numbers of candidates to meet those needs on a timely basis.
- Investigated resume tracking systems to facilitate customer responsiveness. Recommended the purchase of and directed the installation of Resumix version 4.1, subsequently upgraded to version 5.3. Managed the installation of the new system.
- Designed and implemented the site's employee referral program. Designed the marketing material and the systems to manage the program.
- Represented the Site in community School-to-Work programs.

- Participated on a company-wide task force to evaluate and redesign the Corporation's Staffing function.
- Initiated a re-evaluation of the STC-P hiring process to identify a speedier, less costly alternative while still maintaining the integrity, legal defensibility and quality of the process.
- Developed a program of Internet advertising/recruiting to decrease recruiting costs. Initiated Internet recruiting using free Web sites.
- Developed a college recruiting/relations program. Identified schools and professors and initiated contacts to increase Sony's visibility on campus. Arranged campus interview schedules.
- Worked with Business Unit managers to begin an intern program. Anticipated 20 openings for interns for summer 1999.
- Designed and developed Crystal 6.0 reports to manage the Site's staffing process.

PRO-TEM GROUP – Pittsburgh, PA

1994 – 1995

(Start-up firm established to provide Pittsburgh area companies with professional-level contingent employees. Responsible for marketing the firm's services. Interviewed accounting, finance and Human Resources candidates for placement with clients.)

Principal

- Developed and implemented the firm's marketing plan.
- Served as President, Pittsburgh Human Resource Association with a budget of \$200,000. The PHRA provides training services on HR topics and networking opportunities to local Human Resources professionals.

KIRWAN CONSULTING GROUP – Pittsburgh, PA

1992 – 1994

Principal

Provided clients with professional-level recruiting services. Responsible for marketing; sourcing and interviewing candidates; and assisting clients in the selection process.

- As Chairman of a trade association's insurance committee, involved in the negotiations with its health insurance carrier concerning plan design and rating structures. Responsible for oversight and problem resolution.
- Working with the carrier, installed a first-of-its-kind wellness program for the association. Responsible for monitoring its implementation and effectiveness.

THOMPSON, KIRWAN & ROBINSON

1991 – 1992

(A start-up firm providing career transition services to Pittsburgh area companies)

Vice President

Responsible for marketing the firm's services and working with executive clients to develop personal marketing plans and strategies. Developed the marketing strategy, which included organizing a target list of companies based upon revenues and employees; surveying the companies to determine clients' needs; and arranging meetings with the appropriate contacts to introduce the service. Assisted in the design of new services to present to clients.

- Designed and implemented the firm's initial marketing plan.

TEMPORARY ACCOUNTING PERSONNEL

1987 – 1991

President

ACCOUNTING PERSONNEL ASSOCIATES

1976 – 1991

Vice President

These companies provided both full time and temporary recruiting services to clients. Worked with clients to determine staffing needs; developed recruiting plans; sourced and interviewed candidates; and facilitated the interview and offer processes. Responsible for marketing the firms' services and sourcing candidates. Taught seminar sessions as requested for various professional groups.

- Instrumental in the start of the temporary employment business.
- Developed systems to track candidate activity and to manage both businesses.
- Designed, wrote and installed a multi-user information management system to store and retrieve information on candidates and contacts. Designed and wrote using Informix SQL product, the management reports to track activity levels.
- Served as President of the national affiliation of which APA was a member firm.

U.S. ARMY

1969 – 1975

Captain

Performed a variety of duties in both command and staff positions.

EDUCATION

MA, Industrial Relations – St. Francis College, Loretto, PA – 1983
BS, Economics – Xavier University, Cincinnati, OH – 1969

PROFESSIONAL CERTIFICATION

Senior Professional Human Resources, Society for Human Resources Management – 1995

MEMBERSHIPS

National Association of Forensic Economics
American Academy of Economic & Financial Experts
Eastern Economic Association
Society for Human Resources Management
Pittsburgh Human Resources Association

Donal F. Kirwan - List of Cases

5/2/2003	Sherie Ellis v. Michael Thompson FD90-05877	Family Court	Allegheny County, PA
10/16/2003	Mary Jo Deep v. Allen Deep 00928DR-02	Domestic Relations	Beaver County, PA
1/27/2004	Jo Lee Hamm & Charles Hamm v. Warren General Hospital, et al. 140-01	Court of Common Pleas	Warren County, PA
3/16/2004	Ann Smith v. Robert Fremeau DRS-00500099	Domestic Relations	Somerset County, PA
3/18/2004	Dionne J. Grayson & Jerome M. Jackson, Co-Administrators of the Estate of Delores Parker Jackson, Deceased V. Port Authority of Allegheny County, et al GD-03-12871	Court of Common Pleas	Allegheny County, PA
11/9/2004	Estate of William Ward v. Dubois Regional Medical Center, et al. 404-2000	Court of Common Pleas	Jefferson County, PA
11/12/2004	Donn & Marion Boggs v. Anthony N. Okibi, et al. GD-01-21995	Court of Common Pleas	Allegheny County, PA
11/29/2004	Claudia Piper v. Thomas S. Gustafson GD-02-5034	Court of Common Pleas	Allegheny County, PA
12/9/2004	Rajesh P. Mehta v. City of Pittsburgh (Office of Controller) and Tom Flaherty CA 04-0170	US District Court for the Western District of Pennsylvania	
1/4/2005	Wm E. Gregor v. Mary Favaro 02280 DR 1999	Court of Common Pleas, Domestic Relations Section.	Westmoreland County, PA
2/1/05	Sheri and James Fallon v. R.A.H. Associates, Inc. and Heartland Corp. GD-03-024024	Court of Common Pleas	Allegheny County, PA
2/8/05	David J. Birch v. Punxsutawney Electric Motor Manufacturing Co. , t/d/b/a Electro-Mec, Inc. CA 03-280J	Deposition for Defense US District Court for the Western District of Pennsylvania	
2/15/05	Celeste Cook v Arnold Cook FD 02-9974-008	Court of Common Pleas, Family Division	Allegheny County, PA

3/10/05	Jason Tripp v. Laurie Tripp 10211 of 2003	Court of Common Pleas, Family Division Lawrence County, PA
3/30/05	Robert Davis v. Sharon Lintzenich AD 00-11104	Court of Common Pleas Butler County, PA
4/26/05	Bernard Glad v. Thomas Kearns, MD and Uniontown Hospital No. 587 of 2004 G.D.	Court of Common Pleas Fayette County, PA
6/17/05	JL Carter & Diane Carter, his wife, v. State Farm Insurance 2005-33	UIM Claim Washington County, PA
7/8/05	Robin Tanner v. National City Bureau Claim #2029788	Deposition Fayette County, PA
8/12/05	Gerald Kelley v. CSX Transportation, 00-C-30	Deposition Ohio County Circuit Court, WV
8/16/05	Daniel Kushner v. Horzempa, Rohde 11721 of 2002	Court of Common Pleas Beaver County, PA
10/11/05	James Mazzarini v. PennDOT 10521 of 2002, C.A.	Court of Common Pleas Lawrence County, PA
10/13/05	Robert Shearer, Trustee v. Pamela A. Lee, Defendant 05-27255-MBM	US Bankruptcy Court, Western District of Pennsylvania
10/19/05	Forrest McIver and Evelyn McIver v. Borg-Warner Automotive, et al. AD 2004-176	Court of Common Pleas Crawford County, PA
10/20/05	Michael Livingood v. Cianelli Realty Corporation 2001-1304	Court of Common Pleas Washington County, PA
11/16/05	Chad E. Mahle and Karla K. Mahle v. Eighty-Four Mining Co, et al GD 03-14440	Court of Common Pleas Allegheny County, PA
11/21/05	Susan Rocco and Larry Rocco v. Pennsylvania Brewing Company GD 03-026116	Court of Common Pleas Allegheny County, PA
12/5/05	Paul Marini v. St. Paul Fire & Marine Insurance Company Underinsured Motorist Arbitration	Allegheny County, PA
12/7/05	George Shinko & Mary Ann Shinko, Administrators of the Estate of Keith R. Shinko, deceased v. Robert T. Dunn, MD. 507 of 2003	Court of Common Pleas Westmoreland County, PA

12/13/05	Richard F. Meier v. Alliance Capital Management, LP, et al N.A.S.D. Arbitration Number 04-07633	Newark, NJ
1/9/06	Robin P. Miller v Alexa K. Miller 13 of 1999	Court of Common Pleas, Domestic Relations Section, Westmoreland County, PA
1/11/16	Charles Person and Susan Person, his wife v. Reuss Engineers, Inc, et al. 7656 of 2003	Court of Common Pleas Westmoreland County, PA
2/8/06	Jacob Mayhue v. R. Pazmino; Tipton Medical & Diagnostic Center, Inc, et al No. 2002-GN-5207	Court of Common Pleas Blair County, PA
2/22/06	Arthur D. Gilbert and Michelle R. Gilbert v. David Rogerson, MD 138 Civil 2002	Court of Common Pleas Somerset County, PA
5/3/06	Sherry L. Huchko, Administratrix of the Estate of James M.Huchko, Jr. v Paul E. Frye, MD and Vista Behavioral Health Associates, Inc. GD 04-15754	Court of Common Pleas Allegheny County, PA
6/7/06	Jackson Salisbury v. Kansas Jack, Inc. AD 364-1996	Court of Common Pleas Greene County, PA
6/15/06	Frank Ferguson v. UPMC Health System et al. 2002-3445	Court of Common Pleas Mercer County, PA
7/5/06	Lawrence N. Marlett and Judy A. Marlett v. Warren General Hospital et al. AD 118-2003	Court of Common Pleas Warren County, PA
8/22/06	Robert W. Blosc v. Allstate Insurance Company Underinsured Motorist Arbitration	Westmoreland County, PA
9/7/06	Steven G. Burbidge v. Mark Milanovich, Kenneth Stretavski, et al. GD 05-012125	Court of Common Pleas Allegheny County, PA
9/19/06	Carrie M. George and Jeffrey J. George v. Thomas J. Dolgas 11775 CD 2004	Court of Common Pleas Indiana County, PA
9/21/06	Nubia Habay and Jeffrey Habay v. Gina M. Rooker, MD, et al. GD05-22795	Court of Common Pleas Allegheny County, PA
10/10/06	Donna I. Stellato v. Kelly Lynn Zickafoos AD # 2004-804	Court of Common Pleas Crawford County, PA
10/19/06	Annette Blanar Steadle v. Eric Lee Steadle, Defendant 223 of 2003	Court of Common Pleas Westmoreland County, PA

11/3/06 Justyn Starry v. Latrobe Area Hospital Gynecological Associates
73 of 2004 Court of Common Pleas Westmoreland County, PA

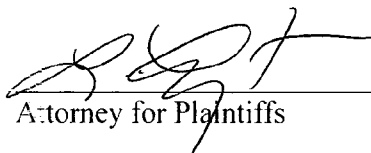
11/15/06 Michelle Opalenik v. Westmoreland Obstetrics & Gynecology, Inc., et al.
GD02-00314 Court of Common Pleas Allegheny County, PA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
PLAINTIFFS' PRE-TRIAL STATEMENT PURSUANT TO PA R.C.P. 212.2 AND LOCAL
RULE 212.4e was served upon counsel for all parties by depositing a true and correct copy
thereof, in the United States Mail, postage pre-paid this 17th day of January, 2007, addressed
to:

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