

John Saunders et al vs DRMC et al  
2004-780-CD

04-780-CD  
JOHN D. SAUNDERS, Etal. vs. DUBOIS REGIONAL MEDICAL CENTER eta.

## Medical Professional Liability Action

Date		Judge
06/01/2004	✓ Filing: Civil Complaint Paid by: Gordon, James G. (attorney for Saunders, John D.) Receipt number: 1880037 Dated: 06/01/2004 Amount: \$85.00 (Check)	No Judge
06/21/2004	✓ Praecept for Appearance, filed by s/David R. Johnson, Esq., on behalf of Defendants No CC	No Judge
07/12/2004	✓ Sheriff Return, Now June 16, 2004, Complaint was served on DuBois Regional Medical Center by handing to Greg Volpe, Risk MGMT. Now, June 24, 2004, Complaint was served on Daniel S Gordon, D.O., by deputizing Thomas Demko, Shff of Jefferson County. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
07/15/2004	✓ Plaintiffs' Motion to Consolidate, filed by s/James G. Gordon, Esq. No CC	No Judge
07/21/2004	✓ Order, AND NOW, to wit this 19 day of July, 2004, Ordered, Adjudged and Decreed that Motion is granted and actions be and are hereby consolidated for all purposes, including trial, at 03-1051-CD. BY THE COURT: /s/Fredric J. Ammerman, P.J. Two CC Attorney Gordon	Fredric Joseph Ammerman
07/22/2004	✓ Answer and New Matter filed. filed by Atty. Johnson no cert.	Fredric Joseph Ammerman
07/29/2004	✓ Stipulation to Dismiss Fewer Than All Defendants, filed by s/James G. Gordon, Esq. s/David R. Johnson, Esq. DuBois Regional Medical Center ONLY dismissed with prejudice	Fredric Joseph Ammerman
08/16/2004	✓ New Matter Pursuant To Rule 2252(d) On the Part of Daniel S. Gordon, D.O. VS. Jerjis T. Alajaji, M.D. Filed by David R. Johnson, Esq. No Cert. Copies.	Fredric Joseph Ammerman
08/24/2004	✓ Jury Trial Demanded. Type of Pleading: Additional Defendant Dr. Jerjis Alajaji's Response to Dr. Daniel Gordon's New Matter. Certificate of Service, Copy of Additional Defendant Dr. Jerjis Alajaji's Response to Dr. Daniel Gordon's New Matter mailed to James G. Gordon, Esq. and David R. Johnson, Esq. On Behalf of Defendant, filed by: s/Darryl R. Slimak, Esq. No CC.	Fredric Joseph Ammerman
11/24/2004	✓ Answer To Motion to Strike Plaintiffs' Praecept for Jury Trial filed by Defendant George M. Kosco, M.D., by s/ James G. Gordon, Esquire. No CC	Fredric Joseph Ammerman
07/20/2005	✓ Certificate of Service, Notice of Rescheduled Oral Deposition Directed to Martin R. Maloney, to James G. Gordon, Esquire; David R. Johnson, Esquire; and Tracey G. Benson, Esquire. Filed by s/ Darryl R. Slimak, Esquire. No CC Original to 03-1051-CD	Fredric Joseph Ammerman
	✓ Certificate of Service, Notice of Rescheduled Oral Deposition Directed to Melissa Frey, to James G. Gordon, Esquire; David R. Johnson, Esquire; and Tracey G. Benson, Esquire. Filed by s/ Darryl R. Slimak, Esquire. No CC Original to 03-1051-CD	Fredric Joseph Ammerman
07/21/2005	✓ Motion For Leave to Have Substitute Counsel Attend Call Of List, filed by s/ David R. Johnson, Esquire. No CC, Orig. filed to 03-1051-CD	Fredric Joseph Ammerman
	✓ Order, this 21st day of July, 2005, Ordered that substitute counsel may attend the call of the list in the case above captioned on July 28, 2005. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Johnson	Fredric Joseph Ammerman
08/15/2005	✓ Motion in Limine with Respect to Plaintiffs' Proposed Expert Report and Testimony of Gregory W. Baran, M.D., filed by s/David R. Johnson, Esq. No CC	Fredric Joseph Ammerman

John D. Saunders, Brenda A. Saunders vs. DuBois Regional Medical Center, Jerjis T. Alajaji, M.D., George M Kosco MD

## Civil Other

Date		Judge
07/18/2003	✓ Filing: Civil Complaint Paid by: James G. Gordon, Esq. Receipt number: 1863245 Dated: 07/18/2003 Amount: \$85.00 (Check) 1 CC to Shff.	No Judge
07/31/2003	✓ Praeipe For Entry of Appearance, filed by Atty. Johnson, Entry of appearance on behalf of DuBois Regional Medical Center.	No Judge
09/02/2003	✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
09/22/2003	✓ Complaint to Join Additional Defendants filed by Atty. Johnson. 2 CC to Shff.	No Judge
09/29/2003	✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
10/03/2003	✓ Entry of Appearance on Behalf of Additional Defendant Jerjis T. Alajaji. M.D. No cc.	No Judge
10/07/2003	✓ Praeipe For Entry of Appearance, filed Atty. Benson Enter my appearance on behalf of George M. Kosco, M.D. only. s/T. Benson	No Judge
10/10/2003	✓ Certificate of Service, Additional Defendant Alajaji's Interrogatories and Request for Production (Set One) upon: Atty Gordon and Atty Johnson. s/Darryl R. Slimak, Esq. no cc	No Judge
	✓ Certificate of Service, Additional Defendant Alajaji's Expert Interrogatories upon: Atty Gordon and Atty Johnson s/Darryl R. Slimak, Esquire no cc	No Judge
	✓ Certificate of Service, Additional Defendant Alajaji's Request for Production (Set Two) upon Atty Gordon and Atty Johnson s/Darryl R. Slimak, Esq. no cc	No Judge
10/14/2003	✓ Certificate of Service, Additional Defendant Alajaji's Notice of Intent to Subpoena Dr. Gordon and Dr. Piasio upon: James G. Gordon, Esquire and David R. Johnson, Esquire filed by s/Darryl R. Slimak, Esquire no cc	No Judge
10/15/2003	✓ Dr. Jerjis Alajaji's Answer With New Matter To Joinder Complaint. filed by s/Darryl R. Slimak, Esquire Verification s/Jerjis T. Alajaji, M.D. Certificate of Service no cc	No Judge
	✓ Preliminary Objections. filed by s/Tracey G. Benson, Esquire Certificate of Service 1 cc Atty Benson	No Judge
10/29/2003	✓ Certificate of Service of Expert Interrogatories and Request for Production of Documents, filed by s/James G. Gordon No CC	No Judge
	✓ Plaintiffs' First Set of Interrogatories, First Request for Production, and First Request for Admissions Directed to Defendant, George M. Kosco, M.D., filed by s/James G. Gordon No CC	No Judge
	✓ Plaintiffs' First Set of Interrogatories, First Request for Production, and First Request for Admissions Directed to Defendant, Jerjis T. Alajaji, M.D., filed by s/James G. Gordon No CC	No Judge
11/04/2003	✓ Certificate prerequisite to Service of a Subpoena filed by Atty. Slimak No cc.	No Judge
11/06/2003	✓ Certificate of Service of Answers to Plaintiffs' Expert Interrogatories. No cc.	No Judge

Date: 09/01/2005

Clearfield County Court of Common Pleas

User: LBENDER

Time: 09:43 AM

ROA Report

Page 2 of 2

Case: 2004-00780-CD

Current Judge: Fredric Joseph Ammerman

John D. Saunders, Brenda A. Saunders vs. DuBois Regional Medical Center, Daniel S. Gordon DO

Medical Professional Liability Action

Date		Judge
08/16/2005	✓ Request for Argument/Hearing, dated August 16, 2005, filed. argument with regard to defendants' (DuBois Regional Medical Center, a corporation, t/d/b/a DRMC, and Daniel S. Gordon, D.O.) motion in limine is scheduled for the 9th day of September 2005 at 2:30. BY THE COURT: /s/ Fredric J. Ammerman, Judge. 1CC Atty Johnson (original filed to 03-1051-CD)	Fredric Joseph Ammerman
08/18/2005	✓ Certificate of Service, filed. I hereby certify that a true and correct copy of the Additional Defendant Dr. Jerjis T. Alajaji's Proposed Points for Charge in the above matter were mailed to James G. Gordon Esq., David R. Johnson Esq., and Tracey G. Benson Esq., filed by s/ Darryl R. Slimak Esq. No CC.	Fredric Joseph Ammerman
08/29/2005	✓ Certificate of Service, filed. that a true and correct copy of the First Supplemental Pretrial Memorandum of Additional Defendant Jerjis T. Alajaji MD in the above-captioned matter was mailed by regular mail on James G. Gordon Esq., David R. Johnson Esq., and Tracey G. Benson Esq., on August 26, 2005 filed by Darryl R. Slimak Esq. (original filed to 03-1051-CD)	Fredric Joseph Ammerman



rent Judge: Fredric Joseph Ammerman

John D. Saunders, Brenda A. Saunders  
MD

DuBois Regional Medical Center, Jerjis T. Alajaji, M.D., George M Kosco

Civil Other

Date		Judge
12/09/2003	✓ ORDER, AND NOW, this 9th day of December, 2003, re: Argument on Attorney Benson's Preliminary Objections scheduled for Friday, January 16, 2004, at 2:00 p.m. by the Court, s/FJA,J. 4 cc to Atty Benson w/Memo re: Service	Fredric Joseph Ammerman
12/22/2003	✓ Affidavit of Service, Order scheduling Hearing on George M. Kosco, M.D.,s Preliminary Objections to Joinder Complaint upon: James G. Gordon, Esq., David R. Johnson, Esq. and Darryl R. Slimak, Esq. filed by, s/Tracey G. Benson, Esquire no cc	Fredric Joseph Ammerman
12/26/2003	✓ Notice of Deposition of George M. Kosco, M.D. filed by, s/James G. Gordon, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
	✓ Notice of Deposition of Daniel S. Gordon, D.O. filed by, s/James G. Gordon, Esquire Certificate of Service no cc	Fredric Joseph Ammerman
01/12/2004	✓ Filing: Praecipe for Entry of Judgment of Non Pros, Rule 1042.6 Paid by: Benson, Tracey G. (attorney for Kosco, M.D., George M.) Receipt number: 1872000 Dated: 01/12/2004 Amount: \$20.00 (Check) Judgment of Non Pros entered against the Plaintiff in favor of George M. Kosco, M.D. only. Notice mailed to Plaintiffs c/o Atty. Gordon	Fredric Joseph Ammerman
	✓ Filing: Praecipe for Entry of Judgment of Non Pros, Rule 1042.6 Paid by: Benson, Tracey G. (attorney for Kosco, M.D., George M.) Receipt number: 1872006 Dated: 01/12/2004 Amount: \$20.00 (Check) Judgment entered against the Defendant DuBois Regional Medical Center, a corporation, t/d/b/a DRCM and in favor of Additional Defendant George M. Kosco, M.D. only Notice mailed to Atty. Johnson	Fredric Joseph Ammerman
	✓ Filing: Praecipe for Entry of Judgment of Non Pros, Rule 1042.6 Judgment Paid by: Benson, Tracey G. (attorney for Kosco, M.D., George M.) Receipt number: 1872009 Dated: 01/12/2004 Amount: \$20.00 (Check) Judgment entered against Jerjis T. Alajaji, M.D. and in favor of Additional Defendant George M. Kosco, M.D. only Notice mailed to Atty. Slimak	Fredric Joseph Ammerman
01/19/2004	✓ ORDER, NOW, this 16th day of January, 2004, re: Hearing scheduled for today be and is hereby CANCELLED The Court will not issue an Order on the Preliminay Objections and that the same are moot. by the Court, s/FJA,P.J. 2 cc to Atty Gordon, Atty Johnson, Atty Slimak, Atty Benson and 1 copy to CA	Fredric Joseph Ammerman
01/20/2004	✓ Verification To Complaint To Join Additional Defendants. s/Greg J. Volpe Certificate of Service no cc	Fredric Joseph Ammerman
	✓ Answer And New Matter. filed by, s/David R. Johnson, Esquire Verification s/Greg J. Volpe Certificate of Service no cc	Fredric Joseph Ammerman
01/29/2004	✓ Plaintiff's Reply To New Matter of Additional Defendant Jerjis T. Alajaji, M.D. filed by, s/James G. Gordon, Esquire Verification s/John D. Saunders s/Brenda A. Saunders Certificate of Service no cc	Fredric Joseph Ammerman
	✓ Certificate of Service of Plaintiff's Answers to Defendant Alajaji's Expert Interrogatories and Request For Production (Set Two) filed by, s/James G. Gordon, Esquire no cc	Fredric Joseph Ammerman
	✓ Certificate of Service of Plaintiff's Answers To Original Defendant DRMC'S First Set Of Interrogatories And First Request For Production Of Documents. filed by, s/James G. Gordon, Esquire no cc	Fredric Joseph Ammerman

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

JOHN D. SAUNDERS AND BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,  
and DANIEL S. GORDON, D.O.,

Defendants.

No. 04-780 CD

**COMPLAINT IN CIVIL ACTION**

FILED ON BEHALF OF PLAINTIFFS

COUNSEL OF RECORD FOR THIS  
PARTY:

JAMES G. GORDON, ESQUIRE  
PA I.D. NO. 26980

JAMES G. GORDON & ASSOCIATES  
1000 Main Street  
Pittsburgh, Pennsylvania 15215-2406

412.696.0062

**JURY TRIAL DEMANDED**

**FILED**

**JUN 01 2004**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.	:	CIVIL DIVISION
SAUNDERS, husband and wife,	:	
	:	No.
Plaintiffs,	:	
v.	:	
	:	
DUBOIS REGIONAL MEDICAL	:	
CENTER, a corporation, t/d/b/a DRMC,	:	
And DANIEL S. GORDON, D.O.,	:	
	:	
Defendants.	:	

**NOTICE TO DEFEND**

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

**LAWYER REFERRAL SERVICE  
THE CLEARFIELD COUNTY BAR ASSOCIATION  
DAVID S. MEHOLICK, COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
230 EAST MARKET STREET  
CLEARFIELD, PENNSYLVANIA 16830**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.	:	CIVIL DIVISION
SAUNDERS, husband and wife,	:	
	:	No.
Plaintiffs,	:	
v.	:	
	:	
DUBOIS REGIONAL MEDICAL	:	
CENTER, a corporation, t/d/b/a DRMC,	:	
And DANIEL S. GORDON, D.O.,	:	
	:	
Defendants.	:	

**COMPLAINT IN CIVIL ACTION**

AND NOW come the Plaintiffs, by and through their undersigned counsel, who file the within Complaint In Civil Action, whereof the following is a statement:

1. Plaintiffs are husband and wife and adult residents of the Commonwealth of Pennsylvania.
2. DuBois Regional Medical Center, t/d/b/a DRMC, ("DRMC") is a for-profit corporation which was, at all times hereinafter complained of, licensed to do business and doing business in Clearfield County and the Commonwealth of Pennsylvania.
3. At all further times hereinafter complained of DRMC owned, operated, staffed, and controlled all medical treatment and procedures, including radiology studies, which were performed and/or conducted at a clinic located in Reynoldsville, Jefferson County, Pennsylvania,

known as the DRMC Reynoldsville Medical Center, where DRMC employed Daniel Gordon, D.O. under DRMC's fictitious practice name of Primary Care Associates of Reynoldsville.

4. Daniel S. Gordon, D.O. (hereinafter "Dr. Gordon"), is a physician licensed to do business and doing business in the Commonwealth of Pennsylvania and County of Clearfield. At all times hereinafter complained of, Dr. Gordon held himself out to the public generally, and the Plaintiffs particularly, as a physician skilled in performing general internal medicine, primary care medicine and, by virtue of his twenty two (22) years of work for DRMC practicing as an emergency department physician at DRMC, capable of diagnosing and treating ankle sprains and foot fractures and in interpreting x-ray films.

5. At all times hereinafter complained of, Dr. Gordon practiced under the name of Primary Care Associates of Reynoldsville as an agent, servant and employee of DRMC, acting within the course and scope of his employment and/or agency with DRMC, such that the actions and inactions of Dr. Gordon, as hereinafter complained of, were for all purposes the actions and inactions of the Defendant DRMC.

6. Plaintiffs are asserting professional liability claims against DRMC as employer, master and/or principal of Daniel Gordon, D.O., and Primary Care Associates of Reynoldsville, and against Daniel Gordon, D.O., individually. Certificates of merit as to Defendants DRMC and Dr. Gordon are attached.

7. John D. Saunders was born on March 27, 1975, and was in excellent health prior to the events hereinafter complained of.

8. On August 17, 2002, husband Plaintiff was riding bicycles with one of his sons when he lost his balance and came down on his right foot. Husband Plaintiff immediately began

to experience severe pain and swelling of the right foot and right ankle areas and was unable to apply any weight to his right foot.

9. Following said incident, husband Plaintiff was taken to the emergency room at DRMC where he conveyed the history set forth above and also the fact that his right foot and right ankle were painful, swollen, and that he was unable to place any pressure or weight on his right foot.

10. After being triaged and admitted to the emergency room at DRMC, Plaintiff was examined by a DRMC emergency room nurse or nurses, and DRMC emergency room physicians.

11. The initial examination and treatment by DRMC personnel confirmed that husband Plaintiff had significant swelling to the right foot and right ankle, that the right foot was painful to touch, with a pain complaint of ten out of ten (10/10), and that Plaintiff could not place any pressure on his right foot.

12. After said examination, husband Plaintiff was sent into radiology, where DRMC's agents, servants, and employees performed x-ray studies of husband Plaintiff's right ankle only.

13. Four (4) views of the husband Plaintiff's right ankle were taken on August 17, 2002, and later interpreted by a DRMC radiologist, who rendered the following diagnoses:

The osseous structures are intact. There is normal alignment of the ankle mortise.  
There is no evidence of fracture or dislocation.

14. Thereafter, DRMC personnel informed husband Plaintiff that his right ankle and foot were normal on x-ray, that he did not have any fractures, that he was suffering from a sprain, and then provided husband Plaintiff with a splint and crutches, and discharged husband Plaintiff with instructions to follow-up with Dr. Gordon, a DRMC physician.

15. From and after August 17, 2002, husband Plaintiff continued to complain of severe pain in the right foot, swelling, and inability to weight bear on his injured foot.

16. Plaintiffs' communicated the severity of husband Plaintiff's injuries by phone to Dr. Gordon on August 20 and 21, 2002. On August 22, 2002, husband Plaintiff saw Dr. Gordon at the DRMC Reynoldsville Medical Center, where Dr. Gordon examined husband Plaintiff's right foot, ordered additional x-rays, reconfirmed that husband Plaintiff was suffering from an ankle sprain, and prescribed medications and physical therapy for husband Plaintiff, with additional instructions to again return to Dr. Gordon's office on August 28, 2002.

17. On August 22, 2002, pursuant to Dr. Gordon's instructions, three (3) views were taken of the right ankle and three views of the right foot by a DRMC technician at the DRMC Reynoldsville Medical Center. Said x-rays were later read by a DRMC radiologist at DRMC who opined in his findings that the right ankle bones were intact and the joint relationships were maintained, that there was advanced degeneration in the navicular bone, superior subluxation of the navicular bone compared to the talus, and that the rest of the foot was preserved.

18. It is also believed that Dr. Gordon may have read the x-ray films of August 22, 2002.

19. At the instruction of Dr. Gordon, husband Plaintiff began physical therapy at the DuBois Regional Medical Center Outpatient Physical Therapy Services in Brockway, Pennsylvania, where said therapy continued from August 23, 2002, through September 17, 2002. Said therapy consisted of range of motion exercises, whirlpool, strengthening, and other modalities. In addition, husband Plaintiff was instructed to use his right foot as tolerated.

20. Husband Plaintiff's care and treatment with Dr. Gordon continued through September 16, 2002, when husband Plaintiff was referred to Dr. Piasio, an orthopedist, who

reviewed husband Plaintiff's DRMC x-ray films and diagnosed multiple fractures which had, by September 20, 2002, begun to heal.

21. The injuries and damages to the Plaintiffs, as set forth below, were directly and proximately caused by the carelessness and negligence of the Defendant DRMC, by and through its physician, agent, servant, and/or employee, Dr. Gordon, who was, at all times, acting within the course and scope of his employment and agency with DRMC, as follows:

- a. in misdiagnosing husband Plaintiff's injury as a right ankle sprain rather than an injury which included multiple fractures of the right foot;
- b. in misinterpreting the x-rays of husband Plaintiff's right foot taken on August 22, 2002;
- c. in failing to diagnose husband Plaintiff's calcaneocuboid injury on August 22, 2002;
- d. in ordering husband Plaintiff to physical therapy when Dr. Gordon knew or should have known that the injury to the right foot included fractures;
- e. in ordering husband Plaintiff to physical therapy in view of the negligent examination, diagnostic testing, and negligent treatment set forth above;
- f. in that Dr. Gordon negligently diagnosed and treated Plaintiff's foot, based upon his prior emergency department experience, rather than referring Plaintiff to a specialist;
- g. in that Dr. Gordon negligently referred Plaintiff to physical therapy and kept Plaintiff in physical therapy in reliance upon his own skill and judgment as a prior emergency department physician rather than relying upon a radiologist and/or orthopedist;
- h. in ignoring husband Plaintiff's complaints of foot and ankle pain;
- i. in ignoring the physical therapist's findings of severe foot pain;
- j. in directing husband Plaintiff to use his foot as tolerated; and;
- k. in permitting husband Plaintiff to return to work.



COUNT I

JOHN D. SAUNDERS

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and Daniel Gordon, D.O.

22. John D. Saunders incorporates the allegations set forth on the preceding paragraph as if each were set forth at length herein.

23. As a direct and proximate result of the carelessness and negligence of DRMC, by and through Dr. Gordon, its agent, servant, and employee acting within the course and scope of his employment and agency with DRMC, husband Plaintiff has suffered and continues to suffer from the following injuries and damages:

- a. past and future pain and suffering;
- b. past and future emotional trauma and anxiety;
- c. past and future disability;
- d. past and future inability to enjoy certain pleasures of life;
- e. deformity;
- f. past and future loss of earnings;
- g. past and future diminution in wage earning capacity;
- h. mal-united fractures of the right foot;
- i. future premature post-traumatic arthritis of the talon navicular calcaneocuboid joints, and;
- j. a need for future medical care and treatment, including but not limited to a triple arthrodesis.

24. As a further direct and proximate result of the carelessness and negligence of DRMC, by and through Dr. Gordon, its agent, servant, and employee acting within the course

and scope of employment and agency with DRMC, husband Plaintiff has incurred and will in the future incur bills for hospitals and related medical expenses, medical appliances, surgeries, orthotics, rehabilitation, and prescription and non-prescription medicines.

25. As a further and proximate result of the carelessness and negligence of DRMC, by and through Dr. Gordon, its agent, servant, and employee, husband Plaintiff has become disabled from performing any type of work that requires motion of the right foot and significant standing and weightbearing, and has and/or will incur costs and expenses for rehabilitation, re-education and/or retraining.

WHEREFORE, husband Plaintiff demands damages of the Defendant in a sum in excess of limits of arbitration of Clearfield, County, Pennsylvania.

JURY TRIAL DEMANDED

## COUNT II

BRENDA A. SAUNDERS,

vs.

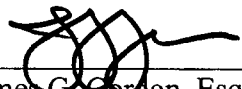
DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and Daniel Gordon, D.O.

26. Wife Plaintiff incorporates the allegations in the preceding paragraphs as if the same were fully and completely set forth at length herein.

27. As a direct and proximate result of the carelessness and negligence of the DRMC, by and through Dr. Gordon, its agent, servant, and employee acting within the course and scope of his employment and agency with DRMC, wife Plaintiff has suffered and continues to suffer the loss of the care, society, and companionship of her husband, John D. Saunders.

WHEREFORE, wife Plaintiff demands damages of the Defendant in a sum in excess of the limits of arbitration of Clearfield County, Pennsylvania.

JURY TRIAL DEMANDED



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James G. Gordon, Esquire  
Attorney for Plaintiffs

## VERIFICATION


I/We verify that the statements set forth in the foregoing Plaintiffs' Complaint In Civil Action are true and correct to the best of my/our knowledge, information and belief. To the extent that any of the statements are inconsistent I/We state that, after reasonable investigation, I/We have been unable to determine which of the inconsistent statements are true, but have information sufficient to form a belief that one of them is true. Further, if there are statements relating to questions of law, I/We sign this Verification relying upon counsel with respect to the correctness of those legal conclusions. I/We understand that false statements herein made are subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

5-23-04

Date

  
John D. Saunders

Date

  
Brenda A. Saunders

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS AND BRENDA A.                      NO.  
SAUNDERS, husband and wife,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,  
And Daniel S. Gordon, D.O.,

Defendants.

**Certificate of Merit as to Daniel S. Gordon, D.O.**

I, James G. Gordon, Esquire, 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 Daniel S. Gordon, D.O. 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 harm;

OR



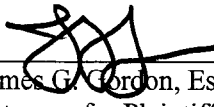
The claim that this defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill, or knowledge exercised or exhibited by 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 harm;

OR



Expert testimony of an appropriate licensed professional is unnecessarily for prosecution of the claim against this defendant.

Date: 5.28.04

  
\_\_\_\_\_  
James G. Gordon, Esquire  
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS AND BRENDA A.                      NO.  
SAUNDERS, husband and wife,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,  
And Daniel S. Gordon, D.O.,

Defendants.

**Certificate of Merit as to DuBois Regional Medical Center, a corporation, t/d/b/a DRMC**

I, James G. Gordon, Esquire, 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 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 harm;

OR

☒

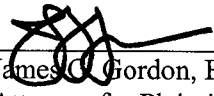
The claim that this defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill, or knowledge exercised or exhibited by 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 harm;

OR



Expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant.

Date: 5.28.04

  
\_\_\_\_\_  
James C. Gordon, Esquire  
Attorney for Plaintiffs



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,

Defendants.

CIVIL DIVISION

No. 04-780-CD

Issue No.

PRAECIPE FOR APPEARANCE

Filed on behalf of defendants.

Counsel of Record for These Parties:

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

THCMSON, RHODES & COWIE, P.C.  
Firm #720  
1010 Two Chatham Center  
Pittsburgh, PA 15219

(412) 232-3400

FILED

JUN 21 2004

William A. Shaw  
Prothonotary, Clerk of Courts

PRAECIPE FOR APPEARANCE

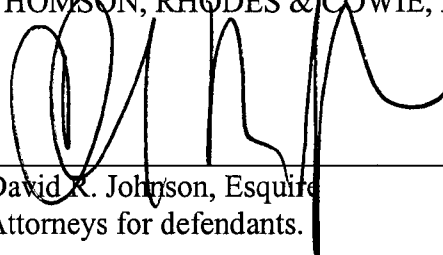
TO: PROTHONOTARY

Kindly enter our appearance on behalf of the defendants.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



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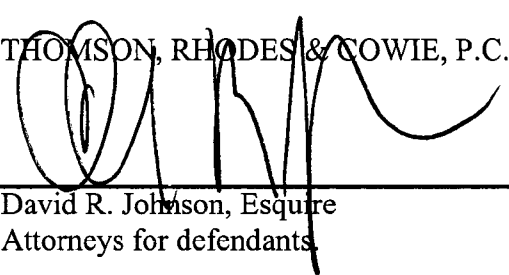
David R. Johnson, Esquire  
Attorneys for defendants.

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within PRAECIPE FOR  
APPEARANCE has been served upon the following counsel of record and same placed  
in the U.S. Mails on this 18<sup>th</sup> day of June, 2004:

James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

THOMSON, RHODES & COWIE, P.C.



\_\_\_\_\_  
David R. Johnson, Esquire  
Attorneys for defendants.

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

SAUNDERS, JOHN D. & BRENDA A.

Sheriff Docket # 15695

VS.

04-780-CD

DUBOIS REGIONAL MEDICAL CENTER t/d/b/a DRMC at

COMPLAINT

**SHERIFF RETURNS**

NOW JUNE 16, 2004 AT 2:30 PM SERVED THE WITHIN COMPLAINT ON DUBOIS REGIONAL MEDICAL CENTER, DEFENDANT AT EMPLOYMENT, 100 HOSPITAL AVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO GREG VOLPE, RISK MGMT. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.  
SERVED BY: COUDRIET/MCCLEARY

NOW JUNE 15, 2004, THOMAS DEMKO, SHERIFF OF JEFFERSON COUNTY WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY TO SERVE THE WITHIN COMPLAINT ON DANIEL S. GORDON, D.O., DEFENDANT.

NOW JUNE 24, 2004 SERVED THE WITHIN COMPLAINT ON DANIEL S. GORDON, D.O., DEFENDANT BY DEPUTIZING THE SHERIFF OF JEFFERSON COUNTY. THE RETURN OF SHERIFF DEMKO IS HERETO ATTACHED AND MADE A PART OF THIS RETURN.

**Return Costs**

Cost	Description
41.00	SHERIFF HAWKINS PAID BY: ATTY CK# 10657
20.00	SURCHARGE PAID BY: ATTY CK# 10656
0.00	JEFFERSON CO. SHFF. PAID BY: ATTY CK# 10651

Sworn to Before Me This

12 Day Of July 2004  
*William A. Shaw*

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

So Answers,

*Chester A. Hawkins*  
Chester A. Hawkins  
Sheriff

FILED  
6/10/04am  
JUL 12 2004  
FAS  
William A. Shaw  
Prothonotary/Clerk of Courts

No. 04-780-CD

Personally appeared before me, Carl J. Gotwald, Sr., Deputy for Thomas A. Demko, Sheriff of Jefferson County, Pennsylvania, who according to law deposes and says that on June 24, 2004 at 1:30 o'clock P.M. served the Notice and Complaint upon DANIEL S. GORDON, D.O., Defendant, at 336 East Main Street, Borough of Reynoldsville, County of Jefferson, State of Pennsylvania, by handing to him, personally, a true copy of the Notice and Complaint and by making known to him the contents thereof.

Advance Costs Received:	\$125.00
My Costs:	\$ 26.06 Paid
Prothy:	\$ 2.00
Total Costs:	\$ 28.06
Refunded:	\$ 96.94

Sworn and subscribed

to before me this

day of

By

My Commission Expires The  
First Monday January 2008

So Answers,

Carl J. Gotwald Sr. Deputy  
Thomas A. Demko Sheriff  
JEFFERSON COUNTY, PENNSYLVANIA

GA

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

**CIVIL DIVISION**

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Original Defendant,

v.

JERJIS T. ALAJAJI, M.D. and  
GEORGE M. KOSCO, M.D.,

Additional Defendants.

-----  
JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,  
and DANIEL S. GORDON, D.O.,

Defendants.

No. 03-1051-CD

No. 04-780-CD

**PLAINTIFFS' MOTION  
TO CONSOLIDATE**

Filed on behalf of:  
Plaintiffs

Counsel of Record for this Party:

James G. Gordon, Esquire  
Pa. ID #26980

James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, Pennsylvania 15215-2406

412.696.0062

**JURY TRIAL DEMANDED**

FILED <sup>no cc</sup>  
m/2:14/81  
JUL 15 2004  
William A. Shaw  
Prothonotary Clerk of Courts

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

**CIVIL DIVISION**

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

No. 03-1051-CD

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant,

v.

JERJIS T. ALAJAJI, M.D. and  
GEORGE M. KOSCO, M.D.,

Defendant.

-----  
JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

No. 04-780-CD

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,  
and DANIEL S. GORDON, D.O.,

Defendants.

**MOTION TO CONSOLIDATE**

AND NOW come the Plaintiffs John D. Saunders and Brenda A. Saunders, husband and wife, by and through their undersigned counsel, who file the within Motion To Consolidate the above-captioned civil action pursuant to Pa. R.C.P. 213 and, in support hereof, respectfully represent the following:

1. John Saunders was twenty seven (27) years of age when he was involved in a bicycling accident. Unable to place any weight on his right foot and in extreme pain, he was taken to DuBois Regional Medical Center ("DRMC"), where he was triaged, x-rayed, examined, and treated by the DRMC personnel and emergency department employees.

2. Mr. Saunders' injuries were diagnosed at the DRMC Emergency Room, incorrectly, as an ankle sprain. Mr. Saunders was directed to follow up with Daniel S. Gordon, D.O., a former DRMC emergency department physician, who was then engaged in family practice in Reynoldsville, Pennsylvania, working as a DRMC employee. In turn, Dr. Gordon examined husband/Plaintiff's right foot, ordered additional x-rays, and then prescribed physical therapy for John Saunders at DRMC.

3. After Mr. Saunders' condition failed to improve, additional x-rays were ordered, which were currently interpreted as revealing multiple and severe fractures of Mr. Saunders' right foot, which he had suffered in the initial bicycling injury of August 17, 2002. Unfortunately, by the time of the correct diagnosis, the fractures had gone on to a malunion. Mr. Saunders is permanently disabled as a result.

4. Mr. Saunders is the father of five (5) children and a manager of a Domino's Pizza Store. He can no longer work any job or engage in any activities which require him to use his right foot to any significant degree. The condition of the right foot is permanent and cannot be improved, other than through a triple arthrodesis which will fuse the joints of the foot for the purpose of eliminating the chronic pain from which Mr. Saunders now suffers.

5. Discovery conducted in the action at number 03-1051-CD, revealed that Dr. Gordon committed actions and failed to take actions which, upon review, are alleged to be negligent. Dr. Gordon was a full-time employee of DRMC during the time of his care and treatment of John Saunders.



6. The above two (2) medical negligence actions arise out of the same transactions and series of occurrences. There are questions of both law and fact common to each.

7. Plaintiffs allege that all defendants are jointly and severally liable.

8. Consolidation of the two (2) actions would serve the interests of justice, avoid the duplication of costs and redundant expenditures of the parties' and court's time, and will prevent potentially inconsistent verdicts and overlapping damages.

9. No party will be prejudiced by the granting of the within Motion. The statute of limitations has not run.

10. Counsel for Defendants in both actions consent to the consolidation.

WHEREFORE, Plaintiffs request that this Honorable Court enter the above Motion consolidating the above two (2) medical negligence actions for all purposes, including discovery and trial.

Respectfully submitted,  
James G. Gordon & Associates

By: 

James G. Gordon, Esquire  
Attorney for Plaintiffs

1000 Main Street  
Pittsburgh, Pennsylvania 15215-2406  
412.696.0062

Dated: 07.08.04

**JURY TRIAL DEMANDED**

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

**CIVIL DIVISION**

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

No. 03-1051-CD

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant,

v.

JERJIS T. ALAJAJI, M.D. and  
GEORGE M. KOSCO, M.D.,

Defendant.

FILED

JUL 21 2004

WILLIAM A. ...  
Prothonotary, Clerk of Courts

-----  
JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

No. 04-780-CD

Plaintiffs,

v.

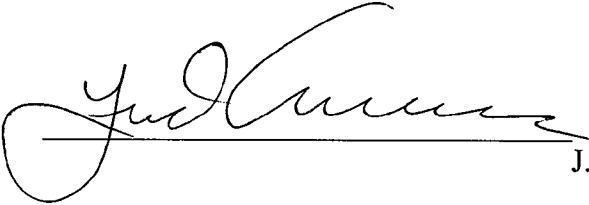
DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,  
and DANIEL S. GORDON, D.O.,

Defendants.

**ORDER OF COURT**

AND NOW, to wit, this 19 day of July, 2004, upon presentation of and hearing  
on Motion To Consolidate the civil actions at Nos. 03-1051-CD and 04-780-CD, and upon further  
stipulation of counsel for Defendants in said two (2) civil actions, it is hereby ORDERED,

ADJUDGED, and DECREED that said Motion be and is hereby granted, and that the above actions be and are hereby consolidated for all purposes, including trial, at No. 03-1051-CD.



J.

Consented to by:

via e-mail consent

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.,  
Counsel for DuBois Regional Medical Center,  
a corporation, t/d/b/a DRMC, at 03-1051-C.D.  
and DuBois Regional Medical Center, a  
corporation t/d/b/a DRMC, and Daniel S. Gordon, D.O.,  
at number 04-780-C.D.

via e-mail consent

Darryl R. Slimak, Esquire  
McQuaide Blasko, Schwartz, Fleming, & Faulkner, Inc.  
Counsel for Jerjis T. Alajaji, M.D.,  
at number 03-1051-C.D.


**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Motion To Consolidate was mailed by regular U.S. Mail, postage prepaid, on the 8<sup>th</sup> day of July 2004, to the following attorneys of record:

Darryl R. Slimak, Esquire  
McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc.  
811 University Drive  
State College, Pennsylvania 16801

David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, Pennsylvania 15219

JAMES G. GORDON & ASSOCIATES

By:  \_\_\_\_\_  
James G. Gordon  
Attorney for Plaintiffs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,

Defendants.

CIVIL DIVISION

No. 04-780-CD

Issue No.

ANSWER AND NEW MATTER

Filed on behalf of Daniel S. Gordon, D.O., one  
of the defendants.

Counsel of Record for This Party:

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

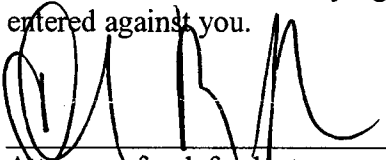
THOMSON, RHODES & COWIE, P.C.  
Firm #720  
1010 Two Chatham Center  
Pittsburgh, PA 15219

(412) 232-3400

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  
mjl:4487  
JUL 22 2004  
cc

ANSWER AND NEW MATTER

NOW COMES, Daniel S. Gordon, 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 admitted: 1, 3, 4, 5, 10, 12 and 13, except that any allegations of agency regarding the radiologist are denied

because, upon information and belief, the radiologist referenced in Paragraph 13 was an independent practitioner and not an agent, servant or employee of DRMC.

5. Paragraph 2 of the complaint is denied as stated. To the contrary, DRMC is a non-profit healthcare institution located at the address specified in the complaint.

6. Paragraph 6 of the complaint is admitted in part and denied in part. It is admitted that plaintiffs are making the allegations specified. However, any statement, suggestion or implication that these allegations have merit is denied.

7. 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: 7, 8 and 15.

8. Paragraphs 9, 11, 14, 16, 17, and 20 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.

9. Paragraph 18 of the complaint is denied.

10. The first sentence of Paragraph 19 of the complaint is admitted. The remainder of Paragraph 19 of the complaint is 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.

11. Paragraphs 21 (including sub-paragraphs (a) through (k)), 23 (including sub-paragraphs (a) through (j)), 24 and 25 of the complaint constitute conclusions of law to which no further response is required. However, if any response is deemed necessary, these paragraphs and sub-paragraphs are denied.

12. Paragraphs 22 and 26 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.

13. Paragraph 27 of the complaint pertains to other defendants for which no further response is required. However, if any response is deemed necessary, this paragraph is denied for the reason that, after a reasonable investigation, defendant has insufficient information or knowledge to form a belief as to the truth of the averments therein.

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.

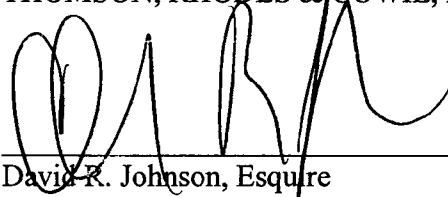
25. If and to the extent that plaintiffs' claims were not filed within the time limitations imposed by law, said lawsuit is barred by the applicable statutes of limitations.

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 Daniel S. Gordon, D.O., one  
of the defendants.

**VERIFICATION**

I, Daniel S. Gordon, 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.

*Daniel S. Gordon*

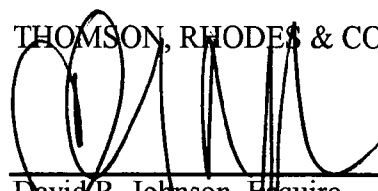
Date: *July 16, 2004*

**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 20<sup>th</sup> day of July, 2004:

James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

THOMSON, RHODES & COWIE, P.C.

  
\_\_\_\_\_  
David R. Johnson, Esquire  
Attorneys for Daniel S. Gordon, D.O., one  
of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,

Defendants.

CIVIL DIVISION

No. 04-780-CD

Issue No.

STIPULATION TO DISMISS FEWER THAN  
ALL DEFENDANTS

Filed on behalf of 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

*blw* m/3-2487 No cc  
JUL 29 2004 Copy to CIA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,  
and DANIEL S. GORDON, D.O.,

Defendants.


: CIVIL DIVISION  
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: No. 04-780-CD  
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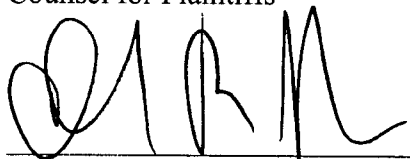
**STIPULATION TO DISMISS FEWER THAN ALL DEFENDANTS**

TO THE PROTHONOTARY:

Kindly discontinue this action with prejudice as to DuBois Regional Medical Center, only. This action has been consolidated with the action at number 03-1051-CD, wherein Defendant, DuBois Regional Medical Center, is already a Defendant and where DuBois Regional Medical Center has admitted that Daniel S. Gordon, D.O., was its agent, servant, and or employee acting within the scope of said agency and/or employment.

Respectfully Submitted,

  
\_\_\_\_\_  
James S. Gordon, Esquire  
Counsel for Plaintiffs

  
\_\_\_\_\_  
David R. Johnson, Esquire  
Counsel for Defendants

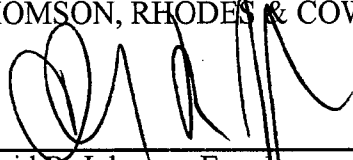
**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within STIPULATION TO DISMISS FEWER THAN ALL DEFENDANTS has been served upon the following counsel of record and same placed in the U.S. Mails on this 27th day of

July, 2004:

James C. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

THOMSON, RHODES & COWIE, P.C.

  
\_\_\_\_\_  
David R. Johnson, Esquire  
Attorneys for defendants



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,  
Defendant.

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,  
Additional Defendants.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

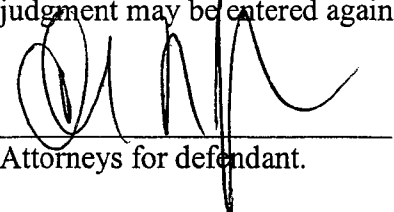
vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.  
Defendants.

NOTICE TO PLEAD:

To: Plaintiff

You are hereby notified to file a written  
response to the enclosed NEW MATTER  
PURSUANT TO RULE 2252(d) within twenty  
(20) days of service hereof or a default  
judgment may be entered against you.

  
Attorneys for defendant.

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. ~~07~~-780-CD  
04

Issue No.

NEW MATTER PURSUANT TO RULE  
2252(d) ON THE PART OF DANIEL S.  
GORDON, D.O. VS. JERJIS T. ALAJAJI,  
M.D.

Filed on behalf of Daniel S. Gordon, D.O., one  
of the defendants.

Counsel of Record for This Party:

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

**COPY**  
**FILED**  
m/11:46am  
AUG 13 2004

*original filed  
To 03-1051-CD*

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,

Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,

Additional Defendant.

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,

Defendants.

Nos: 03 - 1051 - C.D.  
04 - 780 - C.D.

JURY TRIAL DEMANDED

Type of Pleading:  
*Additional Defendant Dr. Jerjis  
Alajaji's Response to Dr. Daniel  
Gordon's New Matter*

Filed on Behalf of Defendant:  
*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:  
*Darryl R. Slimak, Esquire*  
Pa. Supreme Court I.D. #41695

McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

**COPY**  
*original filed  
to 1051*

**FILED** <sup>ELK</sup>

AUG 24 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant,

JERJIS T. ALAJAJI, M.D., GEORGE M.  
KOSCO, M.D., and DANIEL GORDON,  
M.D.,

Additional Defendants.

**CONSOLIDATED WITH**

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,  
and DANIEL S. GORDON, D.O.,

Defendants.

CIVIL DIVISION

No. 03-1051-CD  
CONSOLIDATED WITH  
No. ~~07~~-780-CD  
04

**ANSWER TO MOTION TO STRIKE  
PLAINTIFFS' PRAECIPE FOR  
JURY TRIAL FILED BY DEFENDANT  
GEORGE M. KOSCO, M.D.**

Filed on behalf of PLAINTIFFS:  
John D. Saunders and Brenda A. Saunders

Counsel of Record for this Party:

James G. Gordon, Esquire  
Pa. I.D. #26980

JAMES G. GORDON & ASSOCIATES  
1000 Main Street  
Pittsburgh, Pennsylvania 15215-2406  
412.696.0062

**JURY TRIAL DEMANDED**

FILED No CC  
m/j:49/84  
NOV 24 2004

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

CIVIL DIVISION

Plaintiffs,

No. 03-1051-CD  
CONSOLIDATED WITH  
No. 07-780-CD

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant.

JERJIS T. ALAJAJI, M.D., GEORGE M.  
KOSCO, M.D., and DANIEL GORDON,  
M.D.,

Additional Defendants.

**CONSOLIDATED WITH**

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

v.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,  
and DANIEL S. GORDON, D.O.,

Defendants.

**ANSWER TO MOTION TO STRIKE PLAINTIFFS' PRAECIPE FOR JURY TRIAL  
FILED BY DEFENDANT GEORGE M. KOSCO, M.D.**

AND NOW comes the Plaintiffs, by and through their undersigned counsel, who file the  
within Answer to the Motion to Strike Plaintiffs' Praecipe for Jury Trial filed by Defendant  
George M. Kosco, M.D. in support hereof, Plaintiffs' state the following:

1. Admitted.
2. Admitted in part and denied in part. A reply to Dr. Kosco's new matter has been  
filed.

3. Admitted in part and denied in part. It is anticipated that Dubois Radiologist, Inc., will be dismissed from this action due to the fact that it is not an insured entity and due to the fact that the named defendant employees of Dubois Radiologist, Inc., are insured as required by law. By way of further answer, Plaintiffs' have provided counsel for Dr. Kosco with all discovery materials. By way of further denial, the Praecipe For Jury Trial was filed pursuant to local rule so that a Pretrial Order could be entered setting dates for discovery cut off, the filing of pretrial reports, and a jury trial schedule.

4. Admitted.

5. Paragraph 5 (a)-(c) are denied for the reasons set forth above.

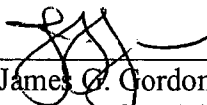
6. Paragraphs 6 (a)-(g) are denied for the reasons set forth above. Plaintiffs seek a trial date and a discovery cut off date.

7. Paragraph 7 is denied for the reasons set forth above.

8. Paragraph 8 is denied for the reasons set forth above. Counsel for Plaintiffs communicated with the Court Administrator's Office with respect to Local Rule 212.2 as the preferred mechanism for moving the Court to set a discovery cut off and other pre-trial dates.

WHEREFORE, Plaintiffs request that the Court hold a Pretrial Conference at which time a discovery cut off date, the exchange of pretrial reports, and a jury trial date are set in this matter.

Respectfully submitted,

  
\_\_\_\_\_  
James G. Gordon, Esquire  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

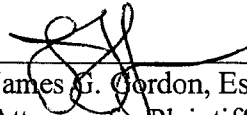
I hereby certify that I have served a true and correct copy of the within Answer to the Motion to Strike Plaintiffs' Praecipe For a Jury Trial filed by George M. Kosco, M.D. on this 22<sup>nd</sup> day of November 2004, via First Class, U.S. Mail, postage prepaid to the following of record:

Darryl R. Slimak, Esquire  
McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc.  
811 University Drive  
State College, Pennsylvania 16801

Walter Wall, Esquire  
Meyer, Darragh, Buckler, Bebenek & Eck  
120 Lakemont Park Blvd.  
Altoona, Pennsylvania 16602

David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, Pennsylvania 15219

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.  
124 North Allegheny Street  
Bellefonte, Pennsylvania 16823

  
\_\_\_\_\_  
James G. Gordon, Esquire  
Attorney for Plaintiffs

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,

Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,

Additional Defendant.

CONSOLIDATED

Nos: 03 - 1051 - C.D.

04 - 780 - C.D.

04 - 1245 - C.D.

Type of Pleading:

*Notice of Rescheduled Oral*

*Deposition Directed to Martin R.*

*Maloney*

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and

DANIEL S. GORDON, D.O.,

Defendants

Filed on Behalf of Defendant:

*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:

*Darryl R. Slimak, Esquire*

Pa. Supreme Court I.D. # 41695

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

GEORGE M. KOSCO, M.D. and  
DUBOIS RADIOLOGISTS, INC.,

Defendants.

McQuaide, Blasko, Schwartz,

Fleming & Faulkner, Inc.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

Counsel for Plaintiffs:

*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

FILED

JUL 20 2005

William A. Shaw  
Prothonotary/Clerk of Courts

Orig.  
to  
03-1051-CD

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

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JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D. and	:	
DUBOIS RADIOLOGISTS, INC.,	:	
Defendants.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Notice of Rescheduled Oral Deposition Directed to Martin R. Maloney, in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 13<sup>th</sup> day of July, 2005, to the attorney(s) of record:



James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.  
124 North Allegheny Street  
Bellefonte, PA 16823

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_



Darryl R. Slimak

Attorneys for Additional Defendant

JERJIS T. ALAJAJI, M.D.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

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JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,  
Defendants

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JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

GEORGE M. KOSCO, M.D. and  
DUBOIS RADIOLOGISTS, INC.,  
Defendants.

CONSOLIDATED

Nos: 03 - 1051 - C.D.  
04 - 780 - C.D.  
04 - 1245 - C.D.

Type of Pleading:

*Notice of Rescheduled Oral  
Deposition Directed to Melissa Frey*

Filed on Behalf of Defendant:  
*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:  
*Darryl R. Slimak, Esquire*  
Pa. Supreme Court I.D. # 41695

McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Counsel for Plaintiffs:  
*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

FILED  
JUL 20 2005

03-1051-CD  
Orig. to

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	
	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

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JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D. and	:	
DUBOIS RADIOLOGISTS, INC.,	:	
Defendants.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Notice of Rescheduled Oral Deposition Directed to Melissa Frey, in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 13<sup>th</sup> day of July, 2005, to the attorney(s) of record:

James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.  
124 North Allegheny Street  
Bellefonte, PA 16823

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_



Darryl R. Slimak  
Attorneys for Additional Defendant  
JERJIS T. ALAJAJI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
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Defendant.

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,

Additional Defendants.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

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DUBOIS REGIONAL MEDICAL  
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DANIEL S. GORDON, D.O.

Defendants.

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. ~~07~~-780-CD

04

Issue No.

MOTION FOR LEAVE TO HAVE  
SUBSTITUTE COUNSEL ATTEND CALL  
OF LIST

Filed on behalf of DuBois Regional Medical  
Center, a corporation, t/d/b/a DRMC, and  
Daniel S. Gordon, 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

no cc

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JUL 21 2005 Orig. filed to

William A. Shaw  
Prothonotary Clerk of Courts

03-1051-CD

MOTION FOR LEAVE TO HAVE SUBSTITUTE COUNSEL ATTEND CALL OF LIST

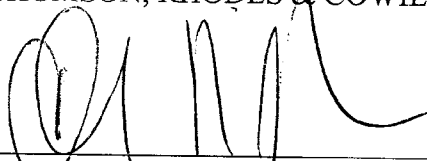
NOW COME DuBois Regional Medical Center, a corporation, t/d/b/a DRMC, and Daniel S. Gordon, D.O., two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following Motion for Leave to Have Substitute Counsel Attend Call of List.

1. Notice has been received of the call of the list in the case above captioned on July 28, 2005. Undersigned counsel will be trial counsel in the case and is available to attend the pretrial conference and jury selection. However, undersigned counsel was previously committed to being out of town on July 28.

2. Accordingly, leave is sought to allow an attorney other than trial counsel to attend the call of the list on July 28, 2005.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

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

David R. Johnson, Esquire  
Attorneys for DuBois Regional Medical Center, a corporation, t/d/b/a DRMC, and Daniel S. Gordon, D.O., two of the defendants.

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within MOTION FOR LEAVE TO  
HAVE SUBSTITUTE COUNSEL ATTEND CALL OF LIST has been served upon the  
following counsel of record and same placed in the U.S. Mails on this 19<sup>th</sup> day of

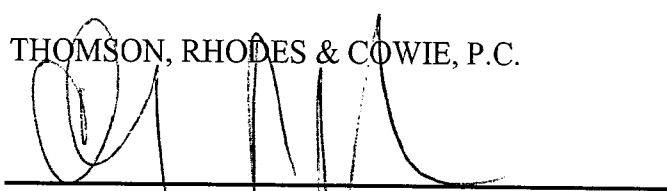
July, 2005:

James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

Darryl R. Slimak, Esquire  
McQuaide, Blasko, Schwartz, Fleming  
& Faulkner, Inc.  
811 University Drive  
State College, PA 16801-6699

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller,  
Williams & Benson, Inc.  
124 North Allegheny Street  
Bellefonte, PA 16823-1695

THOMSON, RHODES & COWIE, P.C.

  
\_\_\_\_\_  
David R. Johnson, Esquire  
Attorneys for DuBois Regional Medical Center, a  
corporation, t/d/b/a DRMC, and Daniel S. Gordon,  
D.O., two of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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Defendant.

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,

Additional Defendants.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.

Defendants.

**ORDER OF COURT**

AND NOW this 21<sup>st</sup> day of July, 2005, it is hereby ORDERED that  
substitute counsel may attend the call of the list in the case above captioned on July 28, 2005.

BY THE COURT:

Judith J. Cunningham J.

FILED 1cc  
0/3536N Any  
JUL 21 2005 Johnson  
William A. Shaw  
Prothonotary/Clerk of Courts  
Orig. filed  
to  
03-1051-CD



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

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vs.

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Defendant.

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,

Additional Defendants.

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JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
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DANIEL S. GORDON, D.O.

Defendants.

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. ~~07~~-780-CD

04

Issue No.

**MOTION IN LIMINE WITH RESPECT  
TO PLAINTIFFS' PROPOSED EXPERT  
REPORT AND TESTIMONY OF  
GREGORY W. BARAN, M.D.**

Filed on behalf of DuBois Regional Medical  
Center, a corporation, t/d/b/a DRMC, and  
Daniel S. Gordon, D.O., two of the defendants.

Counsel of Record for These Parties:


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** Orig. to  
m/12:32/04 03-1051-CD  
AUG 15 2005

 William A. Shaw  
Prothonotary/Clerk of Courts

MOTION IN LIMINE WITH RESPECT TO PLAINTIFFS' PROPOSED EXPERT  
REPORT AND TESTIMONY OF GREGORY W. BARAN, M.D.

NOW COME DuBois Regional Medical Center, a corporation, t/d/b/a DRMC, and Daniel S. Gordon, D.O., two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following motion in limine.

1. This case involves a medical malpractice action arising out of treatment rendered to John Saunders for an ankle injury which he sustained while participating in a BMX racing competition. Mr. Saunders came to the emergency room at DuBois Regional Medical Center on August 17, 2002. A series of ankle x-rays were performed and read as negative by Dr. Kosco, a radiologist. Dr. Shilala, the emergency room physician at DRMC, then released Mr. Saunders to home and told him to follow up with his family doctor if his condition did not improve. He then saw Dr. Gordon on August 22, 2002, who ordered additional x-rays which were read by Dr. Alajaji on August 23, 2002 and, in the meantime, sent Mr. Saunders to physical therapy. Dr. Alajaji did not identify any fractures in the x-rays. When Mr. Saunders' condition did not improve, Dr. Gordon referred Mr. Saunders to an orthopedic specialist.

2. Dr. Shilala practices in the medical sub-specialty of emergency medicine. The care and treatment he rendered to John Saunders was consistent with that specialization.

3. Dr. Gordon practices in the medical sub-specialty of family practice. The care and treatment he rendered to John Saunders was consistent with that specialization.

4. Plaintiffs have provided expert reports from the following individuals:

- (a) Jay Jarrell, Ph.D. (an economist);
- (b) Jeffrey Kann, M.D. (an orthopedist);
- (c) John Tufari, M.D. (an emergency room physician); and

(d) Gregory W. Baran, M.D. (a radiologist).

5. Dr. Baran's report of February 27, 2005 is attached hereto as Exhibit "A." His curriculum vitae is attached hereto as Exhibit "B." Despite being identified as a practitioner of radiology, Dr. Baran does not limit the scope of his report to that medical sub-specialty: he improperly opines upon the liability of Dr. Shilala (an emergency room physician), Dr. Gordon (a family practice doctor), the DRMC nursing staff on duty in the emergency department, the administration of DRMC for the policies of the emergency department; and, for reasons unknown but irrelevant, he also interjects that DRMC violated Medicare billing regulations.

**A. Dr. Baran Is Not Competent To Provide Expert Opinions  
Concerning The Standard Of Care Of Dr. Gordon and Dr. Shilala**

6. As to the liability criticisms levied by Dr. Baran against his fellow physicians, The Medical Care Availability and Reduction of Error Act (hereinafter "MCARE") contains specific requires for expert testimony in medical malpractice cases.

7. Section 1303.512 of MCARE requires that an expert testifying as to a physician's standard of care must meet the following criteria:

(1) 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;

(2) 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; or,

(3) In the event 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).

8. Since Dr. Baran does not practice in the sub-specialty of emergency medicine, he may not offer opinions against Dr. Shilala. No reasonable basis has been established suggesting that Dr. Baran is "substantially familiar with the applicable standards of care" pertaining to emergency room physicians under the circumstances present in this case. Nor is there any evidence to suggest that Dr. Baran practices in the area of emergency medicine.

9. Since Dr. Baran does not practice in the sub-specialty of family practice medicine, he may not offer opinions against Dr. Gordon. No reasonable basis has been established suggesting that Dr. Baran is "substantially familiar with the applicable standards of care" pertaining to family practice physicians under the circumstances present in this case. Nor is there any evidence to suggest that Dr. Baran treats patients in the area of family practice medicine.

10. For all of the above reasons, Dr. Baran is not competent to provide expert medical opinions relative to the standard of care required of Dr. Shilala, an emergency room physician, or Dr. Gordon, a family practice physician.

**B. Dr. Baran Is Not Competent To Provide Expert Opinions  
Concerning The Standard Of Care Of The Emergency Room  
Nurses Or Of The Hospital Administration In Promulgating  
Policies For The Emergency Room**

11. In situations where the conduct of a physician is not at issue, an expert witness still must possess a reasonable pretension to specialized knowledge on the subject matter at issue. Whittington v. Episcopal Hospital, 768 A.2d 1144 (Pa. Super. 2001).

12. Dr. Baran is not an emergency room nurse nor has he ever had any experience whatsoever in the nursing profession. Dr. Baran can thus have no specialized knowledge as to

the emergency room nursing care received by Mr. Saunders, and he is not competent to opine on this issue.

13. In like manner, Dr. Baran is not a hospital administrator nor does his curriculum vitae reveal any experience or expertise in the development of policies and procedures to govern the operation of a hospital emergency department. Dr. Baran is simply not qualified or competent to offer any opinion as to the policies and procedures which he improperly contends should have been in place in the emergency department during the at issue treatment of John Saunders.

**C. The Medicaid Regulations Contained Within Dr. Baran's Report  
Are Irrelevant To The Issues To Be Decided In This Litigation And  
All Reference To Them Should Be Excluded**

14. On page 2 of his report, Dr. Baran references and excerpts a Medicaid regulation entitled "Ordering Diagnostic Tests." This selected and isolated provision is taken from the Carrier Manual for Medicaid and Medicare Services and can be found in Chapter XV of the Manual pertaining to "Fee Schedule for Physicians' Services." Indeed, this regulation does not concern guidelines and rules of medical services to protect the public, rather, it simply addresses the manner in which healthcare institutions are to be compensated for performing diagnostic tests on eligible patients.

15. In some unspecified manner, Dr. Baran opines that DuBois Regional Medical Center violated the above regulations and that this violation is indicative of a breach of the standard of care in establishing policies and procedures for hospital emergency rooms.

16. Mr. Saunders was not a Medicaid/Medicare patient. These regulations were not at all involved in his treatment. For this reason, they are irrelevant.

17. Moreover, the above regulations do not bear upon the issue of whether DuBois Regional Medical Center (or any other defendant in this case) breached an applicable standard of care. Plaintiffs' have not advanced a claim of negligence *per se* in this litigation, and, even had they done so, the regulation cited by Dr. Baran in his report is not of the type upon which such a claim can be based, since the regulation neither pertains to patient safety, in general, or to the type of harm purportedly suffered by Mr. Saunders in this case.

18. For the reasons stated above, plaintiffs should not be permitted to comment upon or reference any Medicaid regulations for the reason that they are irrelevant to the issues to be decided in this litigation.

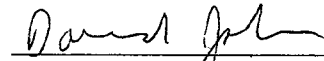
WHEREFORE, DuBois Regional Medical Center, a corporation, t/d/b/a DRMC, and Daniel S. Gordon, D.O., two of the defendants, respectfully request that this Honorable Court grant this motion in limine, and thereby preclude the plaintiffs from:

- (1) Offering any opinions by Dr. Baran that Dr. Shilala deviated from the applicable standard of care.
- (2) Offering any opinions by Dr. Baran that Dr. Gordon deviated from the applicable standard of care.
- (3) Offering any opinions by Dr. Baran that any nurses deviated from the applicable standard of care. Further, it is requested that the Court enter an order in limine precluding any argument by the plaintiffs that DuBois Regional Medical Center may be liable to plaintiffs for the conduct of its nurses, since there is no expert testimony to support any such claim.

- (4) Offering any opinions by Dr. Baran that DuBois Regional Medical Center, corporately, deviated from the standard of care. Further, it is requested that the Court enter an order in limine precluding any argument by the plaintiffs that DuBois Regional Medical Center may be liable to plaintiffs for its corporate breach of the standard of care, since there is no expert testimony available to support any such claim.
- (5) Commenting upon, referring to or offering into evidence any Medicare/Medicaid regulations, ordinances or statutes.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



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David R. Johnson, Esquire

Brad R. Korinski, Esquire

Attorneys for DuBois Regional Medical Center, a corporation, t/d/b/a DRMC, and Daniel S. Gordon, D.O., two of the defendants.

GREGORY W. BARAN, M.D.

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James G. Gordon  
James G. Gordon & Associates  
1000 Main Street  
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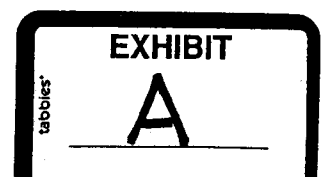
February 27, 2005

RE: John D. Saunders and Brenda A. Saunders, husband and wife v. DuBois Regional Medical Center, a corporation t/d/b/a DRMC v. Jerjis T. Alajaji, M.D. and George M. Kosco, M.D.

Dear Mr. Gordon,

I reviewed the following articles:

1. Right ankle: four view radiographs dated 8/17/02
2. Right ankle: four view radiographs dated 8/22/02
3. Right foot: three view radiographs dated 8/22/02
4. Right foot: three view radiographs dated 9/16/02
5. Left foot comparison; three view radiographs dated 9/16/02
6. CT Scan of both feet with multiplanar reconstruction dated 9/19/02
7. CT Scan of both feet with multiplanar reconstruction dated 1/29/03
8. Deposition of Daniel S. Gordon, D.O. recorded on February 18, 2004
9. Deposition of Patrick F. Shilala, M.D. June 17, 2004
10. Deposition of Jerjis Alajaji, M.D. recorded on June 17, 2004
11. Deposition of George M. Kosco, M.D. recorded on October 25, 2004
12. Deposition of Shirley Mae McNulty recorded on October 25, 2004
13. Deposition of Mitzie Diane Leadbetter recorded on October 25, 2004
14. DuBois Regional Medical Center Emergency Room Records 8/17/02
15. Daniel Gordon, D.O. Office Records: 8/22/02, 8/29/02, 9/4/02
16. Right Ankle radiology report by George M. Kosco, M.D. 8/17/04
17. Right Ankle / Right Foot radiology report by Jerjis T. Alajaji, M.D. 8/22/02
18. CT Right Foot report by George M Kosco, M.D. 9/19/02
19. CT Right Foot report by Jerjis T. Alajaji, M.D. 1/29/03
20. Dubois Regional Medical Center Physical Therapy Reports: 8/23/02, 9/4/02, 9/17/02
21. Correspondence: Mark A. Piasio, MD. 9/16/02
22. Correspondence: Jeffrey N. Kann, M.D. 10/22/02, 1/21/03, 2/18/03
23. Correspondence: Daniel S. Gordon, D.O. Request for moratorium 11/04/02





Summary:

Mr. John D. Saunders was admitted to the DuBois Regional Medical Center emergency room on 8/17/02 after suffering an injury to his right ankle in a competitive bicycle event.

Mr. Sanders was initially assessed by triage nurse, Mitzie Diane Leadbetter who documented that the patient was unable to bear weight. Ms Leadbetter ordered a right ankle x-ray. In her deposition, Ms. Leadbetter does not recall ever reading a policy authorizing triage nurses to order x-rays and stated that x-rays are ordered by the triage nurse based on the patient's complaint and the triage examination. She stated that she would order both an ankle and foot series only if the patient complained of the ankle and foot, or just one or the other, or if upon examination the patient complained of pain when examining a portion of the foot and ankle.

The Carrier Manual regulations from the Centers for Medicare & Medicaid Services ([http://www.cms.hhs.gov/manuals/14\\_car/3b15000.asp](http://www.cms.hhs.gov/manuals/14_car/3b15000.asp)) states the following:

15021. ORDERING DIAGNOSTIC TESTS

A. Definitions.--

1. A "diagnostic test" includes all diagnostic x-ray tests, all diagnostic laboratory tests, and other diagnostic tests furnished to a beneficiary.
2. A "treating physician" is a physician, as defined in §1861(r) of the Social Security Act (the Act), who furnishes a consultation or treats a beneficiary for a specific medical problem, and who uses the results of a diagnostic test in the management of the beneficiary's specific medical problem.

**NOTE:** A radiologist performing a therapeutic interventional procedure is considered a treating physician. A radiologist performing a diagnostic interventional or diagnostic procedure is not considered a treating physician.

3. A "treating practitioner" is a nurse practitioner, clinical nurse specialist, or physician assistant, as defined in §1861(s)(2)(K) of the Act, who furnishes, pursuant to State law, a consultation or treats a beneficiary for a specific medical problem, and who uses the result of a diagnostic test in the management of the beneficiary's specific medical problem.

4. A "testing facility" is a Medicare provider or supplier that furnishes diagnostic tests. A testing facility may include a physician or a group of physicians (e.g., radiologist, pathologist), a laboratory, or an independent diagnostic testing facility (IDTF).
5. **An "order" is a communication from the treating physician/practitioner requesting that a diagnostic test be performed for a beneficiary.** The order may conditionally request an additional diagnostic test for a particular beneficiary if the result of the initial diagnostic test ordered yields to a certain value determined by the treating physician/practitioner (e.g., if test X is negative, then perform test Y). An order may include the following forms of communication:
  - a. A written document signed by the treating physician/practitioner, which is hand-delivered, mailed, or faxed to the testing facility; **NOTE:** No signature is required on orders for clinical diagnostic tests paid on the basis of the physician fee schedule or for physician pathology services.
  - b. A telephone call by the treating physician/practitioner or his/her office to the testing facility; and
  - c. An electronic mail by the treating physician/practitioner or his/her office to the testing facility.

**NOTE:** If the order is communicated via telephone, both the treating physician/practitioner or his/her office, and the testing facility must document the telephone call in their respective copies of the beneficiary's medical records

It is my professional opinion the aforementioned triage process at the DuBois Regional Medical Center is below the standard of care and in violation of the carrier regulations put forth by the Centers for Medicare & Medicaid Services. The DuBois Regional Medical Center lacks a policy which allows a triage nurse to order diagnostic studies under the order of a physician. There are no well documented ordering guidelines established by a physician or physician group that state what specific studies to order under specific clinical presentations, and there is no co-sign policy in effect whereby each order made by a triage nurse is cosigned by the ordering physician. Additionally, the triage nurses at the DuBois Regional Medical Center may be in practice violation of their own state licensure as set forth by the State Licensing Board.

Shirley Mae McNulty is the nurse of record who cared for Mr. Sanders in the emergency room. Ms. McNulty documented that Mr. Saunders' pain score was 10/10. She also noted that the pain was aggravated by movement and that trying to put on the gel splint in the emergency room was too painful for the patient.

Patrick F. Shilala, M.D. was the emergency room physician at the Dubois Regional Medical Center who cared for Mr. Saunders on 8/17/02. In his deposition, Dr. Shilala acknowledged that Mitzi Leadbetter or Shirley McNulty could have ordered the x-rays for John Saunders without consulting him. He also stated that he did not discuss with either Ms. Leadbetter or McNulty in ordering both a foot and ankle series. Dr. Shilala stated "yes" when asked, "do you believe in diagnosing injuries to the foot and ankle mechanism of injury is important?" However he documented no mechanism of injury in the emergency room record and did not recall what he asked Mr. Saunders. Dr. Shilala was familiar with the Ottawa rules but could not recall them in his deposition. He acknowledged that he did not have Mr. Saunders attempt weight bearing and did not ask him to rotate his foot because, "he was having too much pain". He did acknowledge having discussions with "anybody" that an ankle injury could mask a foot injury and stated that he generally does foot and ankle x-rays both. Dr. Shilala acknowledged that he could have ordered a foot series x-rays on August 17<sup>th</sup>, 2002 if he desired. Dr. Shilala stated that he was not aware of the fact that it was too painful for Mr. Saunders to wear the gel splint. He did state that if Mr. Saunders would have left the E.R. room without the gel splint applied, it would have been contrary to his instructions.

It is my professional opinion that Dr. Shilala's care of Mr. Saunders was well below standard and customary. The fact that ankle and foot injuries can be singular, combined, and / or masked is primordial information that is taught in medical school; and knowledge that Dr. Shilala acknowledged has discussed with others. He did not properly examine Mr. Saunders based on the Ottawa rules and violated his own practice pattern, "my own personal treatment is I generally do ankle and foot x-rays both". The patient left the emergency room without the gel splint that was contrary to his orders but his responsibility. Finally he missed the significant soft tissue swelling and subluxed talus on the ankle radiographs.

Mr. Saunders' follow-up care was provided by Daniel S. Gordon, D.O. Dr. Gordon saw Mr. Saunders in his office on 8/22/02, 8/29/02, and 9/04/02. Dr. Gordon wrote in his office notes of 8/22/02 "seen in ER - x-ray (-)" and "Dx: severe sprain, R/O Fx"; and then proceeded to send Mr. Saunders to physical therapy. Dr. Gordon at no time reviewed the 8/17/02 and 8/22/04 x-ray studies of Mr. Saunders and at no time reviewed or discussed the x-ray findings with Dr. Kosco or Dr. Alajaji. Dr. Gordon referred Mr. Saunders to Dr. Piasio on 9/4/02 because Mr. Saunders was "doing better" but Dr. Gordon "didn't feel comfortable" that he was completely better.

It is my professional opinion that Dr. Gordon's care of Mr. Saunders was below standard and customary. Logic would dictate that a health care provider would not send a patient to physical therapy if his or her diagnosis was "rule out fracture" while repeat x-rays were being ordered to substantiate that diagnosis. Additionally, Dr. Gordon made no attempt to discuss and review the x-ray studies with Dr. Kosco and / or Dr. Alajaji in light of the fact that Mr. Saunders' clinical condition was not improving as expected by Dr. Gordon.

George M. Kosco, M.D. interpreted the initial 8/17/02 four view study of the right ankle. Dr. Kosco's dictation was printed out on 8/21/02 at 0723 by LLW after release by Dr. Kosco. The study clearly shows the talus to be impacted into the tarsonavicular and subluxed in a plantar direction in relationship to the tarsonavicular.

It is my professional opinion that the findings are clearly seen and Dr. Kosco's interpretation falls below standard and customary care. Additionally the release of a report four days after exam completion is below standard and customary care and provides little or no clinical utility in the care of the patient.

The interpretation by Jerjis T. Alajaji of the right ankle and right foot series performed on 8/22/02 also falls below standard and customary care. The studies clearly illustrate impaction of the talus into the tarsonavicular, plantar subluxation of the talus in relationship to the tarsonavicular, and a displaced comminuted fracture of the tarsonavicular. The cuboid is also fractured.

Additionally, Dr. Alajaji's method of practice is substantially different than that stated in the American College of Radiology Practice Guideline for Communication in Diagnostic Radiology stated as follows:

The American College of Radiology, with more than 30,000 members, is the principal organization of radiologists, radiation oncologists, and clinical medical physicists in the United States. The College is a nonprofit professional society whose primary purposes are to advance the science of radiology, improve radiologic services to the patient, study the socioeconomic aspects of the practice of radiology, and encourage continuing education for radiologists, radiation oncologists, medical physicists, and persons practicing in allied professional fields.

The American College of Radiology will periodically define new practice guidelines and technical standards for radiologic practice to help advance the science of radiology and to improve the quality of service to patients throughout the United States. Existing practice guidelines and technical standards will be reviewed for revision or renewal, as appropriate, on their fifth anniversary or sooner, if indicated.

Each practice guideline and technical standard, representing a policy statement by the College, has undergone a thorough consensus process in which it has been subjected to extensive review, requiring the approval of the Commission on Quality and Safety as well as the ACR Board of Chancellors, the ACR Council Steering Committee, and the ACR Council. The practice guidelines and technical standards recognize that the safe and effective use of diagnostic and therapeutic radiology requires specific training, skills, and techniques, as described in each document. Reproduction or modification of the published practice guideline and technical standard by those entities not providing these services is not authorized.

1991 (Res. 5)  
Revised 1995 (Res. 10)  
Revised 1999 (Res. 27)  
Revised 2001 (Res. 50)  
Effective 1/1/02

## **ACR PRACTICE GUIDELINE FOR COMMUNICATION: DIAGNOSTIC RADIOLOGY**

### **PREAMBLE**

These guidelines are an educational tool designed to assist practitioners in providing appropriate radiologic care for patients. They are not inflexible rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. For these reasons and those set forth below, the American College of Radiology cautions against the use of these guidelines in litigation in which the clinical decisions of a practitioner are called into question.

The ultimate judgment regarding the propriety of any specific procedure or course of action must be made by the physician or medical physicist in light of all the circumstances presented. Thus, an approach that differs from the guidelines, standing alone, does not necessarily imply that the approach was below the standard of care. To the contrary, a conscientious practitioner may responsibly adopt a course of action different from that set forth in the guidelines when, in the reasonable judgment of the practitioner, such course of action is indicated by the condition of the patient, limitations on available resources or advances in knowledge or technology subsequent to publication of the guidelines. However, a practitioner who employs an approach substantially different from these guidelines is advised to document in the patient record information sufficient to explain the approach taken.

The practice of medicine involves not only the science, but also the art of dealing with the prevention, diagnosis, alleviation and treatment of disease. The variety and complexity of human conditions make it impossible to always reach the most appropriate diagnosis or to predict with certainty a particular response to treatment. It should be recognized, therefore, that adherence to these guidelines will not assure an accurate diagnosis or a successful outcome. All that should be expected is that the practitioner will follow a reasonable course of action based on current knowledge, available resources, and the needs of the patient to deliver effective and safe medical care. The sole purpose of these guidelines is to assist practitioners in achieving this objective.

### **I. INTRODUCTION**

Communication is a critical component of the art and science of medicine and is especially important in diagnostic radiology. An official interpretation shall be generated following any examination, procedure, or officially requested consultation. In addition, the interpreting physician and the referring physician or other healthcare provider have other opportunities to communicate directly with each other during the course of a patient's case management. Such communication should be encouraged because it promotes

optimal patient care and focuses attention on selection of appropriate and cost-effective imaging studies, clinical efficacy, and radiation exposure.

1 The ACR Medical Legal Committee defines official interpretation as that written report (and any supplements or amendments thereto) that attach to the patient's permanent record. In healthcare facilities with a privilege delineation system, such a written report is prepared only by a qualified physician who has been granted specific delineated clinical privileges for that purpose by the facility's governing body upon the recommendation of the medical staff.

Diagnostic radiology practice is primarily a consultative physician service. The interests of both patients and their referring physicians are well served when the following are among the elements of the radiologic consultation and are completed in all practice settings: a) pre-examination evaluation of the patient by the referring physician; and b) a request for radiologic consultation that includes pertinent clinical findings, a working diagnosis, presenting signs or symptoms, and specific question to be answered by the radiology study. Such information assists both in promoting optimal patient care through interpretation of images based on appropriate clinical information and in enhancing the cost-effectiveness of diagnostic examinations by obtaining the optimal images.

Communication of patient information must be in accordance with federal and state privacy requirements.

## **II. THE DIAGNOSTIC RADIOLOGY REPORT**

An official interpretation (final written report) shall be provided with all radiologic studies regardless of the site of performance (hospital, imaging center, physician office, mobile unit, etc.). The report should include the following items as a minimum:

### **A. Demographics**

1. Name of patient and another identifier, such as social security number or hospital or office identification number.
2. Name of any referring physician(s) or other health care provider(s).
3. Name or type of examination.
4. Date of the examination.
5. Time of the examination, if relevant (e.g., for patients who are likely to have more than one of a given examination per day).
6. Inclusion of the following additional items is encouraged:
  - a. Date of dictation
  - b. Date of transcription
  - c. Birth date or age
  - d. Gender

### **B. Relevant clinical information and ICD-9 code as available**

### **C. Body of the Report**

#### **1. Procedures and materials**

The report should include a description of the studies and/or procedures performed and any contrast media (including concentration and volume when applicable), medications, catheters, or devices used, if not recorded elsewhere. Any known significant patient reaction or complication should be recorded.

#### **2. Findings**

The report should use precise anatomic, pathologic, and radiologic terminology to describe the findings accurately.

#### **3. Potential limitations**

The report should, when appropriate, identify factors that may limit the sensitivity and specificity of the examination.

4. Clinical issues

The report should address or answer any pertinent clinical issues raised in the request for the imaging examination.

5. Comparative data

Comparison with relevant previous examinations and reports should be part of the radiologic consultation and report when appropriate and available.

D. Impression (Conclusion or Diagnosis)

1. Unless the report is brief, each report should contain an "impression" section.
2. A precise diagnosis should be given whenever possible.
3. A differential diagnosis should be given when appropriate.
4. Follow-up or additional diagnostic studies to clarify or confirm the impression should be suggested when appropriate.
5. Any significant patient reaction should be reported in the impression.

**III. OFFICIAL INTERPRETATION (FINAL WRITTEN REPORT)**

A. The final written report is considered to be the definitive means of communicating the results of an imaging examination or procedure to the referring physician. Other methods for direct or personal communication of results are encouraged in certain situations. The timeliness of reporting any radiologic examination varies with the nature and urgency of the clinical problem.

B. The final report should be proofread to minimize typographical errors, deleted words, and confusing or conflicting statements.

C. The final report should be completed in accordance with appropriate state and federal requirements (see the Final Regulations, Mammography Quality Standards Act for Mammography Reporting). Electronic or rubber-stamp signature devices, instead of a written signature, are acceptable if access to them is secure.

D. The final report should be sent to the referring physician or healthcare provider providing the clinical follow-up. It should be noted that the referring physician or healthcare provider also shares in the responsibility of obtaining results of imaging studies they have ordered.

E. When feasible, a copy of the final report should accompany the transmittal of relevant images to other healthcare professionals.

F. A copy of the final report should be kept as part of the patient's medical record (paper or electronic) and be retrievable for future reference. Retention of these records should be in accordance with state and federal regulations and facility policies.

**IV. OTHER INTERPRETATIONS**

A. If requested to render an interpretation of an imaging study obtained at another facility, radiologists are encouraged to document their interpretations either by means of a formal report or other written documentation.

B. If requested to render an interpretation of an imaging study obtained at the same facility and previously reported, and a discrepancy is noted, an addendum should be rendered.

#### **V. COMMUNICATION**

- A. Direct communication is accomplished in person or by telephone to the referring physician or an appropriate representative. Documentation of direct communication is recommended. In those situations in which the interpreting physician feels that immediate patient treatment is indicated (e.g., tension pneumothorax), the interpreting physician should communicate directly with the referring physician, other healthcare provider, or an appropriate representative. If that individual cannot be reached, the interpreting physician should directly communicate the need for emergent care to the patient or responsible guardian, if possible.
- B. Under some circumstances, practice constraints may dictate the necessity of a preliminary report before the final report is prepared. A significant change between the preliminary and final interpretation should be reported directly to the referring physician.
- C. In those situations in which the interpreting physician feels that the findings do not warrant immediate treatment but constitute significant unexpected findings, the interpreting physician or his/her designee should communicate the findings to the referring physician, other healthcare provider, or an appropriate individual in a manner that reasonably insures receipt of the findings.

#### **VI. SELF-REFERRED PATIENTS**

Radiologists should recognize the potential obligations of assuming the care and treatment of patients who present themselves for imaging studies on a self-referred basis. Such obligations may include communicating the results of the imaging studies to the patient and the necessity of appropriate follow-up.

#### **ACKNOWLEDGEMENTS**

This guideline was revised according to the process described in the ACR Practice Guidelines and Technical Standards book by the Guidelines and Standards Committee of the General and Pediatric Radiology Commission.

Michael C. Beachley, MD, Chair  
Kimberly Applegate, MD  
Anthony Bruzzese, MD  
Eric N. Faerber, MD  
Edmund A. Franken, MD  
Sam Kottamasu, MD  
Paul A. Larson, MD  
William H. McAlister, MD  
William R. Reinus, MD  
Arvin E. Robinson, MD  
Edward Weinberger, MD  
J. Bruce Hauser, MD, Chair, Commission  
Richard Mintzer, MD, CSC



#### REFERENCES

1. Berlin L. Comparing new radiographs with those obtained previously. AJR 1999; 172:3-6.
2. Berlin L. Pitfalls of the vague radiology report. AJR 2000; 174:1511-1518.
3. Cascade PN, Berlin L. American College of Radiology standard for communication. AJR 1999; 173(6):1439-1442.
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7. Physician Insurers Association of America and The American College of Radiology. Practice standards claims survey. Rockville, Md: PIAA, 1997.
8. Seltzer SE, Kelly P, Adams DF, et al. Expediting the turnaround of radiology reports in a teaching hospital setting. AJR 1997; 168:889-893.

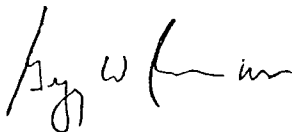
Dr. Alajaji was never working in a "vacuum". If he desired or needed additional information, whether it be reviewing the case with a colleague, speaking to the referring physician, or reviewing previous studies, standard and customary care dictates that he obtain the needed information to provide optimal patient care.

The CT scan of both feet dated 9/19/02 shows diffuse soft tissue swelling of the right ankle and right foot that is asymmetrically larger than the left foot. There are displaced comminuted fractures of the right tarso-navicular and right cuboid. Incidentally there is significant acquisition artifact in the multiplanar reconstructed images of this study; and as such these reconstructed images are uninterpretable.

The CT scan of both feet dated 1/29/03 shows reduction in the degree of soft tissue swelling. The tarso-navicular and cuboid fractures are again visualized and not significantly different in position when compared to the 9/19/02 exam.

In conclusion, multiple errors were made in the care of Mr. Saunders including but not limited to a lack of protocol(s) and oversight, missed radiographic findings, and poor communication.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg W Baran". The signature is fluid and cursive, with the first name "Greg" being more prominent.

Gregory W. Baran, M.D.

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#### 1. Procedures and materials

The report should include a description of the studies and/or procedures performed and any contrast media (including concentration and

volume when applicable), medications, catheters, or devices used, if not recorded elsewhere. Any known significant patient reaction or complication should be recorded.

#### 2. Findings

The report should use precise anatomic, pathologic, and radiologic terminology to describe the findings accurately.

#### 3. Potential limitations

The report should, when appropriate, identify factors that may limit the sensitivity and specificity of the examination.

#### 4. Clinical issues

The report should address or answer any pertinent clinical issues raised in the request for the imaging examination.

#### 5. Comparative data

Comparison with relevant previous examinations and reports should be part of the radiologic consultation and report when appropriate and available.

### D. Impression (Conclusion or Diagnosis)

1. Unless the report is brief, each report should contain an "impression" section.
2. A precise diagnosis should be given whenever possible.
3. A differential diagnosis should be given when appropriate.
4. Follow-up or additional diagnostic studies to clarify or confirm the impression should be suggested when appropriate.
5. Any significant patient reaction should be reported in the impression.

## III. OFFICIAL INTERPRETATION (FINAL WRITTEN REPORT)

A. The final written report is considered to be the definitive means of communicating the results of an imaging examination or procedure to the referring physician. Other methods for direct or personal communication of results are encouraged in certain situations. The timeliness of reporting any radiologic examination varies with the nature and urgency of the clinical problem.

B. The final report should be proofread to minimize typographical errors, deleted words, and confusing or conflicting statements.

C. The final report should be completed in accordance with appropriate state and federal requirements (see the Final Regulations, Mammography Quality Standards Act for Mammography Reporting). Electronic or rubber-stamp signature devices, instead of a written signature, are acceptable if access to them is secure.

D. The final report should be sent to the referring physician or healthcare provider providing the clinical follow-up. It should be noted that the referring physician or healthcare provider also shares in the responsibility of obtaining results of imaging studies they have ordered.

E. When feasible, a copy of the final report should accompany the transmittal of relevant images to other healthcare professionals.

F. A copy of the final report should be kept as part of the patient's medical record (paper or electronic) and be retrievable for future reference. Retention of these records should be in accordance with state and federal regulations and facility policies.

#### IV. OTHER INTERPRETATIONS

A. If requested to render an interpretation of an imaging study obtained at another facility, radiologists are encouraged to document their interpretations either by means of a formal report or other written documentation.

B. If requested to render an interpretation of an imaging study obtained at the same facility and previously reported, and a discrepancy is noted, an addendum should be rendered.

#### V. COMMUNICATION

A. Direct communication is accomplished in person or by telephone to the referring physician or an appropriate representative. Documentation of direct communication is recommended. In those situations in which the interpreting physician feels that immediate patient treatment is indicated (e.g., tension pneumothorax), the interpreting physician should communicate directly with the referring physician, other healthcare provider, or an appropriate representative. If that individual cannot be reached, the interpreting physician should directly communicate the need for emergent care to the patient or responsible guardian, if possible.

B. Under some circumstances, practice constraints may dictate the necessity of a preliminary report before the final report is prepared. A significant change between the preliminary and final interpretation should be reported directly to the referring physician.

C. In those situations in which the interpreting physician feels that the findings do not warrant immediate treatment but constitute significant unexpected findings, the interpreting physician or his/her designee should communicate the findings to the referring physician, other healthcare provider, or an appropriate individual in a manner that reasonably insures receipt of the findings.

#### VI. SELF-REFERRED PATIENTS

Radiologists should recognize the potential obligations of assuming the care and treatment of patients who present themselves for imaging studies on a self-referred basis. Such obligations may include communicating the results of the imaging studies to the patient and the necessity of appropriate follow-up.

#### ACKNOWLEDGEMENTS

This guideline was revised according to the process described in the ACR Practice Guidelines and Technical Standards book by the Guidelines and Standards Committee of the General and Pediatric Radiology Commission.

Michael C. Beachley, MD, Chair  
Kimberly Applegate, MD  
Anthony Bruzzese, MD  
Eric N. Faerber, MD  
Edmund A. Franken, MD  
Sam Kottamasu, MD  
Paul A. Larson, MD  
William H. McAlister, MD  
William R. Reinus, MD  
Arvin E. Robinson, MD  
Edward Weinberger, MD

J. Bruce Hauser, MD, Chair, Commission  
Richard Mintzer, MD, CSC

#### REFERENCES

1. Berlin L. Comparing new radiographs with those obtained previously. *AJR* 1999; 172:3-6.
2. Berlin L. Pitfalls of the vague radiology report. *AJR* 2000; 174:1511-1518.
3. Cascade PN, Berlin L. American College of Radiology standard for communication. *AJR* 1999; 173(6):1439-1442.
4. Department of Health and Human Services, Food and Drug Administration. Mammography quality standards: final rule. *Federal Register* Oct 28, 1997; 68:55852-55994.
5. Holman BL, Aliabadi P, Silverman SG, et al. Medical impact of unedited preliminary radiology reports. *Radiology* 1994; 191:519-521.
6. McLoughlin RF, So CB, Gray RR, et al. Radiology reports: how much descriptive detail is enough? *AJR* 1995; 165:803-806.
7. Physician Insurers Association of America and The American College of Radiology. Practice standards claims survey. Rockville, Md: PIAA, 1997.
8. Seltzer SE, Kelly P, Adams DF, et al. Expediting the turnaround of radiology reports in a teaching hospital setting. *AJR* 1997; 168:889-893.

GREGORY W. BARAN, M.D.

CURRICULUM VITAE

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Telephone: (440) 338-1111

PERSONAL:

Married

EDUCATION:

1983-1984	Fellow, Magnetic Resonance/Nuclear Medicine Mt. Sinai Medical Center Cleveland, OH
1982-1983	Fellow, CT/US University Hospitals of Cleveland Cleveland, OH
1981-1983	Chief Resident, Radiology University Hospitals of Cleveland Cleveland, OH
1979-1982	Radiology Residency, PBY III-V Case Western Reserve University Cleveland, OH
1978-1979	Pediatric Residency, PGY II University Hospitals of Cleveland Case Western Reserve University Cleveland, OH
1977-1978	Pediatric Residency, PGY I University of Wisconsin Madison, WI
1973-1977	Case Western Reserve University School of Medicine Cleveland, OH 44106 M.D.
	Case Western Reserve University Cleveland, OH 44106 A.B. Chemistry, Cum Laude

EXHIBIT

B

tabbies

**PROFESSIONAL:**

1/2002-Present	Chairman, Regional Radiology Cleveland Clinic Foundation Cleveland, OH
1/2000-Present	Staff, Division of Radiology Cleveland Clinic Foundation Cleveland, OH
1/2000-11/2001	Chairman, Radiology Department Marymount Hospital Cleveland, OH
1998-Present	Associate Professor, Clinical Radiology Ohio State University Medical Center Columbus, OH
1998-Present	Assistant Professor, Clinical Urology Case Western Reserve Medical School Cleveland, OH
1992-1997	Assistant Professor Clinical Radiology Case Western Reserve University Cleveland, OH
1991-1997	Staff Radiologist Mt. Sinai Medical Center Cleveland, OH
1985-1991	Clinical Instructor Department of Radiology Michigan State University Lansing, MI
1982-1983	Teaching Fellow Case Western Reserve Medical School Cleveland, OH

**CERTIFICATION**

March 1979	Ohio State Medical License
June 1984	Michigan State Medical License (inactive)
October 1987	Wisconsin State Medical Board (inactive)
March 1997	Pennsylvania State Medical Board (inactive)
June 1983	Diagnostic Radiology American Board of Radiology
June 1984	Nuclear Radiology American Board of Radiology MQSA

**MEDICAL SOCIETIES:**

Society of Magnetic Resonance in Medicine  
Radiological Society of North America  
Society of Nuclear Medicine  
American Institute of Ultrasound in Medicine  
American Medical Association  
Ohio State Radiological Society  
Cleveland Radiological Society  
Member-at-Large 1996-1997

**PROFESSIONAL SERVICES:**

**Editorial Journal Reviewer**

Journal of Clinical Ultrasound  
Prostate Ultrasound  
American Journal of Obstetrics & Gynecology

**Committee Appointments**

Ohio State University Medical Center  
Columbus, OH  
Chairman, Ultrasound,  
Department of Radiology  
1998-2000

Mt. Sinai Medical Center  
Cleveland, OH  
Section Head, Uroradiology  
Department of Radiology  
1992-1997

Mt. Sinai Medical Center  
Cleveland, OH  
Member, Quality Assurance Committee  
1992-1994

American Cancer Society  
Cuyahoga County Unit, OH  
Member, Professional Education Committee  
1992-1994

Mt Sinai Medical Center  
Chairman, Department of Radiology  
Quality Assurance Committee  
The Mt. Sinai Medical Center  
Cleveland, OH  
1992

Hackley Hospital  
Muskegon, MI  
Member, Medical Credentials Committee  
Member, Quality Assurance Committee  
Member, Radiation Safety Committee  
1984-1991

American Cancer Society  
Member, Board of Governors  
Muskegon County Unit  
Michigan  
1985-1987

Western Michigan Health Systems Agency  
Member, MRI Committee  
Member, Mobile MRI Task Group  
1984

University Hospitals of Cleveland  
Cleveland, OH  
Member, Medical Student Education  
Member, Resident Education Committee  
1981-1982

#### SCIENTIFIC PAPERS:

- 1) Miraldi F, **Baran GW**, et al. Evaluation of SPECT in Myocardial Perfusion Studies. Radiological Society of North America (1982).
- 2) **Baran GW**, Golin A, Bergsma C, et al. Standardized Endosonographic Evaluation of Prostate Cancer, Receiver Operator-Characteristic Analysis. American Roentgen Ray Society (1987).
- 3) **Baran GW**, Golin A, Bergsma A. Determination of Long Term Survival in Patients with Prostate Cancer using the Standardized Endosonographic Numeric Method. Radiological Society of North America (1987).
- 4) **Baran GW**, Golin A, Bergsma C, et al. Endosonographic Evaluation of Nonpalpable Cancer. Radiological Society of North America (1988).
- 5) **Baran GW**, Parulekar SG, Alfidi MM. Color Flow Doppler of the Prostate: Pattern Analysis and Comparison of Vascular Indices. Radiological Society of North America (1992).
- 6) Parulekar SG, **Baran GW**, Kest L, et al. American Institute of Ultrasound in Medicine (1994): Color Doppler Sonography of Hypoechoic Areas within the Prostate. American Institute of Ultrasound in Medicine (1994).
- 7) Parulekar SG, Hillier S, Odell J, **Baran GW**. Color Doppler of the Gallbladder Wall. American Institute of Ultrasound in Medicine. (1995).
- 8) Parulekar SG, **Baran GW**, Kest L., et al. Does Color Doppler Imaging Predict Aggressiveness of Prostate Cancer? : A Correlation with Gleason Score. American Institute of Ultrasound in Medicine (1995).
- 9) **Baran GW**. Predictive Value of Capsular Blood Flow in the Detection of Prostate Cancer. Radiological Society of North America (1997).



- 10). **Baran GW**, McNamara MP, Seitz W, Price M, Beckner M. Photopic Imaging of the Rotator Cuff. American Roentgen Ray Society 2001
- 11) **Baran GW**, Seitz W, Price M and Beckner, M. 3D Imaging of the Rotator Cuff. American Roentgen Ray Society 2001.
- 12) **Baran GW**, Seits W. 3D Imaging of the Rotator Cuff: Surgical Correlation. American Roentgen Ray Society 2002.

#### Peer Review Articles:

- 1) **Baran GW**, Haaga JR, Shurin S, Alfidi RJ. CT Guided Percutaneous Biopsies in Pediatric Patients. Pediatr Radiol 14:161-164, 1984.
- 2) **Baran GW**, Golin A, Bergsma C. Standardized Endosonographic Evaluation of Prostate Cancer. AJR 149:975-980, 1987.
- 3) **Baran GW**, Alkema RC, Barkett GK. Autonomous Ovarian Cyst in Isosexual Precocious Pseudopuberty. J Clin Ultrasound 16:58-60, 1988.
- 4) **Baran GW**, Frisch KM. Duplex Doppler Evaluation of Puerperal Ovarian Vein Thrombosis. AJR 149:321-322, 1987.
- 5) **Baran GW**, Golin A, Bergsma C, et al. The Biological Aggressiveness of Palpable and Nonpalpable Prostate Cancer as Studied by Endosonography. Radiology 178:201, 1991.

#### Book Chapters

- 1) Parulekar SG, **Baran GW**. "Color Doppler Sonography of the Prostate". In: Prostate. Editor, B. Fruenage. (In Press) 1999.
- 2) Wainstein MA, Carlin B, **Baran GW**, Resnick MI. "Creative Modalities in Urological Oncology". Editors - JE Oesterling, JP Ritchie. WB Saunders Publishers.

#### Scientific Exhibits

- 1) Radiological Society of North America (1980) and American Roentgen Ray Society (1981): Abdominal Biopsy Procedures-Multimodality Approach. Lipuma JR, Haaga JR, Bryan PJ, Alfidi RJ, **Baran GW**, Barkmeier JC.
- 2) American Roentgen Ray Society (1983): CT Guided Percutaneous Biopsies in Pediatric Patients. **Baran GW**, Haaga JR, Shurin S, Alfidi RJ.
- 3) Radiological Society of North America (1988): Endosonographic Evaluation of Nonpalpable Prostate Cancer. **Baran GW**, Golin A, Bergsma C, et al. Category I Course.
- 4) Radiological Society of North America (1999): Intraglandular Staging of Prostate Cancer by Endosonography. **Baran GW**, Golin A, Bergsma C, et al. Category I Course.

- 5) Radiological Society of North America (1992): Color Flow Doppler of the Prostate: Pattern Analysis and Comparison of Vascular Indices. **Baran GW, Parulekar SG, Alfidi MM.**
- 6) American Institute of Ultrasound in Medicine (1994): Color Flow Doppler of the Prostate: Pattern Analysis and Comparison of Vascular Indices. **Baran GW, Parulekar SG, Alfidi MM.** Honorable Mention Award.

#### **Works in Progress**

- 1) Sonographic Characteristics of Paratesticular Non-Hodgkin's Lymphoma.
- 2) Intrasplenic Pseudoaneurysm: Sonographic Evaluation.

#### **Presentations**

- 1) Cardiovascular MRI. Picker International Physician Training Program. Mt. Sinai Medical Center, Cleveland, OH, 1983.
- 2) The Value of Prostate Ultrasound. Western Michigan Urologic Society. 1984.
- 3) Prostate Sonography. Wisconsin State Radiological Society, 1988.
- 4) Technical Pitfalls & Clinical Applications of Prostate Endosonography. Milwaukee Roentgen Ray Society, 1988.
- 5) Clinical Applications of Prostate Endosonography. Western Michigan Urologic Society, 1989.
- 6) Prostate Endosonography. Medical Grand Rounds. Mt. Sinai Medical Center, Cleveland, OH, 1993.
- 7) Rotator Cuff Ultrasound. Orthopedic Grand Rounds. Ohio State University Medical Center, Columbus, OH. Dec., 1998.
- 8) Color Doppler Sonography of the Prostate. Urology Grand Rounds. Ohio State University Medical Center, Columbus, OH. Feb., 1999.
- 9) Rotator Cuff Ultrasound. Northeastern Ohio Ultrasound Society, 2001

CERTIFICATION OF SERVICE

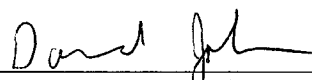
I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 12th day of August, 2005:

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James G. Gordon & Associates  
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THOMSON, RHODES & COWIE, P.C.

  
\_\_\_\_\_  
David R. Johnson, Esquire  
Brad R. Korinski, Esquire  
Attorneys for DuBois Regional Medical Center, a  
corporation, t/d/b/a DRMC, and Daniel S. Gordon,  
D.O., two of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant.

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,

Additional Defendants.

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. 07-780-CD

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.

Defendants.

**ORDER OF COURT**

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2005, it is hereby ORDERED  
that the defendants' motion in limine with respect to plaintiffs' proposed expert report and  
testimony of Gregory W. Baran, M.D. is GRANTED, with the effect that the plaintiffs' are  
prohibited at trial from:

- (1) Offering any opinions by Dr. Baran that Dr. Shilala deviated from the applicable  
standard of care.
- (2) Offering any opinions by Dr. Baran that Dr. Gordon deviated from the applicable  
standard of care.
- (3) Offering any opinions by Dr. Baran that any nurses deviated from the applicable  
standard of care. Further, it is requested that the Court enter an order in limine  
precluding any argument by the plaintiffs that DuBois Regional Medical Center

may be liable to plaintiffs for the conduct of its nurses, since there is no expert testimony to support any such claim.

- (4) Offering any opinions by Dr. Baran that DuBois Regional Medical Center, corporately, deviated from the standard of care. Further, it is requested that the Court enter an order in limine precluding any argument by the plaintiffs that DuBois Regional Medical Center may be liable to plaintiffs for its corporate breach of the standard of care, since there is no expert testimony available to support any such claim.
- (5) Commenting upon, referring to or offering into evidence any Medicare/Medicaid regulations, ordinances or statutes.

BY THE COURT:

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. 07-780-CD

04

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant,

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,

Additional Defendants.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.

Defendants.

REQUEST FOR ARGUMENT/HEARING

AND NOW this 16<sup>th</sup> day of August, 2005, argument with regard to defendants' [DuBois Regional Medical Center, a corporation, t/d/b/a DRMC, and Daniel S. Gordon, D.O.] motion in limine is scheduled for the 9<sup>th</sup> day of September, 2005, at 2:30 o'clock ~~AM~~ P.M., in Courtroom 1 in the Clearfield County Courthouse.

BY THE COURT:

Justin J. [Signature]

J.

COPY  
FILED  
03:39 PM  
AUG 16 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
1 CC Amy Johnson  
Orig. to 03-1051-CD

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,  
Defendants

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

GEORGE M. KOSCO, M.D. ,  
Defendant.

CONSOLIDATED

Nos: 03 - 1051 - C.D.

04 - 780 - C.D.

04 - 1245 - C.D.

Type of Pleading:

*Additional Defendant*

*Dr. Jerjis T. Alajaji's*

*Proposed Points for Charge*

Filed on Behalf of Additional  
Defendant:

*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:

*Darryl R. Slimak, Esquire*

Pa. Supreme Court I.D. #41695

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Counsel for Plaintiffs:

*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

FILED  
m/j:02/01 cc  
AUG 18 2005 (m)

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	
	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 1245 - C.D.
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Additional Defendant Dr. Jerjis T. Alajaji's Proposed Points for Charge in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this day of August, 2005, to the attorney(s) of record:

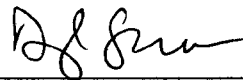


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Miller, Williams & Benson, Inc.  
124 North Allegheny Street  
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McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_

Darryl R. Slimak  
Attorneys for Defendant  
JERJIS T. ALAJAJI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
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CA

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,

Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,

Additional Defendant.

No: 03 - 1051 - C.D.

JURY TRIAL DEMANDED

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and DANIEL S.  
GORDON, D.O.,

Defendants.

No. 04 - 780 - C.D.

Original to 03-1051-CD

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

GEORGE M. KOSCO, M.D.,

Defendant.

No. 04 - 1245 - C.D.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the First Supplemental Pretrial Memorandum of Additional Defendant Jerjis T. Alajaji, M.D. in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 26<sup>th</sup> day of August, 2005, to the attorney(s) of record:

**FILED**  
0/2/08 LM  
AUG 29 2005

William A. Shaw  
Prothonotary

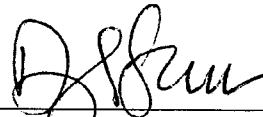
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McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_



Darryl R. Slimak  
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State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

NOW, this 10th day of October, 2005, upon consideration of Plaintiffs' Motions in Limine 1 through 8, it is the ORDER of this Court that Nos. 1, 2, 4, 5 and 7 shall be and are hereby denied on the present state of the record as being premature, without prejudice to the Plaintiffs to raise them again at an appropriate time.

Plaintiffs' third Motion in Limine shall be and is hereby denied to the extent that should Plaintiffs seek an award of monetary damages to compensate Mr. Saunders' alleged inability to engage in future competitive BMX bicycling events, Defendants shall be permitted to examine the ability of competitors to engage in the sport as they continue to age and the extent, if any, to which Plaintiffs' foot injuries would preclude him from actively participating in such bicycle races in the future.

Plaintiffs' sixth Motion in Limine shall be and is hereby denied on the present state of the record and the testimony objected to therein shall be admitted if a proper foundation can be laid therefor at the time of trial.

Plaintiffs' eighth Motion in Limine shall be denied to the extent that if Plaintiffs are successful in recovering an amount for college tuition expenses, Defendants shall be permitted to offset against said award such grants and scholarships as Plaintiffs may obtain for that purpose.

BY THE COURT,

/s/ JOHN K. REILLY, JR.

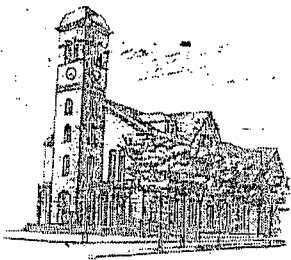
John K. Reilly, Jr.  
Senior Judge

Specially Presiding to be a true  
a the original  
c

OCT 13 2005

Attest:

Clerk of Courts



## Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

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

☒ Plaintiff(s)/Attorney(s)

☒ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

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

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS

VS.

DUBOIS REGIONAL MEDICAL CENTER

VS.

JERJIS T. ALAJAJI, M.D., and  
GEORGE M. KOSCO, M.D.

:  
:  
:  
: NO. 03-1051-CD  
:

:  
: NO. ~~07~~-780-CD  
:

AND

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS

VS.

DUBOIS REGIONAL MEDICAL CENTER  
and DANIEL S. GORDON, D.O.

:  
:  
:  
:  
:  
:  
:

CC:Y  
FILED  
OCT 13 2005 03-1051-CD  
William A. Shaw  
Prothonotary/Clerk of Courts  
1 CC Aug: Gordon  
Johnson  
Slimak  
T. Benson

MEMORANDUM AND ORDER

This matter comes before the Court on Motion for Summary Judgment filed on behalf of Defendant George M. Kosco, M.D. Following argument and briefs thereon, it is the Opinion of this Court that Plaintiffs must be given the opportunity to prove their allegations against this Defendant and, therefore, we will dismiss the Motion for Summary Judgment without prejudice to said Defendant to raise the issues again at the conclusion of Plaintiffs' case in chief.

Wherefore, the Court enters the following

O R D E R

NOW, this 10th day of October, 2005, upon consideration of Defendant George M. Kosco, M.D., Motion for Summary Judgment and argument and briefs thereon, it is the ORDER of this Court that said motion be and is hereby denied in accordance with the foregoing Memorandum.

BY THE COURT,

*/s/ JOHN K. REILLY, JR.*

John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

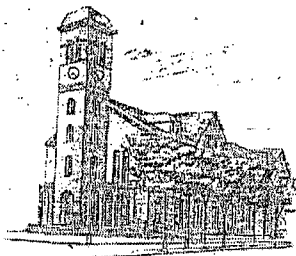
I hereby certify this to be a true  
and correct copy of the original  
filed in the Court of Appeals  
for the Second Circuit.

OCT 13 2005

Attest:

*[Signature]*  
Clerk of Courts





## Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
Prothonotary/Clerk of Courts

David S. Ammerman  
Solicitor

Jacki Kendrick  
Deputy Prothonotary

Bonnie Hudson  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Prothonotary

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☒ Plaintiff(s)/Attorney(s)

☒ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

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

JOHN D. SAUNDERS and BRENDA :  
A. SAUNDERS, husband and wife, :  
vs. :  
DUBOIS REGIONAL MEDICAL :  
CENTER, a corporation, t/d/b/a DRMC : No. 03-1051-CD  
vs. : CONSOLIDATED WITH  
JERJIS T. ALAJAJI, M.D., : No. 04-780-CD

JOHN D. SAUNDERS and BRENDA A.:  
SAUNDERS, husband and wife :  
vs. :  
DUBOIS REGIONAL MEDICAL :  
CENTER, a corporation, t/d/b/a DRMC, :  
and DANIEL S. GORDON, D.O., :

JOHN D. SAUNDERS and BRENDA A.:  
SAUNDERS, husband and wife :  
vs. :  
GEORGE M. KOSCO, M.D. and :  
DUBOIS RADIOLOGIST, INC., :

**FILED** 1cc Atty's:  
J. Gordon  
D. Johnson  
D. Slimek  
T. Benson  
0/11:32 Lm  
OCT 28 2005

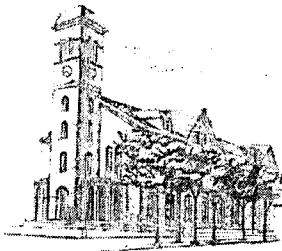
William A. Shaw  
Prothonotary

**ORDER**

NOW, this 26 day of October, 2005, upon consideration of this Court's Pre-Trial Order entered on August 15, 2005, and consistent therewith, it is the ORDER of this Court that counsel shall file with this Court any and all remaining pre-trial motions and/or petitions, forthwith. Said outstanding motions and/or petitions shall be scheduled to be heard on Monday, November 21, 2005, at 1:30 p.m. before the Honorable John K. Reilly, Jr., Senior Judge, specially presiding, in Court Room No. 2 of the Clearfield County Courthouse, Clearfield, PA. It is the FURTHER ORDER of this Court that counsel shall present to the Court on November 21, 2005, any brief(s) relating to any motions and/or petitions to be argued that day.

BY THE COURT

  
President Judge



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,

William A. Shaw  
Prothonotary

\_\_\_\_\_ You are responsible for serving all appropriate parties.

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

☒ Plaintiff(s)/Attorney(s)

☒ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,  
Defendants

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

GEORGE M. KOSCO, M.D. ,  
Defendant.

CONSOLIDATED

Nos: 03 - 1051 - C.D.

~~04 - 789 - C.D.~~

04 - 1245 - C.D.

Type of Pleading:

*Additional Defendant Dr. Alajaji's  
Motion for Order Requiring  
Payment of Reasonable Expenses  
for Depositions, Pursuant to Pa.  
R.C.P. No. 4008*

Filed on Behalf of Defendant:

*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:

*Darryl R. Slimak, Esquire*

Pa. Supreme Court I.D. # 41695

McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Counsel for Plaintiffs:

*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

NOV 04 2005  
m/2100/1  
William A. Show  
Prothonotary Clerk of Courts  
h. c/c.

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

No: 03 - 1051 - C.D.

JURY TRIAL DEMANDED

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and DANIEL S.  
GORDON, D.O.,  
Defendants.

No. 04 - 780 - C.D.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

GEORGE M. KOSCO, M.D.,  
Defendant.

No. 04 - 1245 - C.D.

**ADDITIONAL DEFENDANT DR. ALAJAJI'S MOTION FOR ORDER  
REQUIRING PAYMENT OF REASONABLE EXPENSES FOR  
DEPOSITIONS, PURSUANT TO PA. R.C.P. NO. 4008**

AND NOW comes Additional Defendant, JERJIS T. ALAJAJI, M.D., by and through his attorneys, McQuaide, Blasko, Fleming & Faulkner, Inc., and respectfully requests this Honorable Court to issue an Order requiring Plaintiffs' payment of Dr. Alajaji's reasonable expenses, including attorneys' fees, with respect to depositions scheduled by Plaintiffs which are more than 100 miles from the courthouse, on the following bases:

1. As per the attached document, Exhibit A, Plaintiffs have scheduled two videotape trial depositions of their expert witnesses, Dr. John Tafuri and Dr. Gregory Baron, to take place in Westlake and Lindhurst, Ohio, on November 8 and 11, 2005, respectfully. These depositions are being taken for trial in this matter, commencing December 12, 2005.

2. Pursuant to Pa. R.C.P. No. 4008, pertaining to "Oral Examination. Limitation.", it is provided as follows:

"If a deposition is to be taken by oral examination more than 100 miles from the courthouse, the Court upon motion may make an order requiring the payment of reasonable expenses, including attorney's fees, as a Court shall deem proper."

3. In the instant case, Plaintiffs apparently seek to take the depositions of two expert witnesses in advance of trial, to facilitate presenting their testimony to save Plaintiffs costs and expenses. However, same increases the cost and expense to the Defendants in this matter.

4. Both depositions as noticed, to be taken on separate days near the Cleveland, Ohio area, are more than 100 miles from the Clearfield County Courthouse.

5. Counsel for Additional Defendant Dr. Alajaji calculates that measuring from the Clearfield County Courthouse to the locale of the depositions, approximately three additional hours of driving time will be incurred beyond the 100 mile limit from the Clearfield County Courthouse, to and from each deposition, for a total of six additional attorney hours being incurred. Dr. Alajaji's counsel's fees in this matter are \$130 per hour, resulting excess attorney's fees anticipated to be incurred of approximately \$780.00.

6. In addition, it is estimated that for each deposition, there will be mileage reimbursement expense incurred for counsel for Dr. Alajaji, of approximately 200 miles per

deposition, at the Internal Revenue Service current reimbursement rate of .485 per mile for 400 miles. This is anticipated to be an expense that should be reimbursed pursuant to Pa. R.C.P. No. 4008 in the amount of \$194.00.

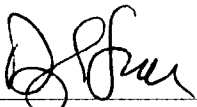
7. Moreover, these trial depositions are scheduled to commence at 10:00 a.m. and 1:00 p.m. on November 8<sup>th</sup> and November 11<sup>th</sup> respectively. Inasmuch as counsel for Dr. Alajaji will be traveling over four hours each way to the depositions from his office in State College, Pennsylvania, and will necessarily have to plan to arrive well in advance of the actual depositions to account for traffic conditions and delays, and to allow for adequate respite so that counsel will be able to effectively represent his client in these depositions being taken for trial, both depositions will require a stay in a hotel accommodations the night before same, at a cost of approximately \$80.00 per night. Present anticipated total costs of the same for these two depositions are \$1,150.

8. Upon completion of the depositions, counsel for Dr. Alajaji will be in a better position to more accurately assess the actual costs and expenses incurred, which should be awarded pursuant to Pa. R.C.P. No. 4008.

WHEREFORE, Additional Defendant Dr. Alajaji respectfully requests this Honorable Court issue an Order requiring Plaintiff to reimburse Dr. Alajaji's reasonable expenses, including excess mileage, excess hourly attorney's fees, hotel accommodations and other expenses as incurred by participating in depositions for trial scheduled by Plaintiffs to be taken by oral examination more than 100 miles from the Courthouse, pursuant to Pa. R.C.P. No. 4008.

Respectfully submitted,

McQUAIDE BLASKO LAW OFFICES

By: \_\_\_\_\_

Darryl R. Slimak

Attorneys for Additional Defendant

JERJIS T. ALAJAJI, M.D.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

Dated: 11 / 3, 2005



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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	
	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	
	:	

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2005, Dr. Alajaji's Motion Pursuant to Rule No. 4008 for an award of expenses and fees for participation in Plaintiffs' trial depositions being taken more than 100 miles from the Courthouse, same is GRANTED. Within thirty (30) days hereof, Plaintiffs are ordered to reimburse Dr. Alajaji through his counsel, the following expenses:

Excess mileage reimbursement:	\$195.00
Hotel/Motel expenses:	\$160.00
Excess Attorney's fees incurred:	\$780.00
Miscellaneous expenses incurred:	\$100.00

BY THE COURT:

---

Honorable John K. Reilly, Jr., S. J.

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant Alajaji's Motion for Order Requiring Payment of Reasonable Expenses for Depositions, Pursuant to Pa. R.C.P. No. 4008 in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 3<sup>rd</sup> day of November, 2005 to the attorney(s) of record:

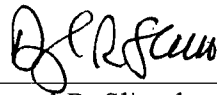
James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.  
124 North Allegheny Street  
Bellevue, PA 16823

McQUAIDE BLASKO LAW OFFICES

By: \_\_\_\_\_



Darryl R. Slimak  
Attorneys for Additional Defendant  
JERJIS T. ALAJAJI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
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SAUNDERS, husband and wife,  
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vs.

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a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

No: 03 - 1051 - C.D.

JURY TRIAL DEMANDED

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Shmak

Professional Office Courts

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

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DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and DANIEL S.  
GORDON, D.O.,  
Defendants.

No. 04 - 780 - C.D.

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vs.

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Defendant.

No. 04 - 1245 - C.D.

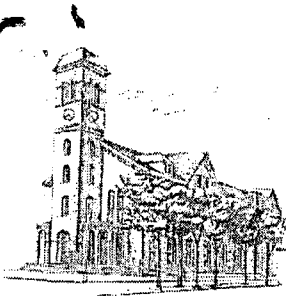
**RULE TO SHOW CAUSE**

AND NOW, this 7<sup>th</sup> day of November, 2005, the Plaintiffs are directed to show cause, if any they have, why Additional Defendant Dr. Alajaji's Motion for Order Requiring Payment of Reasonable Expenses for Depositions, Pursuant to Pa. R.C.P. No. 4008, should not be granted.

This Rule is returnable for Answer and argument is scheduled for the 21<sup>st</sup> day of November, 2005, at 1:30 p.m. in Courtroom #2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:  
/s/ JOHN K. REILLY, Jr.

Honorable John K. Reilly, Jr., S.J.



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Prothonotary

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\_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant.

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,

Additional Defendants.

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

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vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.

Defendants.

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. ~~07~~<sup>04</sup>-780-CD

Issue No.

JOINDER MOTION FOR ORDER  
REQUIRING PAYMENT OF REASONABLE  
EXPENSES FOR DEPOSITIONS  
PURSUANT TO PA. R.C.P. No. 4008

Filed on behalf of DuBois Regional Medical  
Center, a corporation, t/d/b/a DRMC, and  
Daniel S. Gordon, D.O., two of the defendants.

Counsel of Record for These Parties:

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

NO CC  
M 11-38-05  
NOV 10 2005  
(60)

JOINDER MOTION FOR ORDER REQUIRING PAYMENT OF REASONABLE  
EXPENSES FOR DEPOSITIONS PURSUANT TO PA. R.C.P. No. 4008

NOW COME DuBois Regional Medical Center, a corporation, t/d/b/a DRMC, and Daniel S. Gordon, D.O., two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and files the following Joinder Motion to the Motion for Order Requiring Payment of Reasonable Expenses for Depositions Pursuant to Pa. R.C.P. No. 4008 filed on behalf of Additional Defendant Jerjis T. Alajaji, M.D.

1. These defendants incorporate by reference the averments in the Motion filed by the Additional Defendant, Dr. Alajaji.

2. If this Honorable Court determines that Additional Defendant, Dr. Alajaji, is entitled to reimbursement of reasonable expenses under Pa. R.C.P. 4008 for the two depositions that will occur more than 100 miles away from the Clearfield County Courthouse, then, for the same reasons, these defendants should also be awarded like reimbursement for similar expenses. An itemized total of such expenses will be submitted to this Honorable Court following the occurrence of both of the plaintiffs' scheduled depositions.

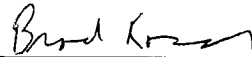
WHEREFORE, these defendants, DuBois Regional Medical Center, a corporation, t/d/b/a DRMC, and Daniel S. Gordon, D.O., respectfully request that this Honorable Court grant their Joinder Motion to the Motion for Order Requiring Payment of Reasonable Expenses for Depositions Pursuant to Pa.R.C.P. 4008, thereby requiring plaintiffs to reimburse trial counsel



for these defendants' costs incurred in attending the deposition of plaintiffs' expert witnesses to be conducted on two separate days in Cleveland, Ohio.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



---

David R. Johnson, Esquire  
Brad R. Korinski, Esquire  
Attorneys for DuBois Regional  
Medical Center and Daniel S. Gordon, D.O.,  
two 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 8th day of November, 2005:

James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

Darryl R. Slimak, Esquire  
McQuaide, Blasko, Schwartz, Fleming  
& Faulkner, Inc.  
811 University Drive  
State College, PA 16801-6699

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller,  
Williams & Benson, Inc.  
124 North Allegheny Street  
Bellefonte, PA 16823-1695

THOMSON, RHODES & COWIE, P.C.

Brad Korinski  
David R. Johnson, Esquire  
Brad R. Korinski, Esquire  
Attorneys for DuBois Regional Medical Center, a  
corporation, t/d/b/a DRMC, and Daniel S. Gordon,  
D.O., two of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC,

Defendant,

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE M.  
KOSCO, M.D.,

Additional Defendants.

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and DANIEL S.  
GORDON, D.O.

Defendants.

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. 07-780-CD

ORDER OF COURT

AND NOW this \_\_\_\_\_ day of \_\_\_\_\_, 2005, it is hereby ORDERED that the Joinder Motion for Order Requiring Payment of Reasonable Expenses for Depositions Pursuant to Pa. R.C.P. No. 4008 filed by Defendants DuBois Regional Medical Center and Daniel S. Gordon, D.O. is GRANTED. Within 30-days after the occurrence of both depositions scheduled by the Plaintiffs in Cleveland, Ohio, these Defendants may submit an itemized statement to the Court for mileage reimbursement and attorney fee's incurred in traveling to each of the depositions.

BY THE COURT:

---

Honorable John K. Reilly, Jr., SJ

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,

Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,

Defendants

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

GEORGE M. KOSCO, M.D. ,  
Defendant.

CONSOLIDATED

Nos: 03 - 1051 - C.D.

04 - 780 - C.D.

04 - 1245 - C.D.

Type of Pleading:

*Certificate of Service Regarding  
Rule to Show Cause on Additional  
Defendant Dr. Alajaji's Motion for  
Order Requiring Payment of  
Reasonable Expenses for  
Depositions*

Filed on Behalf of Defendant:

*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:

*Darryl R. Slimak, Esquire*

Pa. Supreme Court I.D. # 41695

McQuaide, Blasko, Schwartz,

Fleming & Faulkner, Inc.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

Counsel for Plaintiffs:

*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

FILED <sup>NO CC</sup>  
m/12:328  
NOV 14 2005 (3)

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**


I hereby certify that a true and correct copy of the Rule to Show Cause Regarding  
Additional Defendant Dr. Alajaji's Motion for Order Requiring Payment of Reasonable  
Expenses for Depositions, Pursuant to Pa. R.C.P. No. 4008 in the above-captioned matter was  
mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this  
9<sup>th</sup> day of November, 2005, to the attorney(s) of record:

James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.  
124 North Allegheny Street

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
Darryl R. Slimak  
Attorneys for Additional Defendant  
JERJIS T. ALAJAJI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

No: 03 - 1051 - C.D.

JURY TRIAL DEMANDED  
I hereby certify this to be a true  
and correct copy of the original  
statement filed in this case.

NOV 07 2005

Attest.

*James J. Reilly*  
Prothonotary/  
Clerk of Courts

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and DANIEL S.  
GORDON, D.O.,  
Defendants.

No. 04 - 780 - C.D.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

GEORGE M. KOSCO, M.D.,  
Defendant.

No. 04 - 1245 - C.D.

**RULE TO SHOW CAUSE**

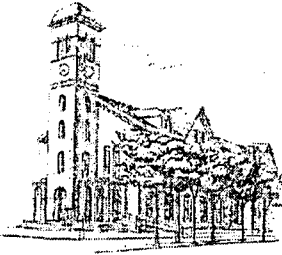
AND NOW, this 7<sup>th</sup> day of November, 2005, the Plaintiffs are directed to show cause, if any they have, why Additional Defendant Dr. Alajaji's Motion for Order Requiring Payment of Reasonable Expenses for Depositions, Pursuant to Pa. R.C.P. No. 4008, should not be granted.

This Rule is returnable for Answer and argument is scheduled for the 21<sup>st</sup> day of November, 2005, at 1:30 p.m. in Courtroom #2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

/s/ JOHN K. REILLY, JR.

Honorable John K. Reilly, Jr., S.J.



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,

William A. Shaw  
Prothonotary

X You are responsible for serving all appropriate parties.

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

\_\_\_\_\_ Plaintiff(s)/Attorney(s)

\_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant,

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,

Additional Defendants.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.

Defendants.

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. 04-780-CD

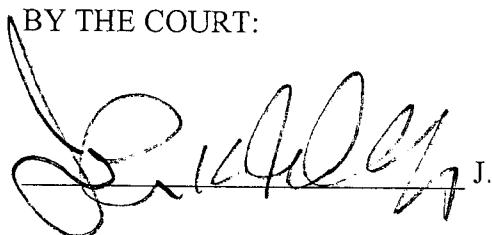
**FILED** 500  
019:59/301  
NOV 14 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
Korinski

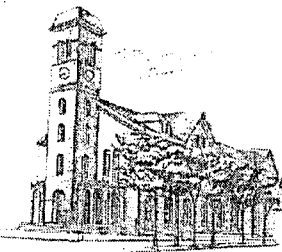
RULE TO SHOW CAUSE

AND NOW this 10 day of November, 2005, the Plaintiffs are directed to show cause, if any they have, why the Joinder Motion for Order Requiring Payment of Reasonable Expenses for Depositions Pursuant to Pa. R.C.P. No. 4008 filed by Defendants DuBois Regional Medical Center and Daniel S. Gordon, D.O. should not be granted.

This Rule is returnable for Answer and argument is scheduled for the 21st day of November, 2005, at ~~1:30~~ <sup>3:00</sup> p.m. in Courtroom # 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

 J.



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,

William A. Shaw  
Prothonotary

X You are responsible for serving all appropriate parties.

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

\_\_\_\_\_ Plaintiff(s)/Attorney(s)

\_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant.

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,

Additional Defendants.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.

Defendants.

Counsel for Plaintiffs:

James & Gordon & Associates

Counsel for Co-Defendants:

Darryl R. Slimak, Esquire  
Tracey G. Benson, Esquire

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. ~~07~~-780-CD

04

Issue No.

MOTION REQUESTING A TRIAL  
SCHEDULING ORDER

Filed on behalf of DuBois Regional Medical  
Center, a corporation, t/d/b/a DRMC, and  
Daniel S. Gordon, 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**

NOV 14 2005

William A. Shaw  
Prothonotary/Clerk of Courts

cc.  
original filed  
to 04-780-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant.

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,

Additional Defendants.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.

Defendants.

Counsel for Plaintiffs:

James & Gordon & Associates

Counsel for Co-Defendants:

Darryl R. Slimak, Esquire

Tracey G. Benson, Esquire

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. ~~07~~-780-CD

04

Issue No.

MOTION TO PRECLUDE EVIDENCE  
BEING DISPLAYED TO THE JURY  
WITHOUT ADVANCE NOTICE TO  
DEFENSE COUNSEL

Filed on behalf of DuBois Regional Medical  
Center, a corporation, t/d/b/a DRMC, and  
Daniel S. Gordon, 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 <sup>NO</sup>CC  
M/10:46 AM  
NOV 14 2005  
original  
filed to  
04-780-01  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC,

Defendant.

vs.

JERJIS T. ALAJAJI, M.D. and GEORGE  
M. KOSCO, M.D.,

Additional Defendants.

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL  
CENTER, a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.

Defendants.

Counsel for Plaintiffs:

James & Gordon & Associates

Counsel for Co-Defendants:

Darryl R. Slimak, Esquire  
Tracey G. Benson, Esquire

CIVIL DIVISION

No. 03-1051-CD

**CONSOLIDATED WITH**

No. ~~07~~-780-CD

CA  
Issue No.

MOTION TO LIMIT AND STRIKE  
TESTIMONY OF DR. JOHN TAFURI

Filed on behalf of DuBois Regional Medical  
Center, a corporation, t/d/b/a DRMC, and  
Daniel S. Gordon, 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** <sup>NO CC</sup>  
NOV 14 2005

William A. Shaw  
Prothonotary/Clerk of Courts

CA

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,

Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,

Additional Defendant.

CONSOLIDATED

Nos: 03 - 1051 - C.D.

04 - 780 - C.D.

04 - 1245 - C.D.

Type of Pleading:

*Dr. Alajaji's Joinder in DuBois  
Regional Medical Center's and  
Dr. Gordon's Motions*

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and

DANIEL S. GORDON, D.O.,

Defendants

Filed on Behalf of Defendant:

*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:

*Darryl R. Slimak, Esquire*

Pa. Supreme Court I.D. # 41695

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,

Plaintiffs,

vs.

GEORGE M. KOSCO, M.D. ,

Defendant.

McQuaide, Blasko, Schwartz,

Fleming & Faulkner, Inc.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

Counsel for Plaintiffs:

*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

FILED<sup>NO CC</sup>  
013:3e61  
NOV 14 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**DR. ALAJAJI'S JOINDER IN DUBOIS REGIONAL  
MEDICAL CENTER'S AND DR. GORDON'S MOTIONS**

AND NOW comes Additional Defendant, JERJIS T. ALAJAJI, M.D., by and through his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and joins in the following motions filed by Defendants DuBois Regional Medical Center and Dr. Daniel Gordon:

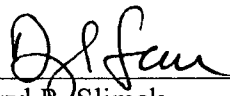
1. Motion Requesting a Trial Scheduling Order;

2. Motion to Preclude Evidence Being Displayed to the Jury Without Advance  
Notice to Defense Counsel; and,

3. Motion to Limit and Strike Testimony of Dr. John Tafuri

Respectfully submitted,

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
Darryl R. Slimak  
Attorneys for Additional Defendant  
JERJIS T. ALAJAJI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: November 14, 2005



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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

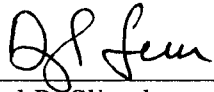
I hereby certify that a true and correct copy of the Dr. Alajaji's Joinder in DuBois Regional Medical Center's and Dr. Gordon's Motions in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 14th day of November, 2005 to the attorney(s) of record:

James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.  
124 North Allegheny Street  
Bellefonte, PA 16823

McQUAIDE BLASKO LAW OFFICES

By: \_\_\_\_\_

Darryl R. Slimak  
Attorneys for Additional Defendant  
JERJIS T. ALAJAJI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

CONSOLIDATED

Nos: 03 - 1051 - C.D.  
04 - 780 - C.D.  
04 - 1245 - C.D.

Type of Pleading:

*Dr. Alajaji's Combined  
Motions in Limine*

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,  
Defendants

Filed on Behalf of Defendant:  
*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:  
*Darryl R. Slimak, Esquire*  
Pa. Supreme Court I.D. # 41695

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

GEORGE M. KOSCO, M.D. ,  
Defendant.

McQuaide, Blasko, Fleming &  
Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Counsel for Plaintiffs:  
*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

**FILED** *mc*  
*mta:325H*  
NOV 14 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**DR. ALAJAJI'S COMBINED MOTIONS IN LIMINE**

1. The instant case against Defendant hospital and multiple physicians, concerns the alleged misdiagnosis/failure to timely diagnose a foot fracture Plaintiff John Saunders incurred in a bicycle accident which occurred on August 17, 2002. Plaintiffs' contention is that because the fracture was not timely diagnosed, contraindicated physical therapy was instituted by family physician, Dr. Daniel Gordon, under the misassumption that the patient's ankle was merely sprained, such that the foot fracture was not promptly diagnosed and treated with surgery, and

healing of the fracture fragments occurred in malposition, resulting in increased and avoidable disability. See Plaintiffs' expert reports discussed infra.

**I. The Court should preclude any testimony against Dr. Alajaji by Plaintiffs' expert witnesses, as Plaintiffs do not have evidence of causation of harm by Dr. Alajaji.**

2. As the instant motion will demonstrate, Plaintiffs do not have expert reports required to establish that alleged negligent misdiagnosis of Plaintiff's foot injury by Dr. Alajaji, caused the harm Plaintiffs complain of and for which they seek recovery. Rather, Plaintiff's own expert reports and other facts of record demonstrate and concede that to the contrary, Dr. Alajaji's alleged misreading of the August 22, 2002 x-ray films **did not** cause Plaintiff harm as treating physician Dr. Gordon **did not** rely on same in instituting contra-indicated physical therapy, rather than referring the patient for orthopedic surgical attention for his injured foot.

3. In the course of discovery, Plaintiffs have provided various expert reports. Attached hereto as Exhibit "A" are the curriculum vitae and June 13, 2003, July 25, 2003, May 11, 2004, May 18, 2004, and October 13, 2005 reports of Plaintiffs' orthopedic expert consultant, Dr. Jeffrey Kann.

4. Attached hereto as Exhibit "B" are the July 11, 2004, August 11, 2004, and February 27, 2005 reports and curriculum vitae of Plaintiffs' radiology expert, Dr. Gregory Baran.

5. Movant herein, Additional Defendant, Dr. Jerjis Alajaji, is a board certified radiologist.

6. In the June 13, 2003 report of Plaintiffs' orthopedic expert, Dr. Kann, he contends that Dr. Alajaji misinterpreted Mr. Saunders' August 22, 2002 x-ray films by failing to specifically diagnose same as representing a fracture of the foot. As such, in his initial report Dr.

Kann originally assumed (albeit erroneously), that family physician Dr. Daniel Gordon thus ordered physical therapy to commence which was contraindicated for a fracture, but appropriate for a mere sprain. See, e.g., at p. 3.

7. Dr. Kann's second report of July 25, 2003 does not appear to be critical of Dr. Alajaji, but first notes that Dr. Alajaji's report on the foot x-rays of "August 22, 2002, . . . was interpreted as showing advanced degeneration of the navicular bone with a large accessory ossicle noted medially." Dr. Kann's report then goes on to correct his own earlier/original report by now criticizing Dr. Gordon for failing to send Mr. Saunders to an orthopedic surgeon, because "the x-ray report (by Dr. Alajaji) suggested significant problems in Mr. Saunders' right foot." (Parenthetical added for clarity).

8. In Dr. Kann's third report of May 11, 2004, he indicates he has now reviewed Dr. Gordon's deposition transcript, and can now confirm that Dr. Gordon "did not rely upon the radiologists' interpretation of the August 17, 2002 and August 22, 2002 x-rays of Mr. John Saunders' foot." He proceeds to explicitly opine that Dr. Gordon was therefore negligent, and should have consulted an orthopedic surgeon and not sent the patient to physical therapy, had he waited for and relied on the x-ray reports of Dr. Alajaji before instituting physical therapy care, which he had not.

9. Dr. Kann's fourth May 18, 2005 report only states that he anticipates Mr. Saunders' medical problems will require certain medical expenses and care into the future. However, Dr. Kann's report does not address causation issues in the case and there is no specific attribution of any such need for care to any purported negligent misinterpretation of the August 22, 2002, x-ray films by Dr. Alajaji. Moreover, the expense and care projection does not

differentiate between care needed for the underlying injury versus that allegedly precipitated by the negligence of any Defendant.

10. Plaintiffs' Radiologist Dr. Baran's first and second reports of July 11 and August 11, 2004 are not critical of defendant radiologist Dr. Alajaji in any way. (Exhibit "B.") However, Dr. Baran's third report, dated February 27, 2005, criticizes Dr. Alajaji at pages 5 and 10, for failing to specifically diagnose fractures and in not having communicated directly with the referring physician, Dr. Gordon. However, there is no specific contention by Dr. Baran that there was any causation of injury thereby. This is not surprising because, as noted earlier herein, Plaintiffs' orthopedic expert, Dr. Kann, has in his reports specifically opined that Dr. Alajaji's allegedly negligent interpretation of the August 22, 2002 films was not relied on by Dr. Gordon to institute or delay care of Plaintiffs' injury.

11. Furthermore, the deposition transcript of Dr. Gordon, a true and correct copy of which is attached hereto as Exhibit "C," reflects at pages 85-88 that Dr. Gordon did not rely on Dr. Alajaji's interpretation of the August 22, 2002 x-rays of the foot and ankle to commence the criticized and allegedly contraindicated physical therapy, for the order for physical therapy was instituted on August 22, 2002, prior to Dr. Alajaji's interpretation of the August 22, 2002 films having been issued on August 23, 2002. A copy of Dr. Alajaji's report is attached hereto as Exhibit "D."

WHEREFORE, Plaintiffs' experts must be precluded from offering testimony critical of Dr. Alajaji, in that their expert reports do not establish that the alleged negligence of Dr. Alajaji caused the harm at issue.

**II. Dr. Kann may not express a standard of care opinion as regards Dr. Alajaji as they are not in the same or a substantially similar medical specialty, as required by the MCARE Act.**

12. Dr. Kann is not in the same or substantially similar medical specialty as board certified radiologist, Defendant Dr. Alajaji, and as such, should be precluded under the MCARE Act, 40 P.S. §1303.512, from testifying as to Dr. Alajaji's standard of care for the specific care at issue: interpretation of x-ray films (only) by a radiologist. (Wexler v. Hecht, 847 A.2d 95 (Pa. Super. 2004), alloc. granted, 879 A.2d 1258 (Pa. July 26, 2005)).

13. Moreover, Dr. Kann's testimony is cumulative and unnecessary, as Plaintiffs have a board certified radiologist that would be qualified to testify as to the standard of care of board certified radiologist, Dr. Alajaji, were it not for the problems with Plaintiffs' expert's theories as indicated in the preceding paragraphs hereof. Pa. R. Evid. 403.

WHEREFORE, Dr. Kann should be precluded from offering testimony at trial that Dr. Alajaji purportedly violated any standards of care in his interpretation of x-rays.

**III. Dr. Kann's reports on future damages are insufficient and must be precluded as they do not differentiate between future medical care necessitated by the alleged malpractice of any party defendant.**

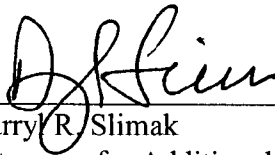
14. Plaintiffs' expert reports from Dr. Kann, particularly the report of May 18, 2005, do not delineate that any postulated future care and medical expense would be due to the negligence of Dr. Alajaji and/or any particular Defendant for that matter, as opposed to the underlying injury. As such, such opinions and proposed testimony as set forth in the May 18, 2005 report should be precluded from the trial of this matter as a matter of law. To allow same would cause the jury to improperly speculate as to whether such care is due to alleged negligence of any defendant, and if so, which one(s). Also, Dr. Kann is per Rule 4003.5 limited to his expert reports, which do not address this issue.



WHEREFORE, Dr. Alajaji respectfully requests his motion be granted, and Dr. Kann be precluded from offering opinions based on his May 18, 2005 report. Proposed Orders are attached hereto.

Respectfully submitted,

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
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Attorneys for Additional Defendant  
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(814) 238-4926  
Fax: (814) 238-9624

Dated: November 9, 2005

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2005, it is hereby Ordered and

Decreed that Additional Defendant Dr. Alajaji's Motion in Limine are GRANTED.

1. Dr. Kann and Dr. Baran may not testify that Dr. Alajaji was negligent as their reports concede there was no causation.
2. Dr. Kann is also precluded from testifying against Dr. Alajaji per MCARE and common law standards for qualifications of experts.

3. Dr. Kann is also precluded from offering opinions at trial on medical expenses as his reports do not delineate what expenses and care are due to the underlying injury versus negligence of specific physicians.

BY THE COURT:

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

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**


I hereby certify that a true and correct copy of the Dr. Alajaji's Combined Motions in Limine in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 9<sup>th</sup> day of November, 2005, to the attorney(s) of record:

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James G. Gordon & Associates  
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David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
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FLEMING & FAULKNER, INC.

By:   
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Attorneys for Additional Defendant  
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June 13, 2003

James G. Gordon, Esquire  
James G. Gordon & Associates  
Two Chatham Center, Tenth Floor  
Pittsburgh, PA 15219-3499

RE: Patient: John D. Saunders  
DOB: March 27, 1975  
SSN: 183-66-7686  
Date of Injury: August 17, 2002

Dear Mr. Gordon:

I was in receipt of your letter dated June 4, 2003. In addition to that letter, you provided me with medical records regarding John Saunders. You provided me with records from the Primary Care Associates/Dr. Daniel Gordon, Dubois Regional Medical Center, Dubois Regional Medical Center Emergency Department, and the East Allegheny Center for Bone and Joint Disease/Mark Piasio, M.D. In addition, you provided me with a copy of the Tri-State Orthopaedics notes/my care of Mr. John Saunders.

In summary, John Saunders is a 27-year old gentleman, who was involved in a bicycling accident on August 17, 2002. On that date, he noticed he had his right foot caught and hyperdorsiflexed. He recalls having immediate and severe pain in his right foot. He was seen in the emergency department at Dubois Regional Medical Center. At that time, it was noted Mr. Saunders complained of 10/10 pain. He noted the pain was constant and any type of movement aggravated that pain. The emergency department physicians documented pain to touch of the right ankle. They noted that Mr. Saunders was unable to bear weight on his right extremity. The emergency department physicians wrote an order for right ankle x-rays. X-rays were obtained of Mr. Saunders' right ankle dated August 17, 2002. These were interpreted by Dr. Kosco as revealing no evidence of any abnormalities in Mr. Saunders right ankle. There were no foot x-rays taken on that date. Mr. Saunders' diagnosis was a right ankle sprain and was asked to follow-up with his family physician, Dr. Gordon.

Mr. Saunders in fact did follow-up with Dr. Gordon. Dr. Gordon saw Mr. Saunders on August 22, 2002. On that date, he diagnosed Mr. Saunders with a severe right ankle sprain. He noted decreased range of motion and bruising. He ordered follow-up x-rays be performed on August 22, 2002. Mr. Saunders underwent a right foot x-ray as well as a repeat right ankle x-ray on August 22, 2002. Dr. Alajaji interpreted Mr. Saunders's right foot x-rays as consistent with advanced degeneration of the navicular bone with a large accessory ossicle noted medially. He also noted there was a superior subluxation of the navicular bone compared to the talus bone.

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June 13, 2003  
RE: John D. Saunders  
TO: James G. Gordon, Esquire

The rest of the foot he noted was preserved. As a result of that interpretation, Dr. Gordon recommended physical therapy for Mr. Saunders. The physical therapy notes dated August 23, 2002 clearly note that Mr. Saunders had pain the intensity of which was 6 to 7/10. The location of the pain was in the subtalar and lateral mid talonavicular joint. He noted the pain was sharp. Mr. Saunders continued with physical therapy, although the notes reflect that he had a continued difficult time with range of motion. He continued to complain of pain.

Dr. Gordon eventually sent Mr. Saunders to see Dr. Mark Piasio. That evaluation took place on September 16, 2002. Dr. Piasio is an orthopaedic surgeon, who diagnosed Dr. Saunders with a comminuted fracture of the right navicular bone, as well as an injury to the right talar head and calcaneocuboid joint. He ordered a CAT scan, which confirmed the diagnosis. The CAT scan was performed on September 19, 2002. It was interpreted as fractures of the navicular bone and distal calcaneus. The fracture was displaced and comminuted.

Dr. Piasio subsequently referred Mr. Saunders for my care. I evaluated Mr. Saunders initially on September 24, 2002. I noted a severe injury to his right midfoot. The most likely scenario was a subtalar dislocation, which spontaneously relocated causing a talonavicular fracture as well as calcaneocuboid joint fractures. At the time I evaluated Mr. Saunders, he was already five weeks out of his injury. His fractures were well healing in a malunited fashion. I noted that he would develop severe premature post-traumatic arthritis of the talonavicular calcaneocuboid joints and noted he would in my opinion require a fusion in the future. I continued to follow Mr. Saunders. I did repeat a CAT scan in February 2003. At that time, I was looking specifically at the subtalar joint. I had recommended Mr. Saunders undergo a right foot fusion. I was contemplating a double arthrodesis versus triple arthrodesis. In addition, I ordered Mr. Saunders an Arizona AFO brace.

It is my opinion based on the records, which were made available for my review and having had the opportunity to see the x-rays dated August 17, 2002 as well as August 22, 2002 that Mr. Saunders did sustain a right foot comminuted fracture of the navicular bone and a calcaneocuboid fracture. In my opinion that occurred on August 17, 2002. It is my opinion that the emergency department failed to obtain x-rays of Mr. Saunders' right foot on August 17, 2002. As a result of that failure, the fractures of Mr. Saunders' right foot were not diagnosed. In my opinion not obtaining x-rays of Mr. Saunders' right foot on August 17, 2002 does fall below the standard of care. Mr. Saunders had documented 10/10 pain and the inability to ambulate on his right extremity. He had apparently severe swelling of the right foot and ankle area. The only x-rays which were obtained were of the right ankle. In my opinion in a patient that is unable to ambulate with severe swelling of the right foot and ankle area, x-rays need to be obtained of both areas to rule out any pathology. It is my opinion that the emergency department physicians on August 17, 2002 did not recognize Mr. Saunders' right foot fractures. He was misdiagnosed with a right ankle sprain when in fact he had a severe right foot injury.



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RE: John D. Saunders  
TO: James G. Gordon, Esquire

Follow-up x-rays were obtained of Mr. Saunders' right foot on August 22, 2002 as ordered by Dr. Gordon. Those were interpreted by Dr. Alajaji as showing degenerative changes of the talonavicular joint and an accessory navicular bone. Again in my opinion this is a misinterpretation of the radiographic studies. These clearly showed in my opinion the acute fracture of the navicular bone. You could clearly see the severe soft tissue swelling in the midfoot of Mr. Saunders on those radiographic studies. In addition to that, there was a calcaneocuboid injury which Dr. Alajaji made no comment of. It is my opinion that Dr. Alajaji's interpretation of the August 22, 2002 right foot x-rays did fall below the standard of care.

It is my opinion that the treatment provided by Daniel Gordon, Mr. Saunders' primary care physician, did not fall below the standard of care. Dr. Gordon examined Mr. Saunders. Although his specific training is not in orthopaedic surgery, he did recognize an injury to Mr. Saunders' right foot and ankle area. He sent Mr. Saunders for right foot x-rays on August 22, 2002. Those x-rays are interpreted by Dr. Alajaji as showing degenerative changes. It appears from the records that based on that interpretation, Dr. Gordon subsequently sent Mr. Saunders for physical therapy. It does not appear that Dr. Gordon personally reviewed the radiographic studies which were ordered on August 22, 2002. In my opinion, Dr. Gordon was following acceptable standards for treatment of an ankle sprain by sending his patient, John Saunders to physical therapy. The problem, however, was that Mr. Saunders had acute fractures of his right foot and, therefore, physical therapy was an inappropriate treatment modality.

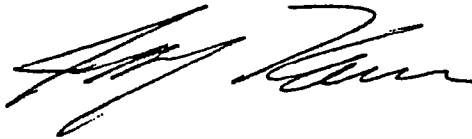
It is my opinion had John Saunders been appropriately diagnosed on August 17, 2002 and referred to an orthopaedic surgeon, the outcome of Mr. Saunders' right foot could have been significantly better than it currently is. In my opinion, Mr. Saunders had an acute injury to his right foot consistent of a comminuted fracture subluxation of the right talonavicular joint and calcaneocuboid joints. In my opinion appropriate treatment at that time would have been external fixation of the medial column of his right foot, and limited internal fixation to fix the navicular bone. Although post-traumatic arthritis would most likely have been the outcome of Mr. Saunders' injury regardless of treatment, the time frame for the development of that arthritis and the functional deficit in Mr. Saunders' foot was clearly expedited by the lack of recognition of his fracture and the treatment provided to him. Mr. Saunders was asked to perform physical therapy on an acutely fractured right foot. That certainly is inappropriate treatment and falls below the standard of care. As a result Mr. Saunders going to physical therapy and moving his fractured foot increased the morbidity of those injuries. Mr. Saunders has required treatment which has consisted of a fixed ankle boot, anti-inflammatory pills, narcotic medication as well as an Arizona AFO brace. In addition, Mr. Saunders will require a right foot triple arthrodesis in the future. Mr. Saunders has suffered and will suffer significant disability in his right foot. He will require a triple arthrodesis which will significantly decrease the motion in his right foot and make it difficult for him to walk on uneven surfaces. In addition that will increase his risk of premature ankle arthritis.

Page Four  
June 13, 2003  
RE: John D. Saunders  
TO: James G. Gordon, Esquire

In my opinion, Mr. Saunders's current disability is directly related to the injury which he sustained on August 17, 2002. In my opinion, Mr. Saunders would have been less disabled had his right foot fractures been recognized and appropriately treated. It is, therefore, my opinion that Mr. Saunders' current disability is causally related to the lack of recognition of his right foot fractures on August 17, 2002. In addition, in my opinion his current disability is causally related to the lack of appropriate orthopaedic treatment of those injuries. In my opinion both of the above fell below the standard of care for such an injury.

All of the opinions I have set forth above have been done so within a reasonable degree of medical certainty based on the history, which I obtained from John Saunders, the medical records made available for my review, the physical examination which I performed on Mr. Saunders, and the radiographic studies, which I have had the opportunity to review.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey N. Kann". The signature is fluid and cursive, with the first name "Jeffrey" and last name "Kann" clearly distinguishable.

Jeffrey N. Kann, M.D.

JNK/lcs



July 25, 2003

James G. Gordon, Esquire  
Tenth Floor  
Two Chatham Center  
Pittsburgh, PA 15219-3499

RE: Patient: John D. Saunders  
DOB: March 27, 1975  
SSN: 183-66-7686  
Date of Injury: August 17, 2002

Dear Mr. Gordon:

I was in receipt of your letter dated July 10, 2003 regarding John Saunders. As you know, Mr. Saunders is a 27-year old gentleman, who was involved in a bicycling accident on August 17, 2002. At that time, he was seen at the DuBois Regional Medical Center. X-rays were obtained of his right ankle on the date of injury. Those were interpreted by Dr. Kosco as revealing no evidence of abnormalities in Mr. Saunders' right ankle. In my opinion, Dr. Kosco was not negligent. He was simply interpreting the x-rays which had been ordered by the emergency department. Mr. Saunders' fracture was in his right foot, not in his ankle. Therefore, one would expect the right ankle x-rays in fact to be normal. It is not the job of the radiologist to order x-rays. He simply interprets the x-rays which have been ordered.

In addition Mr. Saunders followed up with Dr. Gordon, his primary care physician. Dr. Gordon apparently did not review the actual x-rays which he had ordered. He simply relied on the radiologist's interpretation of those. Based on the radiologist's interpretation of those, he sent Mr. Saunders to physical therapy. The radiography report that Dr. Gordon apparently read was dated August 22, 2002. That report was interpreted as showing advanced degeneration in the navicular bone with a large accessory ossicle noted medially.

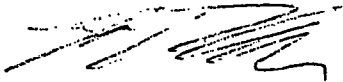
In my opinion given the physical findings noted by Dr. Gordon of Mr. Saunders' right foot and the interpretation of the x-ray, Mr. Saunders should have been sent to an orthopaedic surgeon. Mr. Saunders did not provide a history to Dr. Gordon of having any pre-existing problems with his right foot. However, the x-ray report suggested significant problems in Mr. Saunders' right foot. In my opinion, Dr. Gordon should have recognized that there was a conflict between Mr. Saunders' physical findings and radiographic interpretations as well as the history which was provided to him as of the injury and where Mr. Saunders's complaints were. However, I am not comfortable in suggesting that that defines negligence on Dr. Gordon's part. Dr. Gordon did order repeat x-rays to rule out a fracture. Those x-rays are not interpreted as showing a fracture.

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July 25, 2003  
RE: John D. Saunders  
TO: James G. Gordon, Esquire

Therefore, in my opinion, Dr. Gordon was simply following a standard protocol for what he felt was an ankle sprain.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey N. Kann", with a stylized flourish at the end.

Jeffrey N. Kann, M.D.

JNK/lcs



May 18, 2005

James Gordon & Associates  
1000 Main Street  
Pittsburgh, PA. 15215-2406

**Re: John D. Saunders**

Dear Mr. Gordon:

I was in receipt of your letter dated May 11, 2005. That letter asked that I provide an addendum to the two previous reports, which I have provided for your review, dated June 13, 2003 and May 11, 2004. It is my opinion that Mr. Saunders future medical needs will include an Arizona AFO brace (approximate cost \$1500.00). This will need to be refurbished or replaced every 18 months, in addition, the need for future surgical intervention in the form of a triple arthrodesis (approximate cost \$15,000.00). This will be the most likely surgery that Mr. Saunders will need to undergo based on his physical examination and radiographic studies. In addition, Mr. Saunders will require future orthopedic care in the form of routine postoperative follow up from surgery as well as follow up every 18 to 24 months subsequent to that to look for evidence of ankle arthritis, which is a common problem in patient's undergoing a triple arthrodesis.

Although it is not possible for me to determine exact cost for Mr. Saunders's orthopedic care I would note that the use of an Arizona AFO brace, oral antiinflammatory pills and narcotic medication, surgery and future orthopedic care will all be required for Mr. Saunders's right foot. I would suggest that the overall cost of that treatment on a yearly basis not including the Arizona AFO brace and triple arthrodesis surgery would be between \$300.00 and \$400.00 a year.

Although the above monetary determinations are somewhat arbitrary I think they constitute reasonable expectations for Mr. Saunders' future with respect to his right foot.

Sincerely,

Jeffrey N. Kann, M.D.  
JNK/dt/gm

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**TRI-STATE  
ORTHOPAEDICS  
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Steven E. Kann, M.D.  
Jeffrey N. Kann, M.D.  
Gerard J. Werries, M.D.

October 13, 2005

James G. Gordon Associates  
Attorneys At Law  
1000 Main Street  
Pittsburgh, PA 15215-2406

**RE: John D. Saunders and Brenda A. Saunders vs. Dubois Regional Medical Center as well as Dr. Alajaji.**

Dear Mr. Gordon:

I have had the opportunity to review a significant number of reports filed on the case of John D. Saunders and Brenda A. Saunders vs. Dubois Regional Medical Center, DRMC, as well as Dr. Alajaji. I have had the opportunity to review the following reports: A report of Dr. John Tafuri, a report of Dr. Gregory Baran, a report of Dr. Scott Morse, a report of Dr. Richard Daffner, a report of Dr. Alan Klein, a report of Dr. Vincent Mossesso, a report of Dr. Charles Burke, and a supplemental report authored by Dr. Richard Daffner.

After having had the opportunity to review all of the reports, I would like to provide a summary of my opinions with respect to the care that John D. Saunders received for the injury which he sustained to his right foot.

John D. Saunders sustained a significant right foot injury on August 17, 2002. He subsequently presented to the emergency room at Dubois Regional Medical Center. X-rays of his right foot were not taken. X-rays of his right ankle were taken. On the lateral x-ray of his ankle, one can see a dorsal subluxation of the navicula on the talus bone. This was not pointed out by the initial reading radiographer. However, had this been, it would have prompted radiographic studies of Mr. Saunders right foot. In addition, the nurses records reflect that Mr. Saunders complaints were in his right foot and a drawing in the emergency room records reflect that location of Mr. Saunders pain. In spite of that x-rays of Mr. Saunders right foot were not taken. It is the accepted standard to obtain radiographic studies of the swollen (injured) parts. Mr. Saunders noted to have both swelling of his foot and ankle and those x-rays should have been obtained. As a result of those studies not being obtained, Mr. Saunders was diagnosed with a right ankle sprain. He subsequently saw Dr. Gordon, his primary care physician. Dr. Gordon ordered right foot x-rays but neither relied upon the radiographer's interpretation of those x-rays, nor did he personally review the x-rays. As a result of that, physical therapy was ordered when clearly this would not have been the treatment. Had Mr. Saunders right foot injury been recognized, he would have had a number of options available to him. Mr. Saunders was 27 years of age on the date of the initial injury. Certainly, any orthopaedic surgeon would have attempted some type of

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**TRI-STATE  
ORTHOPAEDICS  
& Sports Medicine, Inc.**

Jack P. Failla, M.D.  
Victor J. Thomas, M.D.  
Paul A. Liefeld, M.D.  
Brian F. Jewell, M.D.

Mark J. Langhans, M.D.  
Steven E. Kann, M.D.  
Jeffrey N. Kann, M.D.  
Gerard J. Werries, M.D.

Page two

October 13, 2005

RE: John D. Saunders and Brenda S. Saunders vs. Dubois Regional Medical Center as well as Dr. Alajaji.

fixation of his fractures. Most likely, that fixation would have included a combination of internal and external fixation. Mr. Saunders is currently left with medial column shortening as a result of his comminuted navicula fracture. Had his medial column been externally fixed, it could have been brought out to length. I do agree with Dr. Burke's comments that Mr. Saunders initial injury was quite bad and the type of injury which he sustained most likely would have led to posttraumatic arthritis. However, the speed with which that arthritis developed, certainly would have been delayed had Mr. Saunders undergone treatment. In my opinion, it is not reasonable to suggest that operative treatment would not have been performed on Mr. Saunders right foot. He was a young, healthy, 27-year-old gentleman who had a significant intraarticular injury to his right foot. It is reasonable to expect that the outcome of that surgery may have been optimal. However, we will never know that answer because appropriate treatment was not rendered to Mr. Saunders right foot.

In summary, Mr. Saunders sustained an injury to his right foot, which by today's orthopaedic standard, would have been treated surgically. Mr. Saunders was not given that opportunity and therefore, "the die was cast" as the outcome of Mr. Saunders right foot injury. In my opinion, the cascade which eventually has led to the unfortunate outcome of Mr. John Saunders foot began in the emergency room. It then continued with the treatment of Dr. Gordon and the overlooked radiographic studies by Dr. Alajaji. In my opinion, all of the treating facilities carry some fault for the outcome of Mr. Saunders right foot.

The opinions that I have set forth in the above narrative have been done within a reasonable degree of medical certainty.

Sincerely,

Jeffrey N. Kann, M.D.

JNK/dt/cam

[www.tristateortho.com](http://www.tristateortho.com)

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Steven E. Kann, M.D.  
Jeffrey N. Kann, M.D.  
Gerard J. Werries, M.D.

## CURRICULUM VITAE

**NAME:** Jeffrey N. Kann, M.D., F.A.A.O.S.

**PRIVATE PRACTICE:** 1998 to present

Tri-State Orthopaedics & Sports Medicine, Inc.  
Pittsburgh Office & Research Park, Suite 200  
5900 Corporate Drive, Pittsburgh, PA 15237  
(412) 369-4000  
Fax: (412) 369-7667

**BIRTH DATE:** May 22, 1965; Pittsburgh, Pennsylvania

**EDUCATION:** B.S. in Molecular Biology—Vanderbilt University, Nashville, Tennessee, 1983-1987  
M.D.—University of Pittsburgh Medical School, Pittsburgh, Pennsylvania, 1987-1991

**POST GRADUATE TRAINING:**

Internship—Rush Presbyterian St. Lukes Medical Center, Chicago, Illinois, 1991-1992  
Orthopedic Surgical Resident—Rush Presbyterian St. Lukes Medical Center, Chicago, Illinois, 1992-1996

**FELLOWSHIP:**

Foot and Ankle Fellowship—Union Memorial Hospital, Baltimore, Maryland, 1996-1997

**AWARDS AND HONORS:**

**Undergraduate:**

- Summa Cum Laude
- Alpha Lambda Delta National Honor Society
- Phi Eta Sigma Freshman Honor Society

**Medical School:**

- Junior Year AOA and President of the University of Pittsburgh Chapter of AOA
- Paul Larimore McLain Award in Pharmacology
- R.J. Behan Award for Surgery
- David Glasser, M.D. Pharmacology Honors Award

**Residency:**

- Chief Orthopedic Resident, Rush-Presbyterian St. Lukes Medical Center
- Chief Orthopedic Resident, Shriners Hospital for Crippled Children, Chicago Unit

**Fellowship:**

- Roger A. Mann, M.D. Award for paper on Rocker Bottom Deformity in Diabetics.  
Presented at 1997 Summer Meeting of American Orthopaedic Foot and Ankle Society.

**LICENSURE:**

Diplomat of the National Board of Medical Examiners, 1992  
Pennsylvania Board of Medical Examiners, 1996  
Maryland Board of Medical Examiners, 1996  
Illinois Board of Medical Examiners, 1991  
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Curriculum Vitae  
Jeffrey N. Kann, M.D.  
Page 2 of 3

BOARD CERTIFIED: American Board of Orthopaedic Surgery, July 1999

MEDICAL STAFF APPOINTMENTS:

- UPMC Passavant, Pittsburgh, Pennsylvania
- Ohio Valley General Hospital, McKees Rocks, Pennsylvania
- UPMC St. Margaret, Pittsburgh, Pennsylvania
- UPMC Passavant Cranberry, Cranberry Township, Pennsylvania

POSITIONS: Clinical Instructor of Orthopaedic Surgery, University of Pittsburgh, Pittsburgh  
Pennsylvania  
Foot and Ankle Surgeon, Pittsburgh Pirates Baseball Club, Pittsburgh,  
Pennsylvania, 1998 to 2002.

ORGANIZATIONS: Diplomat, National Board of Medical Examiners  
Fellow of American Academy of Orthopedic Surgeons  
Active Member, American Orthopedic Foot and Ankle Society  
Pennsylvania Orthopaedic Society  
Pennsylvania Medical Society  
Allegheny County Medical Society

PUBLICATIONS: Mears, D.C., Gordon, R.G., Kann, J.N., Kann, S.E.: "Ankle Arthrodesis with an  
Anterior Tension Plate". *Clinical Orthopaedics and Related Research*, July,  
1991.

Kann, J.N., Bach, B.R.: "Pectoralis Major Muscle Ruptures"; *Encyclopedia of  
Sports Medicine and Exercise*, 1994.

Kann, J.N., Myerson, M.S.: "Intraoperative Pathology of the Posterior Tibial  
Tendon." *Foot and Ankle Clinics*, September, 1997.

Kann, J.N., Myerson, M.S.: Surgical Management of Chronic Ruptures of the  
Achilles Tendon. *Foot and Ankle Clinics*, September, 1997.

Goldberger, M., Kann, J.N.: "Crossover Toe Deformity." *Operative Techniques  
in Orthopaedics*, Vol. 9 No. 1 (January), 1999: pp 1-7.

Kann, J.N., Parks, B.G., Schon, L.C.: "Biomedical Evaluation of Two Different  
Screw Positions for Fusion of the Calcaneocuboid Joint." *Foot Ankle Int.* 20:33-  
36, 1999.

PRESENTATIONS:

Kann, J.N., Kann, S.E., Skura, D.: "Total Hip Replacement with Massive Acetabular Allograft." Presented at the American Academy of Orthopedic Surgeons National Meeting, February, 1992. Presenter: Jeffrey N. Kann, M.D.

Mears, D.C., Gordon, R.G., Kann, J.N., Kann, S.E.: "The Spring Plate—Its Use in Juxta-Articular Fracture Fixation." Presented at the AAOS, Anaheim, California, March 1991 and at the OTA, 1993.

Kann, J.N., Parks, B., Schon, L.: "A Biomechanical Evaluation of Different Screw Positions for Fusion of the Calcaneal Cuboid Joint." Accepted for presentation at the Joint AOFAS—Japanese Society for Surgery of the Foot, Hawaii, November, 1997.

Kann, J.N.: "Evaluate Common Diabetic Foot Problems and Initially Manage Diabetic Foot Problems". Presented at UPMC Passavant, June 16, 1998.

MANUSCRIPTS:

Kann, J.N., Kuo, K.N.: The "Reverse Jones" Procedures for Dorsal Bunion Deformity Following Club Foot Release—A long term follow up.

Kann, J.N., Holmes, G.B.: "Plantar Pressure Analysis of Posterior Tibial Tendon Reconstruction Verses Triple Arthrodesis for Posterior Tibial Tendon Deficiency."

Kann, J.N., Cohen, M.S., Belabarba, C.B.: "Case Report; Compartment Syndrome of the Upper Arm."

INSTRUCTIONAL COURSES:

Instructor, Regional Review Course on the Treatment of Disorders of the Foot and Ankle. Pittsburgh, PA, September 23-24, 2000.

CURRENT PROJECTS:

Plain Radiography of the Foot and Ankle and Normal Adult Measurements Ankle Fractures—Evarts Operative Orthopaedics



*GREGORY W. BARAN, M.D.*

---

James G. Gordon  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, Pennsylvania 15215-2406

July 11, 2004

RE: John D. Saunders and Brenda A. Sanders, husband and wife v.  
DuBois Regional Medical Center, a corporation t/d/b/a DRMC v Jerjis T.  
Alajaji, M.D. and George M. Kosko, M.D.  
No. 03-1051-CD, Clearfield County

Dear Mr. Gordon,

I have reviewed the following:

1. Four views of the right ankle performed at the DuBois Regional Medical Center, dated 8/17/02.
2. Three views of the right ankle and three views of the right foot marked as 8/22/02. No location identified on the radiographs.
3. Three views of the right and left feet performed at DuBois Regional Medical Center on 9/16/02.
4. Thin slice CT of both feet with multi-planar reconstruction dated 9/19/02.
5. Thin slice CT of both feet with multi-planar reconstruction dated January 29, 2003.

Page 2

James G. Gordon

6. Five hundred plus page document containing the medical records of Mr. John D. Saunders.

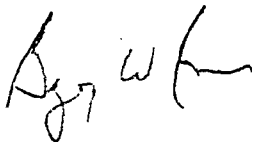
My findings:

The initial 8/17/02 four view right ankle radiographs illustrate downward subluxation of the talus in relationship to the tarsonavicular with the possibility of a fracture involving the tarsonavicular.

All subsequent plain film radiographs of the right ankle and right foot and the CT studies illustrate downward subluxation of the talus with a displaced impacted tarsonavicular. The CT scans also illustrate a displaced cuboid fracture. Nonunion of the fracture fragments is noted in the January 29, 2003 CT exam.

The findings are secondary to a longitudinal stress injury and consistent with the patient's history.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg W Baran".

Gregory W Baran, M.D.

GREGORY W. BARAN, M.D.

James G. Gordon & Associates  
Attorneys at Law  
1000 Main Street  
Pittsburgh, Pennsylvania 15215-2406

August 11, 2004

RE: John D. Saunders and Brenda Saunders,  
husband and wife v. DuBois Regional Medical Center,  
a corporation t/d/b/a DRMC v. Jeris T. Alajaji, M.D.  
and George M. Kosko, M.D. No. 03-1051-CD,  
Clearfield County

Dear Mr. Gordon,

The interpretation given by George M. Kosko, M.D. on 8/17/02 of the three views of the right ankle falls outside the acceptable professional standards of radiology. The malalignment of the talus is clearly seen in the lateral projection of that study.

Sincerely,



Gregory W. Baran, M.D.

**SENT VIA FAX**

GREGORY W. BARAN, M.D.

---

James G. Gordon  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, Pennsylvania 15215-2406

February 27, 2005

RE: John D. Saunders and Brenda A. Saunders, husband and wife v. DuBois Regional Medical Center, a corporation t/d/b/a DRMC v. Jerjis T. Alajaji, M.D. and George M. Kosco, M.D.

Dear Mr. Gordon,

I reviewed the following articles:

1. Right ankle: four view radiographs dated 8/17/02
2. Right ankle: four view radiographs dated 8/22/02
3. Right foot: three view radiographs dated 8/22/02
4. Right foot: three view radiographs dated 9/16/02
5. Left foot comparison; three view radiographs dated 9/16/02
6. CT Scan of both feet with multiplanar reconstruction dated 9/19/02
7. CT Scan of both feet with multiplanar reconstruction dated 1/29/03
8. Deposition of Daniel S. Gordon, D.O. recorded on February 18, 2004
9. Deposition of Patrick F. Shilala, M.D. June 17, 2004
10. Deposition of Jerjis Alajaji, M.D. recorded on June 17, 2004
11. Deposition of George M. Kosco, M.D. recorded on October 25, 2004
12. Deposition of Shirley Mae McNulty recorded on October 25, 2004
13. Deposition of Mitzie Diane Leadbetter recorded on October 25, 2004
14. DuBois Regional Medical Center Emergency Room Records 8/17/02
15. Daniel Gordon, D.O. Office Records: 8/22/02, 8/29/02, 9/4/02
16. Right Ankle radiology report by George M. Kosco, M.D. 8/17/04
17. Right Ankle / Right Foot radiology report by Jerjis T. Alajaji, M.D. 8/22/02
18. CT Right Foot report by George M Kosco, M.D. 9/19/02
19. CT Right Foot report by Jerjis T. Alajaji, M.D. 1/29/03
20. Dubois Regional Medical Center Physical Therapy Reports: 8/23/02, 9/4/02, 9/17/02
21. Correspondence: Mark A. Piasio, MD. 9/16/02
22. Correspondence: Jeffrey N. Kann, M.D. 10/22/02, 1/21/03, 2/18/03
23. Correspondence: Daniel S. Gordon, D.O. Request for moratorium 11/04/02

Summary:

Mr. John D. Saunders was admitted to the DuBois Regional Medical Center emergency room on 8/17/02 after suffering an injury to his right ankle in a competitive bicycle event.

Mr. Sanders was initially assessed by triage nurse, Mitzie Diane Leadbetter who documented that the patient was unable to bear weight. Ms Leadbetter ordered a right ankle x-ray. In her deposition, Ms. Leadbetter does not recall ever reading a policy authorizing triage nurses to order x-rays and stated that x-rays are ordered by the triage nurse based on the patient's complaint and the triage examination. She stated that she would order both an ankle and foot series only if the patient complained of the ankle and foot, or just one or the other, or if upon examination the patient complained of pain when examining a portion of the foot and ankle.

The Carrier Manual regulations from the Centers for Medicare & Medicaid Services ([http://www.cms.hhs.gov/manuals/14\\_car/3b15000.asp](http://www.cms.hhs.gov/manuals/14_car/3b15000.asp)) states the following:

15021. ORDERING DIAGNOSTIC TESTS

A. Definitions.--

1. A "diagnostic test" includes all diagnostic x-ray tests, all diagnostic laboratory tests, and other diagnostic tests furnished to a beneficiary.
2. A "treating physician" is a physician, as defined in §1861(r) of the Social Security Act (the Act), who furnishes a consultation or treats a beneficiary for a specific medical problem, and who uses the results of a diagnostic test in the management of the beneficiary's specific medical problem.

**NOTE:** A radiologist performing a therapeutic interventional procedure is considered a treating physician. A radiologist performing a diagnostic interventional or diagnostic procedure is not considered a treating physician.

3. A "treating practitioner" is a nurse practitioner, clinical nurse specialist, or physician assistant, as defined in §1861(s)(2)(K) of the Act, who furnishes, pursuant to State law, a consultation or treats a beneficiary for a specific medical problem, and who uses the result of a diagnostic test in the management of the beneficiary's specific medical problem.



4. A "testing facility" is a Medicare provider or supplier that furnishes diagnostic tests. A testing facility may include a physician or a group of physicians (e.g., radiologist, pathologist), a laboratory, or an independent diagnostic testing facility (IDTF).
5. **An "order" is a communication from the treating physician/practitioner requesting that a diagnostic test be performed for a beneficiary.** The order may conditionally request an additional diagnostic test for a particular beneficiary if the result of the initial diagnostic test ordered yields to a certain value determined by the treating physician/practitioner (e.g., if test X is negative, then perform test Y). An order may include the following forms of communication:
  - a. A written document signed by the treating physician/practitioner, which is hand-delivered, mailed, or faxed to the testing facility; **NOTE:** No signature is required on orders for clinical diagnostic tests paid on the basis of the physician fee schedule or for physician pathology services.
  - b. A telephone call by the treating physician/practitioner or his/her office to the testing facility; and
  - c. An electronic mail by the treating physician/practitioner or his/her office to the testing facility.

**NOTE:** If the order is communicated via telephone, both the treating physician/practitioner or his/her office, and the testing facility must document the telephone call in their respective copies of the beneficiary's medical records

It is my professional opinion the aforementioned triage process at the DuBois Regional Medical Center is below the standard of care and in violation of the carrier regulations put forth by the Centers for Medicare & Medicaid Services. The DuBois Regional Medical Center lacks a policy which allows a triage nurse to order diagnostic studies under the order of a physician. There are no well documented ordering guidelines established by a physician or physician group that state what specific studies to order under specific clinical presentations, and there is no co-sign policy in effect whereby each order made by a triage nurse is cosigned by the ordering physician. Additionally, the triage nurses at the DuBois Regional Medical Center may be in practice violation of their own state licensure as set forth by the State Licensing Board.

Shirley Mae McNulty is the nurse of record who cared for Mr. Sanders in the emergency room. Ms. McNulty documented that Mr. Saunders' pain score was 10/10. She also noted that the pain was aggravated by movement and that trying to put on the gel splint in the emergency room was too painful for the patient.

Patrick F. Shilala, M.D. was the emergency room physician at the Dubois Regional Medical Center who cared for Mr. Saunders on 8/17/02. In his deposition, Dr. Shilala acknowledged that Mitzi Leadbetter or Shirley McNulty could have ordered the x-rays for John Saunders without consulting him. He also stated that he did not discuss with either Ms. Leadbetter or McNulty in ordering both a foot and ankle series. Dr. Shilala stated "yes" when asked, "do you believe in diagnosing injuries to the foot and ankle mechanism of injury is important?" However he documented no mechanism of injury in the emergency room record and did not recall what he asked Mr. Saunders. Dr. Shilala was familiar with the Ottawa rules but could not recall them in his deposition. He acknowledged that he did not have Mr. Saunders attempt weight bearing and did not ask him to rotate his foot because, "he was having too much pain". He did acknowledge having discussions with "anybody" that an ankle injury could mask a foot injury and stated that he generally does foot and ankle x-rays both. Dr. Shilala acknowledged that he could have ordered a foot series x-rays on August 17<sup>th</sup>, 2002 if he desired. Dr. Shilala stated that he was not aware of the fact that it was too painful for Mr. Saunders to wear the gel splint. He did state that if Mr. Saunders would have left the E.R. room without the gel splint applied, it would have been contrary to his instructions.

It is my professional opinion that Dr. Shilala's care of Mr. Saunders was well below standard and customary. The fact that ankle and foot injuries can be singular, combined, and / or masked is primordial information that is taught in medical school; and knowledge that Dr. Shilala acknowledged has discussed with others. He did not properly examine Mr. Saunders based on the Ottawa rules and violated his own practice pattern, "my own personal treatment is I generally do ankle and foot x-rays both". The patient left the emergency room without the gel splint that was contrary to his orders but his responsibility. Finally he missed the significant soft tissue swelling and subluxed talus on the ankle radiographs.

Mr. Saunders' follow-up care was provided by Daniel S. Gordon, D.O. Dr. Gordon saw Mr. Saunders in his office on 8/22/02, 8/29/02, and 9/04/02. Dr. Gordon wrote in his office notes of 8/22/02 "seen in ER - x-ray (-)" and "Dx: severe sprain, R/O Fx"; and then proceeded to send Mr. Saunders to physical therapy. Dr. Gordon at no time reviewed the 8/17/02 and 8/22/04 x-ray studies of Mr. Saunders and at no time reviewed or discussed the x-ray findings with Dr. Kosco or Dr. Alajaji. Dr. Gordon referred Mr. Saunders to Dr. Piasio on 9/4/02 because Mr. Saunders was "doing better" but Dr. Gordon "didn't feel comfortable" that he was completely better.

It is my professional opinion that Dr. Gordon's care of Mr. Saunders was below standard and customary. Logic would dictate that a health care provider would not send a patient to physical therapy if his or her diagnosis was "rule out fracture" while repeat x-rays were being ordered to substantiate that diagnosis. Additionally, Dr. Gordon made no attempt to discuss and review the x-ray studies with Dr. Kosco and / or Dr. Alajaji in light of the fact that Mr. Saunders' clinical condition was not improving as expected by Dr. Gordon.

George M. Kosco, M.D. interpreted the initial 8/17/02 four view study of the right ankle. Dr. Kosco's dictation was printed out on 8/21/02 at 0723 by LLW after release by Dr. Kosco. The study clearly shows the talus to be impacted into the tarsonavicular and subluxed in a plantar direction in relationship to the tarsonavicular. It is my professional opinion that the findings are clearly seen and Dr. Kosco's interpretation falls below standard and customary care. Additionally the release of a report four days after exam completion is below standard and customary care and provides little or no clinical utility in the care of the patient.

The interpretation by Jerjis T. Alajaji of the right ankle and right foot series performed on 8/22/02 also falls below standard and customary care. The studies clearly illustrate impaction of the talus into the tarsonavicular, plantar subluxation of the talus in relationship to the tarsonavicular, and a displaced comminuted fracture of the tarsonavicular. The cuboid is also fractured.

Additionally, Dr. Alajaji's method of practice is substantially different than that stated in the American College of Radiology Practice Guideline for Communication in Diagnostic Radiology stated as follows:

The American College of Radiology, with more than 30,000 members, is the principal organization of radiologists, radiation oncologists, and clinical medical physicists in the United States. The College is a nonprofit professional society whose primary purposes are to advance the science of radiology, improve radiologic services to the patient, study the socioeconomic aspects of the practice of radiology, and encourage continuing education for radiologists, radiation oncologists, medical physicists, and persons practicing in allied professional fields.

The American College of Radiology will periodically define new practice guidelines and technical standards for radiologic practice to help advance the science of radiology and to improve the quality of service to patients throughout the United States. Existing practice guidelines and technical standards will be reviewed for revision or renewal, as appropriate, on their fifth anniversary or sooner, if indicated.

Each practice guideline and technical standard, representing a policy statement by the College, has undergone a thorough consensus process in which it has been subjected to extensive review, requiring the approval of the Commission on Quality and Safety as well as the ACR Board of Chancellors, the ACR Council Steering Committee, and the ACR Council. The practice guidelines and technical standards recognize that the safe and effective use of diagnostic and therapeutic radiology requires specific training, skills, and techniques, as described in each document. Reproduction or modification of the published practice guideline and technical standard by those entities not providing these services is not authorized.

1991 (Res. 5)  
Revised 1995 (Res. 10)  
Revised 1999 (Res. 27)  
Revised 2001 (Res. 50)  
Effective 1/1/02

## **ACR PRACTICE GUIDELINE FOR COMMUNICATION: DIAGNOSTIC RADIOLOGY**

### **PREAMBLE**

These guidelines are an educational tool designed to assist practitioners in providing appropriate radiologic care for patients. They are not inflexible rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. For these reasons and those set forth below, the American College of Radiology cautions against the use of these guidelines in litigation in which the clinical decisions of a practitioner are called into question.

The ultimate judgment regarding the propriety of any specific procedure or course of action must be made by the physician or medical physicist in light of all the circumstances presented. Thus, an approach that differs from the guidelines, standing alone, does not necessarily imply that the approach was below the standard of care. To the contrary, a conscientious practitioner may responsibly adopt a course of action different from that set forth in the guidelines when, in the reasonable judgment of the practitioner, such course of action is indicated by the condition of the patient, limitations on available resources or advances in knowledge or technology subsequent to publication of the guidelines. However, a practitioner who employs an approach substantially different from these guidelines is advised to document in the patient record information sufficient to explain the approach taken.

The practice of medicine involves not only the science, but also the art of dealing with the prevention, diagnosis, alleviation and treatment of disease. The variety and complexity of human conditions make it impossible to always reach the most appropriate diagnosis or to predict with certainty a particular response to treatment. It should be recognized, therefore, that adherence to these guidelines will not assure an accurate diagnosis or a successful outcome. All that should be expected is that the practitioner will follow a reasonable course of action based on current knowledge, available resources, and the needs of the patient to deliver effective and safe medical care. The sole purpose of these guidelines is to assist practitioners in achieving this objective.

### **I. INTRODUCTION**

Communication is a critical component of the art and science of medicine and is especially important in diagnostic radiology. An official interpretation shall be generated following any examination, procedure, or officially requested consultation. In addition, the interpreting physician and the referring physician or other healthcare provider have other opportunities to communicate directly with each other during the course of a patient's case management. Such communication should be encouraged because it promotes

optimal patient care and focuses attention on selection of appropriate and cost-effective imaging studies, clinical efficacy, and radiation exposure.

1 The ACR Medical Legal Committee defines official interpretation as that written report (and any supplements or amendments thereto) that attach to the patient's permanent record. In healthcare facilities with a privilege delineation system, such a written report is prepared only by a qualified physician who has been granted specific delineated clinical privileges for that purpose by the facility's governing body upon the recommendation of the medical staff.

Diagnostic radiology practice is primarily a consultative physician service. The interests of both patients and their referring physicians are well served when the following are among the elements of the radiologic consultation and are completed in all practice settings: a) pre-examination evaluation of the patient by the referring physician; and b) a request for radiologic consultation that includes pertinent clinical findings, a working diagnosis, presenting signs or symptoms, and specific question to be answered by the radiology study. Such information assists both in promoting optimal patient care through interpretation of images based on appropriate clinical information and in enhancing the cost-effectiveness of diagnostic examinations by obtaining the optimal images.

Communication of patient information must be in accordance with federal and state privacy requirements.

## **II. THE DIAGNOSTIC RADIOLOGY REPORT**

An official interpretation (final written report) shall be provided with all radiologic studies regardless of the site of performance (hospital, imaging center, physician office, mobile unit, etc.). The report should include the following items as a minimum:

### **A. Demographics**

1. Name of patient and another identifier, such as social security number or hospital or office identification number.
2. Name of any referring physician(s) or other health care provider(s).
3. Name or type of examination.
4. Date of the examination.
5. Time of the examination, if relevant (e.g., for patients who are likely to have more than one of a given examination per day).
6. Inclusion of the following additional items is encouraged:
  - a. Date of dictation
  - b. Date of transcription
  - c. Birth date or age
  - d. Gender

### **B. Relevant clinical information and ICD-9 code as available**

### **C. Body of the Report**

#### **1. Procedures and materials**

The report should include a description of the studies and/or procedures performed and any contrast media (including concentration and volume when applicable), medications, catheters, or devices used, if not recorded elsewhere. Any known significant patient reaction or complication should be recorded.

#### **2. Findings**

The report should use precise anatomic, pathologic, and radiologic terminology to describe the findings accurately.

#### **3. Potential limitations**

The report should, when appropriate, identify factors that may limit the sensitivity and specificity of the examination.

4. Clinical issues

The report should address or answer any pertinent clinical issues raised in the request for the imaging examination.

5. Comparative data

Comparison with relevant previous examinations and reports should be part of the radiologic consultation and report when appropriate and available.

D. Impression (Conclusion or Diagnosis)

1. Unless the report is brief, each report should contain an "impression" section.

2. A precise diagnosis should be given whenever possible.

3. A differential diagnosis should be given when appropriate.

4. Follow-up or additional diagnostic studies to clarify or confirm the impression should be suggested when appropriate.

5. Any significant patient reaction should be reported in the impression.

**III. OFFICIAL INTERPRETATION (FINAL WRITTEN REPORT)**

A. The final written report is considered to be the definitive means of communicating the results of an imaging examination or procedure to the referring physician. Other methods for direct or personal communication of results are encouraged in certain situations. The timeliness of reporting any radiologic examination varies with the nature and urgency of the clinical problem.

B. The final report should be proofread to minimize typographical errors, deleted words, and confusing or conflicting statements.

C. The final report should be completed in accordance with appropriate state and federal requirements (see the Final Regulations, Mammography Quality Standards Act for Mammography Reporting). Electronic or rubber-stamp signature devices, instead of a written signature, are acceptable if access to them is secure.

D. The final report should be sent to the referring physician or healthcare provider providing the clinical follow-up. It should be noted that the referring physician or healthcare provider also shares in the responsibility of obtaining results of imaging studies they have ordered.

E. When feasible, a copy of the final report should accompany the transmittal of relevant images to other healthcare professionals.

F. A copy of the final report should be kept as part of the patient's medical record (paper or electronic) and be retrievable for future reference. Retention of these records should be in accordance with state and federal regulations and facility policies.

**IV. OTHER INTERPRETATIONS**

A. If requested to render an interpretation of an imaging study obtained at another facility, radiologists are encouraged to document their interpretations either by means of a formal report or other written documentation.

B. If requested to render an interpretation of an imaging study obtained at the same facility and previously reported, and a discrepancy is noted, an addendum should be rendered.

#### **V. COMMUNICATION**

A. Direct communication is accomplished in person or by telephone to the referring physician or an appropriate representative. Documentation of direct communication is recommended. In those situations in which the interpreting physician feels that immediate patient treatment is indicated (e.g., tension pneumothorax), the interpreting physician should communicate directly with the referring physician, other healthcare provider, or an appropriate representative. If that individual cannot be reached, the interpreting physician should directly communicate the need for emergent care to the patient or responsible guardian, if possible.

B. Under some circumstances, practice constraints may dictate the necessity of a preliminary report before the final report is prepared. A significant change between the preliminary and final interpretation should be reported directly to the referring physician.

C. In those situations in which the interpreting physician feels that the findings do not warrant immediate treatment but constitute significant unexpected findings, the interpreting physician or his/her designee should communicate the findings to the referring physician, other healthcare provider, or an appropriate individual in a manner that reasonably insures receipt of the findings.

#### **VI. SELF-REFERRED PATIENTS**

Radiologists should recognize the potential obligations of assuming the care and treatment of patients who present themselves for imaging studies on a self-referred basis. Such obligations may include communicating the results of the imaging studies to the patient and the necessity of appropriate follow-up.

#### **ACKNOWLEDGEMENTS**

This guideline was revised according to the process described in the ACR Practice Guidelines and Technical Standards book by the Guidelines and Standards Committee of the General and Pediatric Radiology Commission.

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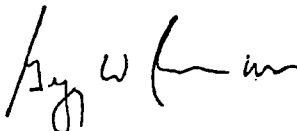
Dr. Alajaji was never working in a "vacuum". If he desired or needed additional information, whether it be reviewing the case with a colleague, speaking to the referring physician, or reviewing previous studies, standard and customary care dictates that he obtain the needed information to provide optimal patient care.

The CT scan of both feet dated 9/19/02 shows diffuse soft tissue swelling of the right ankle and right foot that is asymmetrically larger than the left foot. There are displaced comminuted fractures of the right tarsonavicular and right cuboid. Incidentally there is significant acquisition artifact in the multiplanar reconstructed images of this study; and as such these reconstructed mages are uninterpretable.

The CT scan of both feet dated 1/29/03 shows reduction in the degree of soft tissue swelling. The tarsonavicular and cuboid fractures are again visualized and not significantly different in position when compared to the 9/19/02 exam.

In conclusion, multiple errors were made in the care of Mr. Saunders including but not limited to a lack of protocol(s) and oversight, missed radiographic findings, and poor communication.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg W Baran". The signature is fluid and cursive, with the first name "Greg" and last name "Baran" clearly distinguishable.

Gregory W. Baran, M.D.





The American College of Radiology, with more than 30,000 members, is the principal organization of radiologists, radiation oncologists, and clinical medical physicists in the United States. The College is a nonprofit professional society whose primary purposes are to advance the science of radiology, improve radiologic services to the patient, study the socioeconomic aspects of the practice of radiology, and encourage continuing education for radiologists, radiation oncologists, medical physicists, and persons practicing in allied professional fields.

The American College of Radiology will periodically define new practice guidelines and technical standards for radiologic practice to help advance the science of radiology and to improve the quality of service to patients throughout the United States. Existing practice guidelines and technical standards will be reviewed for revision or renewal, as appropriate, on their fifth anniversary or sooner, if indicated.

Each practice guideline and technical standard, representing a policy statement by the College, has undergone a thorough consensus process in which it has been subjected to extensive review, requiring the approval of the Commission on Quality and Safety as well as the ACR Board of Chancellors, the ACR Council Steering Committee, and the ACR Council. The practice guidelines and technical standards recognize that the safe and effective use of diagnostic and therapeutic radiology requires specific training, skills, and techniques, as described in each document. Reproduction or modification of the published practice guideline and technical standard by those entities not providing these services is not authorized.

1991 (Res. 5)  
Revised 1995 (Res. 10)  
Revised 1999 (Res. 27)  
Revised 2001 (Res. 50)  
Effective 1/1/02

## ACR PRACTICE GUIDELINE FOR COMMUNICATION: DIAGNOSTIC RADIOLOGY

### PREAMBLE

These guidelines are an educational tool designed to assist practitioners in providing appropriate radiologic care for patients. They are not inflexible rules or requirements of practice and are not intended, nor should they be used, to establish a legal standard of care. For these reasons and those set forth below, the American College of Radiology cautions against the use of these guidelines in litigation in which the clinical decisions of a practitioner are called into question.

The ultimate judgment regarding the propriety of any specific procedure or course of action must be made by the physician or medical physicist in light of all the circumstances presented. Thus, an approach that differs from the guidelines, standing alone, does not necessarily imply that the approach was below the standard of care. To the contrary, a conscientious practitioner may responsibly adopt a course of action different from that set forth in the guidelines when, in the reasonable judgment of the practitioner, such course of action is indicated by the condition of the patient, limitations on available resources or advances in knowledge or technology subsequent to publication of the guidelines. However, a practitioner who employs an approach substantially different from these guidelines is advised to document in the patient record information sufficient to explain the approach taken.

The practice of medicine involves not only the science, but also the art of dealing with the prevention, diagnosis, alleviation and treatment of disease. The variety and complexity of human conditions make it impossible to

always reach the most appropriate diagnosis or to predict with certainty a particular response to treatment. It should be recognized, therefore, that adherence to these guidelines will not assure an accurate diagnosis or a successful outcome. All that should be expected is that the practitioner will follow a reasonable course of action based on current knowledge, available resources, and the needs of the patient to deliver effective and safe medical care. The sole purpose of these guidelines is to assist practitioners in achieving this objective.

### I. INTRODUCTION

Communication is a critical component of the art and science of medicine and is especially important in diagnostic radiology. An official interpretation<sup>1</sup> shall be generated following any examination, procedure, or officially requested consultation. In addition, the interpreting physician and the referring physician or other healthcare provider have other opportunities to communicate directly with each other during the course of a patient's case management. Such communication should be encouraged because it promotes optimal patient

<sup>1</sup>The ACR Medical Legal Committee defines official interpretation as that written report (and any supplements or amendments thereto) that attach to the patient's permanent record. In healthcare facilities with a privilege delineation system, such a written report is prepared only by a qualified physician who has been granted specific delineated clinical privileges for that purpose by the facility's governing body upon the recommendation of the medical staff.

**MEDICAL SOCIETIES:**

Society of Magnetic Resonance in Medicine  
Radiological Society of North America  
Society of Nuclear Medicine  
American Institute of Ultrasound in Medicine  
American Medical Association  
Ohio State Radiological Society  
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American Cancer Society  
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Western Michigan Health Systems Agency  
Member, MRI Committee  
Member, Mobile MRI Task Group  
1984

University Hospitals of Cleveland  
Cleveland, OH  
Member, Medical Student Education  
Member, Resident Education Committee  
1981-1982

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- 3) Prostate Sonography. Wisconsin State Radiological Society, 1988.
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- 8) Color Doppler Sonography of the Prostate. Urology Grand Rounds. Ohio State University Medical Center, Columbus, OH. Feb., 1999.
- 9) Rotator Cuff Ultrasound. Northeastern Ohio Ultrasound Society, 2001



1 IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
2 PENNSYLVANIA  
3

4 JOHN D. SAUNDERS and : CIVIL DIVISION  
5 BRENDA A. SAUNDERS, :  
6 husband and wife, : No. 03-1051 C.D.  
7 Plaintiffs :  
8 :

9 vs. :  
10 :

11 DUBOIS REGIONAL MEDICAL  
12 CENTER, a corporation, t/d/b/a :  
13 DRMC, :  
14 Defendant :  
15 :

16 vs. :  
17 :

18 JERJIS T. ALAJAJI, M.D and :  
19 GEORGE M. KOSCO, M.D. :  
20 Defendants :  
21 :  
22 :

23  
24 PROCEEDINGS: Deposition of:  
25 DANIEL S. GORDON, D.O.  
26

27 DATE: February 18, 2004  
28

29 TIME: 1:00 p.m. to 3:50 p.m.  
30

31 PLACE: Office of:  
32 Daniel Gordon, D.O.  
33 336 E. Main Street  
34 Reynoldsville, Pa. 15851  
35

36 BEFORE: Francine M. Weber  
37 Freelance Court Reporter  
38 Notary Public  
39

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1 Whereupon,

2 DANIEL S. GORDON, D.O.

3 the deponent herein, having been first duly sworn, was  
4 examined and testified as follows:

5

6 MR. JOHNSON: Just for the record, Jim, I am here not  
7 only as counsel of record but also as counsel representing Dr. Gordon  
8 in this deposition.

9 DIRECT EXAMINATION

10 BY MR. GORDON:

11 Q Doctor, you do not have your CV with you today,  
12 correct?

13 A Correct.

14 Q I want to go through a number of questions with you  
15 on that subject. Can you state your full name and your age?

16 A Daniel Scott Gordon, sixty two.

17 Q And what medical school are you a graduate of?

18 A PCON, P-c-o-n, Philadelphia.

19 Q What year?

20 A 1972.

21 Q Are you a specialist?

22 A No.

1 Q Can you describe your practice for us?

2 A From the beginning?

3 Q Let's say in the last ten years.

4 A I was in emergency medicine for twenty two years and  
5 then in the last nine years I have been in family practice or general  
6 practice.

7 Q Are you board certified or were you board certified in  
8 emergency—

9 A Board eligible but not board certified.

10 Q Where did you practice emergency medicine?

11 A Dubois Regional Medical Center my entire career, twenty  
12 two years.

13 Q And your last practice at Dubois Regional Medical Center  
14 in emergency medicine was nine years ago?

15 A Yes, 1995, I've been in Reynoldsville, my home town,  
16 since then.

17 Q Now, did you work in the emergency room at the Dubois  
18 Regional Medical Center for those twenty two years?

19 A Yes.

20 Q And you have treated trauma patients?

21 A Yes.

22 Q And you are proficient in reading x-rays?

1           A     Proficient, I wouldn't say I'm proficient, but I feel I'm  
2     adequate. I feel comfortable reading them but I'm not proficient. I am  
3     not a radiologist.

4           Q     Other than training you had at PCON, what training have  
5     you had in radiology?

6           A     That would be the only training plus my experience. I was  
7     also, prior to becoming a physician, I was a physical therapist. We did  
8     cadaver work in physical therapy as well as medical school.

9           Q     But you never had any formal training in radiology?

10          A     No, just medical school.

11          Q     In the twenty two years that you worked in the emergency  
12     room at Dubois Regional Medical Center, did you interpret your own  
13     x-rays?

14          A     Yes. I interpreted them as being the physician on duty,  
15     they were also interpreted officially by the radiologist. We would give  
16     a preliminary report in the middle of the night saying yes we don't see  
17     anything or yes we do, but it was always the radiologist made the final  
18     interpretation. I wasn't paid for reading x-rays.

19          Q     Are you board certified in family practice?

20          A     No, I'm not.

21          Q     You are board eligible?

22          A     Board eligible, yes.

1 Q Have you taken your boards in family practice?

2 A No.

3 Q Did you take your boards in emergency medicine?

4 A No.

5 Q You are licensed to practice medicine in the State of  
6 Pennsylvania. Any other states?

7 A That's the only state, Pennsylvania.

8 Q And you are licensed and you have privileges at Dubois  
9 Regional Medical Center. Any other hospitals?

10 A No.

11 Q When you practice emergency room medicine for twenty  
12 two years, did you have privileges at any other hospitals?

13 A I did maybe once or twice helped some other hospitals  
14 out as an emergency but I worked in Phillipsburg maybe one or two  
15 shifts, things like that, but I never actually applied for privileges. I  
16 was just hired as an emergency room doctor to help them out as much  
17 as anything.

18 Q Now, when you worked in the emergency room for twenty  
19 years at DRMC, were you an employee of the hospital?

20 A Yes and no. As I was telling Jim at lunch over there, I  
21 thought I was an employee, they paid my malpractice and they paid  
22 my salary but I wasn't officially an employee. I wasn't eligible for

1       their retirement benefits and things that you do until my last three  
2       years in the emergency room, I believe, is when I was officially  
3       called an employee and I got some of the benefits and privileges that  
4       go along with that.

5               Q     Now, when you worked in the DRMC emergency room  
6       through up to 1995, did you perform surgery?

7               A     I assisted in surgeries as a--because I enjoyed things like  
8       that, but I mean I had privileges to do that. I wasn't a surgeon, I assisted  
9       in surgeries helping with appendixes and gallbladders.

10              Q     You were never the lead surgeon?

11              A     No, no, not at all.

12              Q     What types of injuries and conditions did you treat on  
13       your own, trauma?

14              A     Trauma, that was almost pre-life flight, pre- all kinds of  
15       surgeons running around the hospital and specialists, so we did a lot on  
16       our own.

17              Q     And you treated sprained ankles?

18              A     Most certainly.

19              Q     And broken foot?

20              A     Yes.

21              Q     Feet?

22              A     Yes.

1 Q Other injuries, traumatic injuries to the legs?

2 A All kinds of trauma, but understand we also had, we  
3 weren't in the dark ages, we had availability of orthopaedic surgeons,  
4 not as many as we do now but we did have them and utilized them.

5 Q Why in '95 did you switch from ER medicine to family  
6 practice?

7 A It was just a time in my life. If I should expound on it  
8 I could tell you my health problems if you need to know that, but it was  
9 just the time to do it.

10 Q I have a couple questions about your status in 2002.  
11 Were you an employee or an independent contractor of DRMC then?

12 A In 2002 I would have been an employee.

13 Q So that includes August of 2002?

14 A Yes.

15 Q And you received for the calender year 2002, you receive a  
16 W-2 as opposed to a 1099 from DRMC?

17 A I'll say yes. I am not real business oriented but I was  
18 an employee and my wife could answer those questions better.

19 Q Dr. Gordon, we are in your private office located on  
20 Main Street currently, is that correct?

21 A Yes.

22 Q In August of 2002 did you also have this private practice



1 on Main Street in Reynoldsville?

2 A I was in another building in Reynoldsville. I was in  
3 this type of practice but in another office building.

4 Q What I'm trying to get to is, did you have both a private  
5 practice and—

6 A Never, never. I've always either done emergency  
7 medicine or family practice, never simultaneously. In '95 I just  
8 divorced myself completely from emergency medicine.

9 Q And in August of calender year 2002, you were solely  
10 family practice, correct?

11 A Correct.

12 Q Did you have both the private practice and a practice  
13 with DRMC?

14 A My practice was with DRMC. I was an employee of DRMC  
15 so I was in my own office or in an office but I was a hospital employee.

16 Q So you had another office in Reynoldsville in 2002  
17 but you were in that office by virtue of the fact that you were an  
18 employee of DRMC?

19 A Correct.

20 Q DRMC has a—they are around the corner on Third  
21 Street they have a facility, is that correct?

22 A Yes.

1 Q What is the title of that?

2 A Well it was the Reynoldsville Medical Center. There is  
3 a long history involved.

4 Q In 2002?

5 A It was called Reynoldsville Medical Center, I worked there  
6 as an employee of the hospital.

7 Q In 2002?

8 A Yes.

9 Q You worked both in your office in Reynoldsville and  
10 also at the DRMC Medical Center?

11 A No, this wasn't an office, I only worked at one place.

12 Q In 2002?

13 A In 2002, that was the Reynoldsville Medical Center  
14 which is just another building.

15 Q On Third Avenue?

16 A Yes.

17 Q What were your duties and responsibilities at the  
18 Reynoldsville Medical Center in August of 2002?

19 A Just general practitioner, family doctor.

20 Q Did you have your own clients or patients?

21 A Yes.

22 Q As well as DRMC patients that were referred to you?

1 MR. JOHNSON: I object to the form of the question. I  
2 think you are missing the point, Jim, that he was an employee of  
3 DRMC. I don't understand the distinction you are trying to draw.

4 MR. GORDON: That he would not have had his own  
5 patients.

6 THE WITNESS: They were my patients, they came to  
7 me because they wanted to come to me but I was an employee of the  
8 hospital so I guess they were their patients also.

9 BY MR. GORDON:

10 Q You had no private practice outside of what you did at  
11 Reynoldsville Medical Center in 2002?

12 A Correct.

13 Q You have been basically, whether it's an independent  
14 contractor or an employee, you have had that relationship with Dubois  
15 Regional Medical Center for over –

16 A Since 1974.

17 Q Since 1974. I looked, just to move this along, I looked  
18 at the website and there is a lot of affiliations under DRMC, one is  
19 DRMC Primary Care Associates, Reynoldsville. Is that the facility on  
20 Third Street?

21 A Yes, this is—yes it would be. But I believe this is also  
22 called DRMC Primary Care also, it was split between the doctors there

1 and myself and I ended up here, but we are both employees of the  
2 hospital. I'm in a different location than I was before.

3 Q There is a facility listed on the website as 5 North Street  
4 in Reynoldsville, PA.

5 A North Third Street.

6 Q North Third Street?

7 A Yes. That's the old Reynoldsville Medical Center and  
8 they were at one time all self employed, the doctors that raised me.  
9 But actually within the last couple months those doctors have also  
10 joined with the hospital DRMC which is Dubois Regional Medical  
11 Group and that's what I am.

12 Q When did that officially take place?

13 A For them or for myself?

14 Q For you?

15 A I would say July of 2003 when I split with them up there.

16 Q So prior to July of 2003 you were an employee of Dubois  
17 Regional Medical Center?

18 A Yes.

19 Q All of your care and treatment of John Saunders would have  
20 been as an employee of Dubois Regional Medical Center?

21 A Yes.

22 Q How long have you known Dr. Shlala?

1           A     I'd like to think I've known him ever since he started his  
2 career, he's a protégée of mine. I've been the team football physician  
3 for, this is my thirty first year, that was in high school when I was--so  
4 I've known him forever and encouraged him to go to school.

5           Q     And he has been practicing at Dubois Regional Medical  
6 Center how long, if you know?

7           A     His whole career. He's never worked anywhere else to my  
8 knowledge.

9           Q     How old is he approximately?

10          A     I'd say Pat is 45, 46.

11          Q     What is his specialty?

12          A     Emergency medicine.

13          Q     Did he work with you when you still practiced emergency  
14 medicine?

15          A     Yes, I was director of the emergency room for most of my  
16 career there and I hired Pat.

17          Q     And 1995 when you divorced yourself from the emergency  
18 room medicine, who became the director of the ER at the DRMC?

19          A     Kip Winger.

20          Q     And who is the director now?

21          A     Kip. He's leaving in the not too distant future.

22          Q     Is it Christopher?

1 A I don't know what his first name is.

2 Q Is it W-i-n-g-e-r?

3 A Yes.

4 Q He would have been director of the emergency room at  
5 DRMC in 2002?

6 A Yes.

7 Q Was Patrick Shlala under Kip Winger?

8 A He was.

9 Q In 2002.

10 A He was an employee of the hospital as Kip was also, Kip  
11 was the medical director.

12 MR. JOHNSON: It's actually W-e-n-g-e-r.

13 BY MR. GORDON:

14 Q And do you know if Dr. Shlala was board certified?

15 A No, he's not.

16 Q Has he taken the boards?

17 A I don't believe so.

18 Q What department did Dr. Shlala work in 2002?

19 A Emergency department is the only department he worked in.

20 Q He didn't perform any general surgery?

21 A No, he didn't do any moonlighting or anything like that I  
22 don't think.

1 Q What about Dr. Jeffrey Elias?

2 A Jeff I didn't work with at all, but he would be considered  
3 the same as Patrick, except I think he is board certified.

4 Q Did he then come on the staff, emergency room department  
5 staff at DRMC after 1995?

6 A Yes, he would have come after me, yes.

7 Q Do you know when?

8 A I really don't. They hired quite a few people about that  
9 time. I just know Jeff would have been after '95.

10 Q Is he also an employee of DRMC?

11 A To my knowledge he is, yes.

12 Q You know Dr. Elias less then you know Dr. Shlala?

13 A Yes. I don't know Jeff that well, just basically talking  
14 to him on the phone maybe about a patient of mine, just know he's a nice  
15 young man.

16 Q You never worked with Dr. Elias?

17 A No.

18 Q Do you know Dr. Elias treated John Saunders on  
19 August 17, 2002?

20 A Are you asking me do I know that he did?

21 Q Yes.

22 A Just from the emergency room report, I never had any

1 conversations with him about it. In fact, I have to say that when you get  
2 the emergency room report back, it may have Dr. Elias's name on it  
3 because maybe he was there when the patient was admitted to the  
4 emergency room but he may not have been the treating doctor, but I  
5 think in this case he was. But, I see that a lot. I mean I have Dr. Shlala's  
6 name on it but he didn't actually him, it just happened to be the change of  
7 shifts.

8 Q We're going to look at the records in a minute, we'll talk  
9 about that then. So Dr. Wenger was the head of the emergency department  
10 at DRNC in August of 2002?

11 A Yes.

12 Q Did Dr. Shlala report to Dr. Wenger?

13 A I would imagine, yes.

14 Q Did Dr. Elias also report to Dr. Wenger?

15 A Correct.

16 Q Do you know who was head of radiology at DRMC in  
17 August of 2002?

18 A Dr. Ali Shah.

19 Q S-h-a-w?

20 A S-h-a-h.

21 Q Is he still the head of radiology?

22 A Yes, he is.



1 Q Did Dr. Alajaji report to Ali Shah?

2 MR. JOHNSON: I object to the form.

3 THE WITNESS: I honestly don't know the hierarchy. I  
4 would assume yes.

5 MR. JOHNSON: Don't assume.

6 BY MR. GORDON:

7 Q Same question with respect to Dr. Kosco.

8 A I don't know.

9 MR. JOHNSON: Same objection.

10 BY MR. GORDON:

11 Q Do you know if there is any policy or procedure at DRMC  
12 that called for a radiologist to be actually present at the hospital at all  
13 times?

14 A There wasn't when I was employed there.

15 Q You are still employed by DRMC but you do not work  
16 out of that hospital, correct?

17 A Correct.

18 Q Was 1995 the last time you worked out of the hospital?

19 A Correct.

20 Q In 1995 the policy would have been that there would have  
21 been a radiologist on call, is that correct?

22 A There would have been one on call.

1           Q     Was the practice in 1995 when you were last there in  
2     the emergency room such that if you read your own x-rays you didn't  
3     have to call a radiologist but if you wanted to you could call a  
4     radiologist?

5           A     Correct. Just put an addendum that would be for routine  
6     x-rays, certainly if it was an MRI or CT of the brain we wouldn't even try  
7     to interpret that. But for routine x-rays or wrist x-ray, emergency room  
8     doctors would interpret them and tell the patient, we are not radiologists,  
9     this may or may not be correct.

10          Q     I assume DRMC like most hospitals, the technicians  
11     in radiology would actually take the x-rays?

12          A     Correct.

13          Q     And the radiologists would not take the x-rays?

14          A     Correct.

15          Q     Do you have any idea based on anything whether or not  
16     a radiologist was on site at DRMC on the afternoon of August 17 when  
17     John Saunders presented?

18          A     No.

19          Q     You don't—

20          A     No, I don't know.

21          Q     How long have you known Jerjis Alajaji?

22          A     I would have to think that he came around 1990 but I

1 could be wrong on that.

2 Q Is it safe to assume that he was there working at DRMC  
3 when you were there as head of the emergency room department?

4 A Yes, he was.

5 Q Approximately five years but you are not sure of the  
6 exact date?

7 A Yes, I'm not sure.

8 Q During those five years, what was Dr. Alajaji's position  
9 at the hospital?

10 A Staff radiologist.

11 Q He reported to Dr. Shah who was the Director of Radiology?

12 MR. JOHNSON: Object to the form of the question.

13 MR. SLIMAK: Objection.

14 THE WITNESS: I don't know.

15 BY MR. GORDON:

16 Q Did Dr. Alajaji work at any other hospitals?

17 A I don't know.

18 Q How well do you know Dr. Alajaji, do you know him  
19 socially?

20 A Not socially. I know him from being at meetings, that's all.

21 Q Do you hold any positions at Dubois Regional Medical  
22 Center?

1 A No, I don't, not at the present.

2 Q Did you in the past, were you a member of any boards or  
3 heads of any committees?

4 A Way back I was, but I was Director of Emergency  
5 Room, that was probably my biggest position there. I've been on some  
6 credentialing and things like that a long time ago.

7 Q How about in 2002?

8 A Nothing.

9 Q How about Dr. Kosco, how long have you known Dr. Kosco?

10 A Dr. Kosco I've known much longer, probably twenty years,  
11 maybe even a little bit longer. I'm not sure how long he's been there but  
12 I've know him the whole time.

13 Q As an employee or an independent contractor at DRMC?

14 A I just knew him as a radiologist at DRMC.

15 Q And he's still a radiologist at DRMC?

16 A Correct.

17 Q And he was a radiologist at DRMC when you were head  
18 of the emergency room department?

19 A Correct.

20 Q You don't know him socially?

21 A Yes, I do.

22 Q He's a friend of yours?

1           A     He's a friend of mine. I'm not very social but I know  
2     George very well and he has been a friend when I needed a friend and we  
3     don't go out and socialize, our wives don't socialize, I'm not very much  
4     into that.

5           Q     Do you happen to know whether he's an independent  
6     contractor or an employee?

7           A     No.

8           Q     Do you know if he has practiced outside of DRMC?

9           A     No.

10          Q     To your knowledge, when x-rays were ordered by the  
11     emergency department at DRMC and there was not a radiologist present in  
12     radiology at the time they were being taken, would the x-rays come  
13     immediately back to the emergency room?

14          A     Correct.

15          Q     And they would be preliminarily looked at or read by  
16     the emergency room doctor?

17          A     Correct.

18          Q     And then at least up to 1995, did you then have the  
19     option of calling the radiologist on call for further consult?

20          A     Correct.

21          Q     And was there any hospital policy or procedure or  
22     practice that indicated when you were allowed to call a radiologist for

1 a consult on an x-ray?

2 A I don't --

3 MR. JOHNSON: Object to the form of the question.

4 BY MR. GORDON:

5 Q You can answer if you understand.

6 A Prior, I mean until 1995 there was no rule or regulation  
7 that said you had to call a radiologist and it was based on your own gut  
8 feelings and experience whether you did or didn't.

9 Q At least back in 1995 when you were working in the  
10 emergency room department, if you felt additional views or additional  
11 x-rays were appropriate, you had the authority to order those, is that  
12 correct?

13 A Correct.

14 Q With respect to John Saunders, have you had the opportunity  
15 to review his chart recently?

16 A Yes, I have.

17 Q When was the last time?

18 A Last night.

19 Q When you began to treat John Saunders in August of  
20 2002, did you rely upon the determination by the DRMC emergency  
21 department that Mr. Saunders did not have any fractured bones in his  
22 right foot?

1 MR. JOHNSON: Object to the form of the question.

2 MR. GORDON: Do you understand my question?

3 BY MR. GORDON:

4 Q When you began treating him in August of 2002, did  
5 you rely upon the determination that the emergency room physicians  
6 had made that John Saunders did not have any fractured bones in his  
7 right foot?

8 MR. JOHNSON: Same objection.

9 THE WITNESS: Sort of. I'm not sure what to say. I  
10 understand the question. Certainly when we look at the x-ray report we put  
11 a lot of credence in that, but it's not how we make our final decision.  
12 I mean we don't base everything on that, still use clinical judgment.

13 BY MR. GORDON:

14 Q You did review the emergency room report?

15 A Yes, I did.

16 Q Sorry, let me rephrase that. The x-ray report that came  
17 out of DRMC on August 17?

18 A Yes, I did.

19 Q Did you do that prior to ordering John to physical therapy?

20 A Yes.

21 Q Did you rely upon the fact that the emergency room  
22 report indicated that there were no fractures to the bones of John's

1 right foot?

2 MR. JOHNSON: Object to the form of the question.

3 MR. SLIMAK: May I object too because I'm not  
4 certain which one you are talking about this point, somebody from  
5 the ER, the docs themselves or something from Dr. Kosco also, which  
6 of course is on Dubois Regional Medical Centers's paper.

7 MR. GORDON: Let me rephrase the question.

8 THE WITNESS: Okay.

9 BY MR. GORDON:

10 Q When you started to treat John Saunders, did you have  
11 any x-ray reports?

12 A Yes.

13 Q Was it the x-ray report on the films that were taken on  
14 August 17, the day of his admission?

15 A First, yes.

16 Q Did you rely upon that report?

17 MR. JOHNSON: Objection.

18 THE WITNESS: No.

19 BY MR. GORDON:

20 Q You did not?

21 A No.

22 Q Explain.



1           A     Well, if I could answer. I didn't rely on it in that it is  
2     not uncommon to see a normal x-ray, a negative x-ray. So I mean my  
3     experience I've seen that many many times so we re-order the x-ray and a  
4     second x-ray is done.

5           Q     Why did you re-order the x-ray?

6           A     Just from experience that, you know, in the past we have seen  
7     where an x-ray film has been read and interpreted as normal and the person  
8     is still clinically having symptoms. It's not uncommon to order the x-ray  
9     again to make sure. Often times with the first x-ray there is swelling  
10    and pain and things of that nature and circumstances and it will be read as  
11    negative, I've seen that many times.

12          Q     Were you aware that John had been diagnosed with suffering,  
13    as having suffered a sprain?

14          A     That was working diagnosis initially, yes.

15          Q     Did you rely upon that diagnosis when you began to treat  
16    John Saunders?

17                   MR. JOHNSON: Objection to the form of the question.

18                   THE WITNESS: I didn't rely on it, no, I didn't.

19    BY MR. GORDON:

20          Q     What I'm understanding or gaining from you is that  
21    despite what the emergency room diagnosis was and despite what the  
22    x-ray of August 17, 2002 indicated, you were making your own

1 diagnosis when you began to treat John Saunders, is that correct?

2 MR. JOHNSON: Object to the form of the question.

3 THE WITNESS: That's a difficult--you rely on the x-ray  
4 report, the physical examination and talking to the patient, it's not one  
5 thing that you rely on.

6 BY MR. GORDON:

7 Q That's what I'm trying to establish here. Do you know?  
8 When you began to treat John Saunders, you relied upon the diagnosis  
9 at DRMC emergency department but not exclusively?

10 A Not exclusively, certainly.

11 Q You relied upon the diagnosis made by the DRMC  
12 emergency department in conjunction with your own experience and  
13 examination of the patient and the patient's complaints, is that correct?

14 A Yes.

15 Q And the same is true with respect to the report, x-ray report,  
16 that came out of DRMC on August 17, 2002. You looked at it but you did  
17 not rely upon that exclusively?

18 A Correct.

19 Q When you began to treat John Saunders, did you believe that  
20 the DRMC emergency department physicians had taken or had ordered  
21 a sufficient number and type of x-rays of John's right foot?

22 A Yes, I did.

1           Q     In August of 2002 did you rely upon the emergency  
2     room physician's to adequately interpret the x-rays that were taken of  
3     John's right foot?

4           A     I didn't base anything on their interpretation, I had the  
5     official x-ray report when I first saw John.

6           Q     So even though the x-rays were taken on August 17, 2002  
7     you relied to some extent, not totally, upon the interpretation made by,  
8     of those films by Dr.Kosco, is that right?

9           A     Correct.

10          Q     Did you assume when you began to treat John Saunders  
11     that his x-ray films of August 17, 2002 had been reviewed preliminarily  
12     by the emergency room physicians and then later by Dr. Kosco?

13          A     Yes, that would be procedure.

14          Q     Now, when you ordered additional films, you did order  
15     additional films on August 22, is that correct?

16          A     Correct.

17          Q     Why did you order additional films?

18          A     Because the patient, John, was continuing to have  
19     symptoms, after being in the emergency room he was still having some  
20     pain and swelling and discomfort. And as I stated, experience just  
21     tells me that the first x-rays, sometimes the second or third x-ray, don't  
22     always give you all the information. So it was just appropriate to do

1 another x-ray.

2 Q Were you questioning on August 22 when you ordered  
3 additional films, were you questioning the interpretations made by  
4 the emergency room physicians at the DRMC on August 17?

5 A Not at all.

6 Q Or the interpretation or read made by Dr. Kosco?

7 A Not at all. I believe them both to be excellent doctors.

8 Q Did you rely upon the skill and judgment of Dr. Alajaji  
9 in interpreting the x-ray films that you ordered on August 22?

10 A Yes, I guess I would have had to say yes on that question,  
11 yes, I did.

12 Q Did you rely upon Dr. Alajaji to advise you in his x-ray  
13 report whether there were any fractures apparent in the August 22 x-ray  
14 films?

15 A That wouldn't be my total reason for doing anything that  
16 I did but yes, I mean, it was important to see what he had to say and  
17 maybe made me relax a little bit seeing basically a negative x-ray report.

18 Q Did you consider the report by Dr. Alajaji on the August 22,  
19 2002 films to be negative?

20 MR. JOHNSON: I don't understand that question. I object  
21 to its form.

22 BY MR. GORDON:

1 Q Did you understand Dr. Alajaji's report on the  
2 August 22, 2002 x-ray films to be negative for the fracture?

3 MR. JOHNSON: Object to the form. I think the report will  
4 speak for itself.

5 THE WITNESS: He put another word on that made it  
6 more clear, 'for the fracture'.

7 BY MR. GORDON:

8 Q Yes.

9 A Yes.

10 Q In other words, based upon your reading of Dr. Alajaji's  
11 x-ray report, you believe that John Saunders had not suffered any fractures  
12 to his right foot?

13 MR. SLIMAK: Object to the form of the question.

14 BY MR. GORDON:

15 Q Is that correct?

16 A Correct.

17 Q Just to clarify that objection, with respect to fractures,  
18 after reading Dr. Alajaji's report on the August 22 film what did you  
19 determine?

20 A Based on the reports I felt that it probably wasn't a fracture  
21 and we should proceed with some form of treatment.

22 Q Did you believe that Dr. Alajaji's x-ray report of

1 August 22 was consistent with the emergency room department  
2 diagnosis of sprain?

3 MR. SLIMAK: Objection to the form.

4 MR. JOHNSON: Join.

5 THE WITNESS: I'm not sure how I'm supposed to  
6 answer this.

7 MR. JOHNSON: If you understand it you can answer  
8 it, if you have a question about what he's asking then—

9 MR. GORDON: With respect to any of my questions,  
10 if you don't understand them, don't guess.

11 MR. SLIMAK: I'm objecting—

12 THE WITNESS: When they say objection, am I saying  
13 something I shouldn't say or—

14 MR. SLIMAK: I'm just objecting because I think the  
15 question is unclear. I think it's inappropriate, that's all I'm saying.

16 MR. GORDON: Let me break it down into a couple  
17 questions.

18 BY MR. GORDON:

19 Q You were aware when you began treating John that the  
20 emergency room department had diagnosed his condition to be a sprain,  
21 correct?

22 A Correct.

1 Q And you received and read Dr. Alajaji's x-ray report of  
2 the August 22 film, correct?

3 A Correct.

4 Q You previously testified that you found that report to  
5 indicate that John's—that the report was negative for fractures of John's  
6 right foot?

7 MR. SLIMAK: Object to the form.

8 THE WITNESS: Yes.

9 BY MR. GORDON:

10 Q You already testified to that, correct?

11 A Correct.

12 Q Now my question here is whether or not you thought  
13 Dr. Alajaji's report was consistent with the emergency room diagnosis  
14 of sprain?

15 MR. SLIMAK: Same objection.

16 THE WITNESS: I don't understand, I'm sorry.

17 BY MR. GORDON:

18 Q When you read Dr. Alajaji's report, did you consider his  
19 findings to be consistent with the emergency room diagnosis of sprain?

20 MR. SLIMAK: Same objection.

21 MR. JOHNSON: And I object to it because the doctor  
22 has already said he doesn't understand the question. It's the same

1 question.

2 MR. SLIMAK: I think you are also asking him to opine  
3 what the emergency room physicians were thinking and what  
4 Dr. Alajaji himself was thinking.

5 MR. GORDON: I'm not. Let me just start again.

6 MR. SLIMAK: Dr. Alajaji's report speaks for itself,  
7 it says what it does say, as do the emergency room records.

8 MR. GORDON: I don't think that's an objection that  
9 goes to my question. Let me be clear on it.

10 BY MR. GORDON:

11 Q You read the emergency room diagnosis of sprain?

12 A Correct.

13 Q You read Dr. Alajaji's report?

14 A Correct.

15 Q You testified that the report was negative for fracture?

16 A Correct.

17 Q My question is, was Alajaji's report as you read it,  
18 consistent with the emergency room doctor's diagnosis of sprain?

19 MR. SLIMAK: Objection to the form.

20 MR. JOHNSON: Same objection. He already answered  
21 that question that he didn't understand it.

22 THE WITNESS: And I'm not sure that I do to be honest



1 with you.

2 BY MR. GORDON:

3 Q Well you looked at the report and you have in one hand  
4 the emergency room diagnosis of sprain and in another one Dr. Alajaji's  
5 report, x-ray report?

6 A Right.

7 Q Did you consider them to be contradictory?

8 A No.

9 Q Did you consider them to be consistent with one another?

10 MR. SLIMAK: Objection to the form.

11 THE WITNESS: Yes, they were consistent based on that  
12 plus my physical exam and total picture.

13 BY MR. GORDON:

14 Q And just so—you keep coming back to that and I want  
15 all the answers to be clear, when you say the total picture, it would  
16 be the patient's complaints?

17 A Yes.

18 Q The history that you have?

19 A Yes.

20 Q And your examination and experience?

21 A Correct.

22 MR. JOHNSON: Along with the report.

1 BY MR. GORDON:

2 Q Along with the reports, everything, total picture.

3 A Right. Total picture.

4 Q As a physician, did you understand that weight bearing  
5 is tolerated in physical therapy and going back to work at Domino's  
6 Pizza where John is employed were all inconsistent to the care and  
7 treatment of somebody who had suffered the fracture that John had  
8 suffered?

9 MR. SLIMAK: Objection.

10 MR. JOHNSON: Object to the form of the question. I  
11 don't understand it, I think it's multifaceted.

12 MR. GORDON: I'll break it down.

13 BY MR. GORDON:

14 Q You at some point learned that John had fractures in his  
15 foot, correct?

16 A Only after he was sent to the orthopaedic specialist.

17 Q Whenever that was, you at some point learned that he  
18 had fractures?

19 A At some point I learned he did have fractures.

20 Q Prior to learning that John had fractures--

21 A Yes.

22 Q By the way, that was Dr. Piasio, correct?

1 A Correct.

2 Q Now, prior to learning that John had fractures his right  
3 foot, he had undergone physical therapy, correct?

4 A Correct.

5 Q And he was instructed to bear weight as tolerated, correct?

6 A I'm not sure if he was or not.

7 Q Did you?

8 A I didn't. I only saw him three times, I didn't manage  
9 the long term. There was a point I wanted to make, I can't think what it  
10 was.

11 MR. JOHNSON: You answered the question.

12 BY MR. GORDON:

13 Q Did you tell John that he could go back to work at Domino's  
14 Pizza?

15 A No. In fact I wrote a letter saying he was off work.

16 Q Was the physical therapy that you ordered or directed—  
17 strike that. Would you have ordered physical therapy for John had you  
18 known that he had suffered the fractures he was later determined to  
19 have suffered?

20 MR. JOHNSON: I'm going to object to that question and  
21 instruct him not to answer that question. That is beyond the scope of  
22 the proper examination of this witness.

1 MR. GORDON: Does it not ask for an opinion?

2 MR. JOHNSON: I think it asks for an opinion and doesn't

3 involve a fact that he had at the time he was treating the patient, it's a

4 different set of facts.

5 BY MR. GORDON:

6 Q Did you order physical therapy for John Saunders based

7 in part upon the x-ray report of Dr. Ajajaji?

8 A Correct.

9 Q Did you order physical therapy for John based in part upon

10 the emergency room diagnosis of sprain?

11 A No.

12 Q Were you at any time aware of the fact that John had gone

13 back to work at Domino's Pizza prior to the time that you learned that he

14 had suffered fractures to his foot?

15 A No, I wasn't.

16 Q Were you at any time aware that John was walking on his

17 foot to the extent that he could, prior to the time that you learned that he

18 had suffered fractures to his foot?

19 A No.

20 Q Would that have been inconsistent with the physical

21 therapy that you had directed?

22 MR. JOHNSON: Would what have been?

1 BY MR. GORDON:

2 Q The fact that he was walking—weight bearing as tolerated?

3 A Again, that's sort of a retrospective type of question. I  
4 don't know how to answer that.

5 MR. JOHNSON: I understand the Doctor's answer to  
6 be that he doesn't understand that particular question.

7 THE WITNESS: I could refer to my— I did write a letter  
8 and I remember writing it to somebody. If you would like I could refer to  
9 that, saying that he shouldn't be working because of his injury. But after I  
10 referred him to the orthopaedic specialist I had no other contact with him to  
11 know what he was doing as far as walking and ambulating and crutches  
12 and not crutches.

13 BY MR. GORDON:

14 Q Have you ever had any discussions with Dr. Shlala  
15 at any time from August 17 of 2000 regarding the care and treatment of  
16 John Saunders?

17 A No.

18 Q Have you had any discussions with Dr. Elias?

19 A No.

20 Q How about with Dr. Kosco?

21 A No.

22 Q Dr. Alajaji?

1 A No.

2 Q Anybody at radiology at DRMC?

3 A No.

4 Q Anybody at the emergency room department at DRMC?

5 A No.

6 Q How about the physical therapy department at DRMC?

7 A They correspond with me through a written letter of  
8 what they were doing, how he was progressing or not progressing, that  
9 was the only—I didn't speak to anybody directly.

10 Q Have you spoken to anybody about John Saunders care  
11 and treatment other than your attorney?

12 A I haven't talked to anybody even the attorney except  
13 for today.

14 Q Did you ever make any inquiry as to why x-rays were not  
15 taken of John Saunder's foot on August 17?

16 A I don't understand your question.

17 Q Are you aware of whether or not any x-rays were  
18 taken of John's right foot as opposed to his ankle on August 17?

19 A No.

20 Q You don't know one way or the other?

21 A I'm going to have to look at the report, I don't know  
22 whether I did just his foot or his foot and ankle.

1 Q At some point you were advised that John had suffered  
2 fractures to his right foot, I think you indicated after John had gone  
3 to Dr. Piasio?

4 A Yes, I saw the report.

5 Q And what was your reaction?

6 A That was on a CT report that wasn't on a regular x-ray.

7 Q What was your reaction when you saw that?

8 A I felt bad.

9 Q Why did you feel bad?

10 A I don't like to see anybody injured. I don't like to see  
11 anybody have to miss work.

12 Q Were you upset?

13 A I wasn't—I didn't feel bad that thinking that we did anything  
14 wrong. I just felt bad that, you know, it took the CT and in my notes  
15 I suggested that that may need to be the next form of investigative tool,  
16 in fact I said MRI but they did a CT, that's not uncommon.

17 Q They have both CT's and MRI's at DRMC?

18 A Correct.

19 Q In August of 2002?

20 A Correct.

21 Q Have you ever looked at any of the films of John  
22 Saunder's foot or ankle?

1 A No, I haven't.

2 MR. JOHNSON: Was the question whether he ever looked  
3 at the x-ray?

4 BY MR. GORDON:

5 Q Right. Well, let me explain, have you ever looked at  
6 either the x-ray films or the CT?

7 A No.

8 Q Just to make this perfectly clear. With respect to the  
9 interpretation of x-ray films, you relied upon other people, is that right?

10 A Correct.

11 Q I have labeled as a group, exhibit A, your notes and I  
12 showed these to you before.

13 A Sure.

14 Q You have your chart?

15 A Yes, I have my chart.

16 Q Can you quickly make sure that we have the full chart  
17 as group exhibit A. We have twenty four pages.

18 A There are exactly three pages of my notes. You want  
19 me to check and make sure they are the same three pages, is that what  
20 you are saying?

21 Q No, that's fine. Why don't we just go and maybe I can  
22 take a quick look at your chart.



1 A Sure.

2 Q I can tell whether I have everything I think.

3 A I think those are just correspondence from the hospital  
4 requesting the reports.

5 MR. GORDON: Off the record.

6 (Whereupon, a brief discussion was held off the record.)

7 BY MR. GORDON:

8 Q Doctor, I have labeled as one through twenty four, different  
9 portions of your chart, okay?

10 A Okay.

11 Q Let's use that so we will be able to reference them easier.

12 A I may not be able to find them as easy because I know  
13 where the stuff is in my chart.

14 Q Go to the first page on the right hand side. There is initials  
15 and a date. Is that something your office. Do you see that?

16 A I don't recognize it as being--

17 Q It's not yours?

18 A No.

19 Q Can you go to page number four, Doctor?

20 A Okay.

21 Q When would you have received this emergency record,  
22 if you know?

1 A That was 8/17.

2 Q 8/17 was the date he was seen at Dubois Regional Medical  
3 Center. Let me tell you that, that was a Saturday.

4 A May I just suggest to you that it didn't have my name  
5 as a family doctor on it so I wouldn't have routinely got this. Then that  
6 is when you get into those yellow sheets and he called our office wanting  
7 to be seen. And then after that, after we established that we would have  
8 called for the emergency room report, the x-ray report and stuff. But on  
9 the initial emergency room report he doesn't list a doctor.

10 Q Do you know when you would have received this? Is  
11 there anything in your chart, for example, those yellow sheets?

12 A Yes, the yellow sheets would have been—let me just—  
13 Can I tell you what the first correspondence is we had?

14 Q Sure.

15 A It was on 8/20/02 sprain—and the notes that—what they  
16 do is they call into our office, not a nurse necessarily, but a secretary  
17 will take the message and give it to the nurse. And the message was,  
18 sprained right ankle on Saturday, went to the emergency room, still  
19 swelled a lot and unable to walk on it yet or apply pressure by moving it.  
20 Is this normal? He's asking a question. Is this normal and how long  
21 should the swelling last? Then the nurse, this would be taken back to my  
22 nurse and she would, it would be on my desk and I would answer it.

1 And I did. I said, yes, it would be normal to have swelling and pain. Did  
2 he have x-rays? And I asked the question, question mark. And was  
3 he on crutches? And did they give him analgesics? My nurse checks  
4 these things out for me and she answers yes, he had a splint applied  
5 in the emergency room. And, yes, he was given Lortabs. And, yes, he did  
6 have an x-ray. So that was my first correspondence and that was on the  
7 20<sup>th</sup>. And on 8/21 which would have been the next day—

8 Q Let me see the first sheet that you are referring to. This  
9 would have been a telephone log?

10 A Yes. That's how we take all of our messages.

11 Q I haven't seen this before. This would have been a call  
12 from Brenda Saunders.

13 A All they were doing, they weren't asking to be seen they  
14 were just asking some questions.

15 Q And this nurse's signature—

16 A Yes, that's Sandy, that's my nurse. She's been my nurse  
17 for thirty years, Sandy Herzing, H-e-r-z-i-n-g.

18 Q And you did not speak with John or Brenda Saunders?

19 A No. I answered their questions.

20 Q But you told Sandy the answers to the questions?

21 A Yes, I wrote them there and she called the patient back and  
22 gives the information.

1 Q Based on that first contact on August 20 of 2002, is that  
2 the first time you learned that John injured his right foot?

3 A Correct.

4 Q What happened at that point? Was there an appointment  
5 scheduled?

6 A Nothing happened. Now the next day, there's another  
7 yellow slip which means another phone call. To that point I had never  
8 seen John. 8/21, 11:30 a.m., John Saunders.

9 Q Who makes the phone call that day?

10 A It doesn't say, it just says John Saunders, it doesn't give  
11 a callers name. Sometimes it does, sometimes it doesn't. Probably John.  
12 Twisted ankle, went to ER, told him that if he had any more swelling  
13 to call his doctor. Still having problems, needs to see Dr. Gordon. Call,  
14 give time for tomorrow. And that's actually not my writing, I probably  
15 told my nurse that and then she wrote, notified patient of appointment  
16 time. And that signature I'm not sure of, that's not my regular nurse.  
17 Now, there is another nurse that helps me out occasionally.

18 Q Now this is the yellow telephone log for August 21, 2002,  
19 correct?

20 A Right.

21 Q Now, all the handwriting down to where it says wants  
22 to see Doctor—or needs to see Dr. Gordon.

1 A Yes.

2 Q That is not your handwriting, correct?

3 A No, no. My handwriting is not on here at all.

4 Q Whose handwriting is that?

5 A I don't know. It normally would be Sandy's because like  
6 I said she's been my nurse for thirty years, but there are times she is off and  
7 maybe somebody else takes the call. All I did was told them to call and give  
8 a time for tomorrow, 8/22, and then that would have been my response  
9 to this and then they write me a note saying notify patient of appointment  
10 time and I just don't know who that is. My nurse probably does.

11 Q You can't identify any of the handwriting on that 8/20  
12 telephone log?

13 A No. This is pretty much our procedure and policy to  
14 handle calls this way.

15 Q Going back to, based on that do you know when you would  
16 have received in your chart the emergency room record for August 17 of  
17 2002?

18 A Yes. I don't know the time. I can say that once we  
19 make this correspondence we would solicit the chart, knowing  
20 he's coming in, solicit the x-ray report and I'd have to look to see if my  
21 name was even on the x-ray report, sometimes it will be.

22 Q Dr. Gordon, on page number four there is what appears

1 to be initials. Are they yours, do you know?

2 A This right here?

3 Q Yes.

4 A Yes, that's mine.

5 Q That just indicates--

6 A That just means that I got the--I saw the copy of the  
7 report but I didn't date it, unfortunately, I usually do, but I didn't.

8 Q On this page number four, group exhibit A, it has  
9 injured right ankle, do you see that?

10 A Yes.

11 Q Is there anything on this that would have indicated to  
12 you that there was an injury to the foot?

13 A No, this is what the patient tells the clerk when he  
14 signs into the emergency room.

15 Q And at the bottom of it, it has ER physician, Elias, Jeffrey?

16 A Right.

17 Q What would that indicate to you when you received that?

18 A That, as I said before, this only indicates that he was  
19 in the hospital but they usually--they have double coverage now. So  
20 although his name is on it, that doesn't necessarily mean he saw the  
21 patient.

22 Q Do you know if they had double coverage on August 17,

1 2002?

2 A No, I don't.

3 Q Do you know when the double coverage started?

4 A No, I don't.

5 Q Page five, next sheet.

6 A Okay.

7 Q You would have received this, would it have come with  
8 page four?

9 A Yes.

10 Q What information did you learn upon receiving or  
11 reviewing five?

12 A You have to be able to read this, but the chief complaint  
13 was twisted right ankle while bicycling then it's pretty poor writing  
14 after that.

15 Q Actually you have it in your chart, correct?

16 A The emergency room report?

17 Q Yes. What I have marked as group exhibit A came from  
18 your office, so why don't we look at the emergency room records.

19 A Okay. I have it here now.

20 Q That's number four, next page is number five.

21 A Twisted right ankle while riding bicycle. Something on ice,  
22 no, wait. Occurred 1:00 p.m today, ice. Unable to apply weight, there is

1 one word I can't make out.

2 Q Now, is there anything indicating that you reviewed this  
3 or when you received this?

4 A Not when but this means that I saw it. That's my--

5 Q Just initialing the first page you--

6 A Yes, first page.

7 Q You wouldn't have initialed each page?

8 A No, this would be considered, it would be stapled  
9 together, it would be like a report. No, I would check the first page.

10 Q Could the Saunders have brought that to you when they  
11 came on the 22<sup>nd</sup>?

12 A They could have.

13 Q Was the original from the hospital?

14 A It's the original hospital report.

15 Q Further down there are two-- identification of triage  
16 nurse and primary nurse, do you know who those individuals are?

17 A I know the primary nurse, Shirley McNulty, she did work  
18 with me in the emergency room. The first one I have no idea who she is.

19 Q Appears to me to possibly be Vicky Ledbecker?

20 A Yes, I can read the name but I just don't know who she is.

21 Q What is the name, can you read it, have you ever seen it  
22 before?



1           A     I don't remember looking at it, Ledbetter, it looks pretty  
2 clear, it's either Margie or, like you said, Vickie. I'm not sure.

3           Q     Do you know who the physician is who signed it?

4           A     That, I believe, is Dr. Shlala.

5           Q     Under the exam time, the middle of the page and  
6 the diagnosis order on page five.

7           A     Yes.

8           Q     Does that indicate sprain/strain?

9           A     Sprain/strain right ankle.

10          Q     Is there anything on this--would you have reviewed this?

11          A     Yes, I would have looked at it, yes. I'm not saying I looked  
12 at it with a fine tooth comb at that point but I would have looked at it.

13          Q     Upon reviewing this, would there have been any  
14 indication to you that there was any injury to the right foot as opposed  
15 to the right ankle?

16          A     Not based on this.

17                   (Whereupon, a brief recess was taken.)

18 BY MR. GORDON:

19          Q     Doctor, let's go to the emergency room department  
20 record. Mine is five, but you have the document.

21          A     I can use either, okay.

22          Q     Actually I think we finished that one. Let's go to the

1 next page.

2 A Six.

3 Q Six.

4 A Okay.

5 Q Do you have that?

6 A Yes.

7 Q Do you see where it says associated symptoms, unable  
8 to bear weight?

9 A Yes.

10 Q And who in the ordinary course would have completed  
11 this emergency physician record?

12 A These check offs, I believe all of this writing, is the  
13 physician.

14 Q Can you tell whether it was Dr. Elias?

15 A No, it was Dr. Shlala.

16 Q You can recognize his writing?

17 A I recognize his writing.

18 Q And his HPI chief complaint is injury to right ankle,  
19 correct?

20 A Injury to right ankle, right.

21 Q Does not indicate any injury to the right foot, correct?

22 A Correct.

1 Q And under associated symptoms further down, that  
2 would be unable to bear weight, do you see that?

3 A Yes, unable to bear weight, correct, painful.

4 Q And then further down on physical exam, would that be  
5 the physician's checkmarks as well?

6 A Yes.

7 Q And has foot, has normal inspection, non-tender,  
8 is that what—

9 A Yes, correct.

10 Q Is that what you found when you examined—

11 A I'd have to look.

12 Q That would have been on the 22<sup>nd</sup>?

13 A Yes. Initial visit, 8/22. Physical exam indicated  
14 that there was ecchymosis below the medial and lateral malleolus and  
15 decreased range of motion. I didn't mention foot on here at all. The  
16 way he signed in was twisted right ankle.

17 Q Go to the next page which is number seven on that  
18 group exhibit A. Can you tell what this record is?

19 A This is instructions given to the patient before they  
20 leave the emergency room.

21 Q About halfway down, your name appears?

22 A Yes.

1 Q It says call Daniel S. Gordon, M.D. if you have any  
2 problems or concerns. You can reach Daniel S. Gordon at, and then  
3 a telephone number and address.

4 A Yes.

5 Q Is this a standard form at the emergency room department?

6 A Yes.

7 Q To whom is this given?

8 A The patient.

9 Q Any patient that has treatment at the emergency room?

10 A Yes, I believe this is part of that package I alluded to.

11 On discharge they get information for headache or stomach pain or  
12 anything.

13 Q This shows a diagnosis of ankle sprain?

14 A Ankle sprain.

15 Q And would this have been given, do you know whether  
16 this would have been given to you by John Saunders or whether or not  
17 you received it in a separate copy?

18 A I honestly don't know. Because it didn't have my name  
19 on the emergency room thing, I would, you know, because this goes with  
20 the emergency room page one, or page four actually, didn't have my  
21 name on it. So somewhere along the line he must have said I want to  
22 see Dr. Gordon and they put that in there. So they may have sent me this,

1 I do not know.

2 Q Now, if in fact—strike that. Does this page seven of  
3 group exhibit A indicate whether this was sent to you automatically  
4 by the hospital?

5 A No.

6 Q There is no practice at the emergency room when somebody  
7 is—when they put your name on a discharge sheet, that you automatically  
8 and independently end up getting copies of the records?

9 A The only way I would automatically and independently  
10 get it is if they gave my name when they signed into the emergency  
11 room. Somewhere along the line they must have mentioned my name  
12 because they have my name there.

13 Q Does that indicate that you would have received directly  
14 from the hospital some records?

15 A No, it doesn't indicate that.

16 Q So, so far we don't know when you received these  
17 documents?

18 A No, I don't know.

19 Q Let's go to page 8 which is the next sheet, which is  
20 August 22, 2002 office visit and that's a Thursday, correct?

21 A Sorry, which one?

22 Q Page 8 of exhibit A.

1 A That's my report, okay.

2 Q You can use either your records, it's the August 22, 2002.

3 A Yes.

4 Q That is the first time you would see John Saunders ever,  
5 correct?

6 A Correct.

7 Q And that chart number is the same chart number that  
8 appears at the hospital, 309481, do you see that?

9 A Yes, I see the number.

10 Q What does that mean the fact that you have the same  
11 chart number, does it mean anything?

12 A You mean in the emergency room?

13 Q Right.

14 A I'd have to see that. There is no reason that I know of.  
15 It would be a heck of a coincidence, but there is no—

16 Q The emergency room record and the medical record  
17 number 309481 then on your first office chart says 309481.

18 A I have no idea. My secretary might know, I have no idea  
19 what that means. It surprises me.

20 Q So he appears, what are his complaints when he appears  
21 when you see him the first time?

22 A Well the yellow—going back to the yellow thing, just

1 says he continues, let me get it here, twisted ankle. That's the problem  
2 he presented with, that was the next day. The next day which  
3 was the 22<sup>nd</sup>, my note says, seen in the emergency department, x-ray  
4 negative, analgesic some help, twisting type injury, also given splint.  
5 Works on feet at Dominos Pizza, Clearfield. And decrease range of  
6 motion, ecchymosis, black and blue, below the medial/lateral malleolus.

7 Q Where is that?

8 A That's the ankle, that's the little things that jut out here  
9 on both sides.

10 Q Can you tell from this report how far below the ankle?

11 A No, I can't.

12 Q But there was—strike that. Is this in your handwriting?

13 A Yes.

14 Q Is the top of the form page 8 of exhibit A in your  
15 handwriting?

16 A No, that's my nurses, she signed it.

17 Q Which nurse is that?

18 A Sandy Herzing.

19 Q Now, can you read your plan?

20 A Yes, re-x-ray, re-ray, which means x-ray, whirlpool,  
21 and that means evaluate and treat, so that's physical therapy. And then  
22 non-steroidal anti-inflammatory medicine.

1 Q Your diagnosis?

2 A Severe sprain, rule out fracture.

3 Q Return to office?

4 A On the 28<sup>th</sup>.

5 Q Now, that's your signature and the date?

6 A Yes.

7 Q Were you suspicious that John may have sustained a  
8 fracture?

9 A I don't know what I was suspicious of at that point.  
10 I can just say that experience, once again, they are still having symptoms,  
11 experience tells me that the x-rays are not always correct no matter who  
12 reads them. And, that's why we thought we should re-x-ray. It's a  
13 pretty common thing that we do, at least that I do. Not everybody does.

14 Q So at this point you are just relying, if you know, and  
15 you may not know, how do you know that the x-rays are negative?

16 MR. JOHNSON: I don't understand what you are asking.  
17 What do you mean, how do you know the x-rays were negative, I don't  
18 understand what you mean.

19 BY MR. GORDON:

20 Q How do you know the x-rays did not show a fracture?

21 MR. JOHNSON: You are referring to a specific note in the  
22 chart.



1 MR. GORDON: Yes, it says seen in the emergency room  
2 department.

3 MR. JOHNSON: The question is, where did you get that  
4 information.

5 MR. GORDON: Right.

6 THE WITNESS: That would have been off of the x-ray  
7 report.

8 BY MR. GORDON:

9 Q Do you think—how do you know you had the x-ray report  
10 at this point, is my question?

11 A I just know I did or I wouldn't have wrote that.

12 Q My question was whether or not the patient related it  
13 to you.

14 A No, no. I would not have written that.

15 Q If you would have had the x-ray report would you also  
16 have had the emergency room records?

17 A I just don't know, I honestly don't.

18 Q I'm just asking you, I'm not suggesting an answer.

19 A I don't know.

20 Q Did you schedule the x-ray or did you just instruct—

21 A I gave him a slip of paper to have it re-x-rayed and  
22 and have the nurse schedule him for physical therapy, evaluate and

1 treat. I'm suggesting whirlpool. I don't tell them what to do. They  
2 are professionals also. I suggest that they evaluate and treat.

3 Q Did you write out a prescription for physical therapy?

4 A Yes, we have forms that we send, it would have said that.  
5 It would not have been a prescription. I wouldn't say you must do this,  
6 this, this and this. It would just say evaluate and treat.

7 Q In other words does that mean that you would leave it up  
8 to the physical therapist to treat the injury appropriately?

9 A Yes.

10 Q I didn't see a copy of the script for physical therapy in  
11 your chart, is it in there?

12 A I don't remember seeing it. I don't remember seeing  
13 any kind of paper. Actually what it is, it's given to the patient and he takes  
14 it with him to therapy.

15 Q Let me show you what has been marked as page number 6  
16 of deposition group exhibit B and ask you if that's it?

17 A That looks like our form, yes. That's my writing here.

18 Q If you look at number 6, page number 6.

19 A Okay.

20 Q Would that have been the prescription for physical therapy  
21 that you would have given to--would you have given it to John Saunders  
22 on the day of the first visit?

1           A     The nurse would have called and made the appointment  
2     up in the upper part there, Friday, 9:30 a.m. That's definitely my  
3     writing.

4           Q     Where it says severe sprain, right ankle?

5           A     Yes, the rest of this is the nurse's then because she  
6     wouldn't put the diagnosis in.

7           Q     Is that the script or prescription for physical therapy?

8           A     Yes.

9           Q     Is that your signature on the bottom of page 6 of group  
10    exhibit B?

11          A     No.

12          Q     Where it says physician's signature, whose signature is  
13    that?

14          A     That's my nurse's.

15          Q     Is that Sandy's?

16          A     Sandy.

17          Q     What is her last name again?

18          A     Herzing.

19          Q     Did she have your authority to sign your name on a  
20    prescription for physical therapy?

21          A     Yes.

22          Q     And did she prescribe physical therapy where it says

1 duration and frequency of treatment as needed?

2 MR. JOHNSON: I thought the testimony was that  
3 the doctor prescribed—

4 THE WITNESS: I don't see—

5 BY MR. GORDON:

6 Q Just so the record is clear, you indicated that, I thought,  
7 that it's your handwriting which says severe sprain, right ankle?

8 A Right.

9 Q Would you have checked the box, do you know, where  
10 it says evaluate?

11 A I either checked them or directed her to check them.

12 Q And underneath your handwriting, severe sprain, right  
13 ankle, it says duration and frequency of treatment and the words are  
14 written in there, as needed?

15 A Yes.

16 Q Would that either be your—something you instructed?

17 A That would be my direction, that's not my writing.

18 Q It's your direction to Sandy?

19 A Yes.

20 Q Underneath that it says Blaze Development?

21 A Correct.

22 Q What is Blaze Development?

1           A     That is a building in Brockway where the physical therapy is.

2           Q     When you directed that John Saunders undergo physical  
3     therapy for severe sprain of the right ankle 'as needed', what does that  
4     mean in your mind?

5           A     As far as --it usually means as far as time, how many  
6     treatments a week, how long the treatment is necessary, but then the  
7     therapist does an evaluation and he writes me his evaluation and I believe  
8     that is in the chart some place.

9           Q     But based upon the prescription that you made, what type  
10    of physical therapy did you expect John to undergo?

11          A     The only thing I specified was whirlpool and the rest  
12    was evaluate and treat. Again, they are professionals and as physical  
13    therapists I respect them. That's routine for that type of an injury.

14          Q     In other words you left it up to the discretion of the  
15    physical therapist as to how to treat John?

16          A     Yes. Again they do contact us through usually writing,  
17    you know, a plan of treatment and we sign it.

18          Q     Now, the top of the prescription has Friday at 9:30 a.m.,  
19    that would be the next day, correct?

20          A     Well, I don't know, doesn't say the date on there but I'm not  
21    sure. The 22<sup>nd</sup> was a Thursday and that would have been a Friday.

22          Q     Did Sandy make that?

1           A     Yes. She would have called them right before the patient  
2 left the office.

3           Q     Would you have received the x-ray report back from  
4 Dr. Alajaji or from Dubois Regional Medical Center before he began  
5 physical therapy, do you know?

6           A     I don't know. I would have to look and see when we got that  
7 back. But you know, probably not, but if he did it that same day I would  
8 have. I would have gotten it the next day.

9           Q     How do documents get from the hospital to your office?

10          A     Courier .

11          Q     On a daily basis?

12          A     Yes. There is also a check and balance where if there  
13 is something grossly abnormal they call us.

14          Q     From the hospital?

15          A     Yes.

16          Q     Blaze Development is where?

17          A     Brockway, Pennsylvania.

18          Q     Did you have a relationship with physical therapists  
19 up in Brockway?

20          A     I'm not even sure who saw him. They have a choice. You  
21 can see the different locations, that's the one he chose. Apparently  
22 he lives in Brockway.

1           Q     Would you have on this first visit, August 22, 2002, would  
2     you have performed a full examination of John's right foot?

3           A     Yes.

4           Q     Would you have wanted John to undergo physical  
5     therapy if in fact you suspected that his foot might have been fractured?

6                     MR. JOHNSON: I object to the question. Again, you  
7     are asking for a set of circumstances different from what the doctor  
8     was involved in. So I instruct him not to answer that specific question.

9     BY MR. GORDON:

10          Q     Let me try to correct it. I'm not trying to ask the  
11     doctor to answer it. But, on the August 22<sup>nd</sup> visit you indicated  
12     rule out fracture.

13          A     Yes.

14          Q     You indicated previously that you just don't know,  
15     based on all the circumstances, whether there was or wasn't, correct?

16          A     Right.

17          Q     On the same date, you directed that he started physical  
18     therapy?

19          A     Yes.

20          Q     My question is, in your mind, would you have directed him  
21     to start physical therapy if you thought he might have had a fracture  
22     to his right foot?

1 MR. JOHNSON: That's calling for speculation, that's not  
2 a proper question. You don't have to answer that question.

3 BY MR. GORDON:

4 Q Let me ask it this way. How can you reconcile the  
5 fact that you are directing him to go to physical therapy and ordering  
6 another x-ray to rule out fracture at the same time?

7 A I would say that I had a low index of suspicion based  
8 upon my physical exam and x-rays.

9 Q You are talking about the x-rays that were performed  
10 on August 17?

11 A On the 17<sup>th</sup>.

12 Q Then some point after August 22 you also received a report  
13 from Dr. Alajaji?

14 A Correct.

15 Q Did that reinforce your 'low index belief in a fracture'?

16 A Yes. But again, it wasn't my total, as I stated in my  
17 notes there, that the next visit, actually when we saw him on the 29<sup>th</sup>.  
18 Maybe that's--maybe I'm not in order but--

19 MR. JOHNSON: Wait for the next question.

20 BY MR. GORDON:

21 Q Let's move to that page, page 9.

22 A Yes.



1 Q That's your signature on the lower left hand corner?

2 A Correct.

3 Q And that's the date you saw John next, August 29, 2002?

4 A Right.

5 Q Is this all your handwriting on the bottom under exam?

6 A Under exam, yes.

7 Q And above would be Sandy's handwriting?

8 A Yes.

9 Q And it indicates five day check-feeling better at times?

10 A Yes.

11 Q Is that right?

12 A Yes.

13 Q Then you read your examination?

14 A Yes. Decrease swelling and ecchymosis, feels better,  
15 applied an ace wrap, continued physical therapy, and diagnosis was  
16 severe sprain, right ankle. Return to office on Wednesday. We were  
17 trying to keep close tabs on him.

18 Q And you had not talked to Dr. Alajaji other than seeing the  
19 report?

20 A No, never talked to him.

21 Q You can go to the next page, page 10 on group exhibit A.

22 A Ten, okay. That was on 9/14/02.

1 Q I have 9/4/02.

2 A Yes, 9/4/02, that would be five days.

3 Q That's your signature in the left hand corner?

4 A Yes. Not signature, it's—

5 Q Initials?

6 A Initials.

7 Q Under exam is that your handwriting?

8 A Yes.

9 Q At the top is it Sandy's handwriting?

10 A Yes, she signed it. Says doing a lot better.

11 Q Now, can you read your exam?

12 A Yes. Still difficult with inversion—

13 Q Meaning he cannot flex?

14 A Turn the foot in this way (indicating). That is actually  
15 an ankle movement. Plan, consult Dr. Piasio. Diagnosis, improve  
16 severe sprain. So I felt that he was doing better but I didn't feel  
17 comfortable that it was completely better and I felt that he needed  
18 to see somebody else. And below that I wrote consider MRI and  
19 return to office as needed. So I basically said that, you know,  
20 we are not making as much headway and let's have someone  
21 else look at it.

22 Q Did you basically, did you discharge him on this date?

1           A     No, I didn't discharge him. I mean he was still considered  
2 my patient but I put him into somebody else's hands.

3           Q     That was my question. Did you come to the conclusion  
4 that there is nothing else you could do for him?

5           A     I think at that time, this is all within less than a months  
6 time, so, yes.

7           Q     And have you referred patients to Dr. Piasio previously?

8           A     Yes, of course.

9           Q     And does he have any affiliations with DRMC?

10          A     No, except for just on the staff there.

11          Q     He's an orthopaedist, correct?

12          A     Correct.

13          Q     Did you understand him to have a specialty, sub-specialty  
14 within orthopaedics of ankle and foot?

15          A     No.

16          Q     Just a general orthopaedic?

17          A     General orthopaedic surgeon.

18          Q     Did you make an appointment with Dr. Piasio for  
19 John Saunders or was he just instructed to--

20          A     No, we would have made the appointment.

21          Q     And did you leave it up to Dr. Piasio to do some  
22 additional testing?

1           A     Yes, I said consider it, but rather than order it myself, I  
2     thought he's going to be seeing him, let him order what he wants to  
3     and he in fact ordered a CT instead of an MRI.

4           Q     What is going through your mind, Dr. Gordon, on  
5     September 4, 2002 to cause you to ask John to consult with Dr. Piasio?

6                     MR. JOHNSON: Other than what he has already told you?

7     BY MR. GORDON:

8           Q     Yes.

9           A     I would just have to say that I feel very—I've had a lot  
10    of experience and I apparently felt at that time that maybe John should  
11    be doing better and I felt one of my skills is being able to recognize  
12    this and I could have maybe put him on crutches and told him see me in  
13    a month.

14          Q     The next page is page 11, it is Dr. Kosco's report on the—

15          A     It's initial report.

16          Q     Done on August 17, 2002?

17          A     Correct.

18          Q     Can you tell from looking at this page eleven, when the  
19    films that were taken on August 17, 2002, would have been reviewed  
20    by Dr. Kosco?

21          A     They were done at 1:43 p.m, 1300. I don't know their  
22    system.

1 Q The lower left hand corner has 8/22/02.

2 A Yes, I see that, I don't know what that means.

3 Q Page 12. This is the x-ray that you had requested for the  
4 22<sup>nd</sup>, is that correct?

5 A Correct.

6 Q And again, you don't know that's your—is that your scratch?

7 A Yes.

8 Q Looks like your initial down at the bottom?

9 A Yes.

10 Q You don't know when you would have received it?

11 A No, sir.

12 Q On the lower left hand corner it has a date of 8/23/02,  
13 you don't know when—

14 A I'm not sure of the significance of that. It was 2:50 p.m.

15 Q You don't know when you would have read this report,  
16 correct?

17 A No.

18 Q We know that you examined John on 8/22 and told him  
19 then to go get x-rays again?

20 A I'm sure my antennas were up saying, keep an eye open  
21 on this film. I just know myself, it was apparently done on that day..

22 Q Now, there is an indication of right foot?

1 A Correct.

2 Q Can you read that on to the record please?

3 A There is advanced degeneration in the navicular bone  
4 with a large accessory ossicle noted medially. There is superior  
5 subluxation of the navicular bone compared to the talus and the rest of  
6 the foot is preserved.

7 MR. SLIMAK: I object to the form, there is an extra  
8 word 'and' in that reading, but, it speaks for itself.

9 BY MR. GORDON:

10 Q This is page 12 of group exhibit A. Doctor, if you recall,  
11 what was your impression when you read that impression?

12 A I don't recall.

13 MR. JOHNSON: That's your answer.

14 THE WITNESS: Yes.

15 BY MR. GORDON:

16 Q Having read it now, does it refresh your recollection  
17 as to what you thought when you read this report?

18 MR. JOHNSON: He just said he didn't recall.

19 THE WITNESS: No, it doesn't.

20 MR. JOHNSON: He just read it before he said that. That's  
21 okay, you answered the question

22 BY MR. GORDON:

1 Q Now, page 13 which is the next sheet.

2 A Okay.

3 Q This is a report of a CT done by Dr Kosco on September 19,  
4 2002, would you have received that the same way?

5 A That's September 19, I would have received it the same way  
6 through my mailbox and brought down to my office.

7 Q Just so I'm clear, what is the process, do you have a mailbox  
8 at the hospital?

9 A Yes.

10 Q Tell me how that works, does somebody take whatever is  
11 in that mailbox and courier it or whatever the documents are, up to you?

12 A Yes.

13 Q It's done on a daily basis?

14 A Yes.

15 Q What time do you receive your courier mail from DRMC?

16 A Usually around 4:00 o'clock.

17 Q Every day?

18 A Yes.

19 Q Somebody from your office that goes to the hospital?

20 A No, it's a hospital employee, that's all he does is deliver  
21 mail.

22 Q Same thing, you don't know when you would have

1 received this?

2 A No, I don't.

3 Q Same with the next sheet, number fourteen, that is your  
4 initial at the bottom?

5 A Yes.

6 Q You don't know when you would have received this?

7 A No. January.

8 Q All right. The next sheet is the physical therapy or the  
9 next set of records is physical therapy discharge record which is  
10 number 15.

11 A Yes.

12 Q How would you have received these records?

13 A Through the same process, would have been my mailbox  
14 at the hospital and would have been a courier down to me.

15 Q If in fact a form is completed, let's go to page 16 and I  
16 can ask you some questions with respect to that. This shows that,  
17 suggests that John is receiving his out patient physical therapy  
18 at Brockway.

19 A Correct.

20 Q Would there have been a courier from Brockway down  
21 to Reynoldsville?

22 A No, it would have gone in my box at the hospital.



1 Q Would there have been a courier from Brockway to the  
2 hospital and then from the hospital here?

3 A Yes, same person. In fact he may have picked it up in  
4 Brockway and brought it right directly down to me on his circle that  
5 he makes, I don't know.

6 Q For example, if you look at 8/23, page 17.

7 A Okay.

8 Q That again is your check, correct?

9 A Yes.

10 Q This is a report dated 8/23/02, two page report. Do you  
11 know Martin R. Maloney, physical therapist?

12 A Yes.

13 Q On the second page of that report, the top, exhibit number 18,  
14 it indicates pain subtalar, it says tone/palpation?

15 A Okay, I see that.

16 Q Pain subtalar region/medial and lateral navicular heads,  
17 do you see that?

18 A Yes.

19 Q Was that consistent with what you found on your  
20 examination of John Saunders?

21 A I wasn't that specific. I don't think I'm that skilled either.

22 Q Were you relying on the skill of the physical therapist

1 to make these findings?

2 A I'm questioning, you know, the terminology and that, if  
3 he is able, if anybody is able to do that, that specifically, and that's with  
4 all due respect to the physical therapist, he has not shown any—

5 Q On the first page of our exhibit number 13 under pain,  
6 do you see that, way down? Page 17, first page of that report?

7 A Where at?

8 Q Pain.

9 MR. JOHNSON: You are referring now to the physical  
10 therapy report that is page 17, right?

11 MR. GORDON: Right, it's the August 23, 2002.

12 THE WITNESS: I see where you are.

13 BY MR. GORDON:

14 Q It has pain, intensity and location beginning at the  
15 subtalar lateral/mid (talonavicular joint). Do you see that?

16 A Yes, I do.

17 Q Now, that's more specific than your report?

18 A Yes.

19 Q My question is the same, would that have been consistent  
20 with what you found on your report and your examination?

21 A I can't say it would be because I didn't document it.

22 Q Do you recall ever speaking to anybody at the Brockway

1 physical therapy office or location with respect to John Saunders?

2 A No, I do not.

3 Q If you go to 19 or page 19. That same number appears  
4 on top, this is on Dr. Piasio's report. Do you know if that was put there by  
5 somebody from your office?

6 A No, I don't.

7 Q We already established you don't know what that  
8 means one way or the other?

9 A No, I don't.

10 Q And Dr. Piasio copied this to you and that is your--

11 A That's my check off, yes.

12 Q This is his first examination and he indicates swelling of the  
13 right foot. Was there always swelling when you saw John?

14 A I have documented there was, but it was less on the,  
15 I think the second and third visit.

16 Q It says there is mild erythema, do you see that?

17 A Yes.

18 Q And then following that there is tenderness over the  
19 talar navicular joint?

20 A Yes.

21 Q Is that consistent with John's complaints or your  
22 examination when you saw him?

1 A I don't recall, I didn't document it.

2 Q Let's go to your report which is on page 21 and 22.

3 A This is a letter I wrote?

4 Q Yes. And this would have been after John's fractures  
5 were diagnosed, correct?

6 A Yes, it would be.

7 Q Did you write this letter at John's request? Do you  
8 recall why you wrote it?

9 A I don't recall why I wrote it.

10 Q Says request for a moratorium?

11 A Yes, I don't know why I wrote it. Somebody  
12 requested it obviously.

13 Q You don't recall any conversation with John or Brenda?

14 A No, I don't.

15 Q You never spoke to Dr. Kann, did you?

16 A Correct.

17 Q And is the information contained in your report of  
18 November 4, 2002 based upon Dr. Piasio's report and the CT that  
19 he had John undergo?

20 MR. JOHNSON: Object to the form of the question.

21 BY MR. GORDON:

22 Q You indicated an MRI was done which revealed a fracture

1 of the navicular and the talus?

2 A That's incorrect, that was a CT.

3 Q That was based on the CT that Dr. Piasio had performed?

4 A Yes.

5 Q And in the first paragraph where you state on the fifth  
6 line, x-rays were initially negative for fracture, two separate sets of  
7 x-ray. Is that the x-rays that were taken on August 17 and August 22?

8 A Correct.

9 Q Have you ever talked to anybody about whether or not  
10 the August 22, 2002 x-rays actually revealed any fractures?

11 A No, I haven't.

12 Q Let me just check my records, I think I'm done. Oh,  
13 Doctor Gordon, what is your policy when the x-ray records are  
14 couriered from Brockway to the hospital and then from the hospital  
15 to here? I notice your signature is on the x-ray records.

16 A My signature is on any report that comes from any place.  
17 That just indicates that I saw it and looked at it.

18 Q I want to show you on group exhibit B the page number 8  
19 it's the Dubois Regional Medical Center physical therapist notes. Do you  
20 see that?

21 A Yes.

22 Q Would those notes have been made by the physical

1 therapist?

2 A The notes up here?

3 Q Yes.

4 A Yes, those would have been physical therapists.

5 Q So then the notes would have been couriered down  
6 to the hospital and then from the hospital to your office, correct?

7 A Well, in this case they could have been faxed to us. I  
8 don't know. What they were doing was, I think questioning whether  
9 you wanted us to proceed with therapy, what is your plan, what  
10 do you plan on doing with the patient and that. And then I have to  
11 sign it, which I did. And my answer was, you know, we referred  
12 him last week to the orthopaedic surgeon.

13 Q That's my question. So is the protocol or procedure  
14 such that when the physical therapist completes all his notes and he  
15 sends them down to you for your signature because you are the person  
16 who prescribed the physical therapy?

17 A Right, correct. In that case that would have had to have  
18 been sent back to him though.

19 Q Because you had put a note on there?

20 A Well it's—they are asking for my signature to give  
21 further orders or discontinue treatment or what are you doing.

22 Q Would you have received the daily physical therapy

1 records? Let me show you some of them. They begin at page 11 of  
2 group exhibit B and go through page 16.

3 A No, this isn't something that I would have received on a  
4 daily basis, no.

5 Q So you would not have known what the physical  
6 therapist was doing on a daily basis in Brockway?

7 A No. No, there is no way they would be able to contact  
8 every physician every day.

9 Q These are not part of your chart, correct?

10 A Correct.

11 Q Is there anything to suggest that you would have ever  
12 seen these daily progress notes from your outpatient therapy service  
13 at Brockway before today?

14 A No, sir.

15 Q There is no way that we can tell or is there any—

16 A If I didn't check it, I didn't see it. But I can tell you  
17 that routinely we do not see their daily entries as far as what they are  
18 doing, progress, that type of thing. I don't know if it's weekly or monthly  
19 or however, but they do send reports like the one we have there, asking  
20 me to give the okay or not, but it's not a daily basis.

21 Q And those reports don't contain the notes, is that right?

22 A Not those notes, no.

1 Q The daily progress notes?

2 A No.

3 Q Doctor, I'm showing you page 16 of the group exhibit B.

4 It indicates that John had gone back to work on one of the days at

5 Domino's Pizza. Do you see the highlighted section?

6 A Yes, I see the highlighted section.

7 Q Now, we've established earlier that you didn't know that  
8 John had gone back to work?

9 A No, I didn't, correct.

10 Q Would that have been something based on that the  
11 physical therapist would have had the authority to do?

12 MR. JOHNSON: To do what?

13 BY MR. GORDON:

14 Q Allow John to go back to work.

15 MR. JOHNSON: I'm just going to object to that as  
16 to lack of foundation as to what transpired with regard to the physical  
17 therapist.

18 MR. GORDON: Well let me lay a foundation.

19 BY MR. GORDON:

20 Q When you were seeing John, did you have him off work  
21 or did you even address the issue?

22 A I didn't address the issue but--well, I didn't address the



1 issue.

2 Q You didn't tell him he couldn't go back to work or he  
3 could go back to work, correct?

4 A You know what, Jim, I probably told him not to but I  
5 can't tell you, I don't have it written. Based on what my physical  
6 finding was and the fact that I'm putting him through these hoops, I  
7 would say that he wasn't ready to go back to work.

8 Q I think this is my last question. On the discharge  
9 instructions, page 19 of group exhibit B, it indicates the day, and under  
10 the discharge instructions that I have highlighted there for John, that  
11 he had been treated by Dr. Shlala. Do you know whether or not he  
12 could have been treated by both Dr. Elias and Dr. Shlala?

13 A No, I don't.

14 Q All depends on whether that dual coverage was in  
15 effect and what happened at the hospital that day?

16 A Correct

17 Q Some point you would have received the emergency  
18 physician records, it's part of your chart, but also page 27 of group  
19 exhibit B?

20 A Yes, I recognize that.

21 Q And there would be some shading in on the injury?

22 A Yes.

1 Q The injured area. Who would have done that, would  
2 it have been the triage nurse?

3 A No, I believe that was Dr. Shlala.

4 Q Would that have meant anything to you in respect to your  
5 care and treatment, do you rely on it in any way?

6 A He was localizing where the pain was.

7 Q Did you rely upon that in any way?

8 A No.

9 MR. GORDON: That's all the questions I have. We'll  
10 attach group exhibit A and B.

11 MR. SLIMAK: I do have some questions I want to  
12 ask you about. I think maybe I'll mark some additional exhibits  
13 because I didn't have copies what he was showing you except for  
14 the one.

15 CROSS EXAMINATION

16 BY MR. SLMKAK:

17 Q I'm going to mark as exhibit number one to your  
18 deposition. Can you identify this as the three pages of your handwritten  
19 office notes of the three visits with Mr. Saunders on August 22,  
20 August 29 and September 4, 2002?

21 A Correct.

22 Q Specifically with regard to your notes of August 22, 2002.

1 At that point in time, the first time you saw Mr. Saunders, did you have  
2 some documentation from Dubois Regional Medical Center, whether  
3 it be emergency room physician or Dr. Kosco, or both, as regards to  
4 their reading of the x-ray films of August 17?

5 A Yes.

6 Q Now you know specifically which documents you had at  
7 that point in time in relation to someone else's interpretation of x-ray  
8 films on August 17?

9 A No. I just, by my notes, I indicated that the x-ray  
10 was negative and I wouldn't have known that without having seen the  
11 x-ray report.

12 Q Well, let me show you what has been marked as exhibit  
13 number 2 to this deposition and this is Dr. Kosco's report for an x-ray  
14 film of August 17, 2002 which down in the lower left hand corner  
15 above the initials LLW have the date of 8/22/02?

16 A Correct.

17 Q Do you believe that you would have had this report  
18 in your office at the time you saw Mr. Saunders on August 22, 2002  
19 or not?

20 A I believe that I would have.

21 Q When you read Dr. Kosco's report of August 17—strike  
22 that question. When you read Dr. Kosco's report of the x-ray of

1 August 17, 2002, does he specifically indicate whether there is or is  
2 not evidence of fracture or dislocation?

3 MR. JOHNSON: Object to the form of the question, I  
4 think the report speaks for itself.

5 BY MR. SLIMAK:

6 Q Does it?

7 A He does.

8 Q When you read Dr. Kosco's report, what did you  
9 understand—strike that. Looking at Dr. Kosco's report which speaks  
10 for itself, we see that the sentence says, there is no evidence of  
11 fracture or dislocation.

12 A Correct.

13 Q Now, when you look at Dr. Alajaji's report which we'll  
14 mark as exhibit number 3.

15 MR. GORDON: The August 22<sup>nd</sup>?

16 MR. SLIMAK: Yes.

17 BY MR. SLIMAK:

18 Q This is a report of films taken August 22, 2002. In  
19 this report is there any statement by Dr. Alajaji with regard to the right  
20 foot?

21 A Yes.

22 Q Does he indicate that there is no evidence of fracture

1 or dislocation?

2 MR. JOHNSON: Objection on the basis that the report  
3 speaks for itself as to what it states.

4 THE WITNESS: Can you repeat that?

5 BY MR. SLIMAK:

6 Q Does Dr. Alajaji state in his report of the x-rays of  
7 August 22, 2002 that there is no evidence of fracture or dislocation?

8 A No

9 MR. JOHNSON: Same objection.

10 MR. GORDON: Same objection.

11 BY MR. SLIMAK:

12 Q On Dr. Alajaji's report on the x-rays of August 22, 2002  
13 pertaining to the right foot, what information did he convey to you through  
14 this form as far as his interpretations?

15 A That there was some degenerative changes.

16 Q Read it into the record exactly what he wrote.

17 A There is advanced degeneration in the navicular bone with  
18 a large accessory ossicle noted medially. There is superior subluxation of  
19 the navicular bone compared to the talus. The rest of the foot is  
20 preserved.

21 Q Looking again now at your exhibit number 1 which is the  
22 August 22, 2002 office note. Would you have had Dr. Alajaji's

1 report and interpretation of the x-ray of August 22, 2002 at the time  
2 that you prepared your office note of August 22, 2002?

3 A You want me to get to 8/22, my initial exam, is that correct?

4 Q Yes.

5 A The question again?

6 Q Would you have had Dr. Alajaji's interpretation of  
7 the x-rays of August 22, 2002 of the right foot at the time that you saw Mr.  
8 Saunders and prepared the report of August 22, 2002?

9 A No. I just think it's important to me anyway, this  
10 shows what experience is. When I order, I never, I don't think I  
11 ever in my life ordered just an ankle or a foot. See we have a foot and  
12 ankle on that x-ray report, that's experience.

13 Q I understand. When you saw Mr. Saunders on August 22,  
14 2002, that was the first time you saw him, correct?

15 A Yes, correct.

16 Q First contact you ever had with him directly?

17 A Ever.

18 Q And at that time you ordered an x-ray to be taken, correct?

19 A Correct.

20 Q And is it your understanding that that x-ray was ultimately  
21 interpreted by Dr. Alajaji?

22 A Correct.

1 Q Do you know what date it was actually read by Dr.  
2 Alajaji and his report was issued?

3 A No.

4 Q Do we know for certain that it would have been  
5 sometime after your August 22, 2002 evaluation of Mr. Saunders?

6 A Oh, it had to be.

7 Q Now is it correct that you issued a prescription directing  
8 Mr. Saunders to commence physical therapy before you had Dr. Alajaji's  
9 interpretation and the x-ray was taken?

10 A Yes.

11 Q Of August 22, 2002?

12 A Yes.

13 Q Is it fair to say that you could not have relied upon  
14 Dr. Alajaji's interpretation of the x-ray film of August 22, 2002 at the time  
15 that you started Mr. Saunders on physical therapy?

16 A Correct.

17 Q And at the time you started Mr. Saunders on physical  
18 therapy, were you considering in your mind the possibility that there  
19 still may be a fracture that had not originally been detected in Mr.  
20 Saunder's foot?

21 A I would say yes, I have been considering that.

22 Q Now, at the time you saw Mr. Saunder's on August 22,

1 2002, would you have had this record which I'll mark as exhibit  
2 number 4 to the deposition, which is three pages of the emergency  
3 room record from Dubois Regional Medical Center for August 17, 2002,  
4 which I believe are part of the packet you viewed earlier?

5 A Yes, they are.

6 Q Would you have had those at the time that you examined  
7 Mr. Saunders on August 22, 2002?

8 A I think yes, but I think I answered that, Jim, too, I'm  
9 not a hundred percent sure, but just knowing my routine we would have  
10 tried to get everything that we could get.

11 Q On the third page of that document there is a reference  
12 to x-rays, correct?

13 A Yes.

14 Q And who, in your understanding, in usual course of  
15 things at Dubois Regional Medical Center would complete that portion  
16 of this document that indicates x-rays?

17 A I don't know, it's just a circle around, so I don't know.

18 Q In your experience would it generally be the emergency  
19 room physicians that would complete that portion of the form?

20 MR. JOHNSON: I object it calls for speculation since  
21 the doctor said he doesn't know.

22 THE WITNESS: I just don't know.



1 BY MR. SLIMAK:

2 Q When you worked in the emergency room of the Dubois  
3 Regional Medical Center, would you have similar forms to prepare?

4 A We didn't have quite this nice of form.

5 Q Then regardless of who prepared exhibit number 4  
6 which are these three pages of records from the emergency department  
7 at Dubois Regional Medical Center of August 17, 2002, at some point  
8 you would then have gotten this report or these records, correct, and  
9 it does have a box indicated x-rays and it says x-rays, circled the right  
10 and circles for the ankle, correct?

11 A Correct.

12 Q And what does it indicate on this form as far as  
13 information from whatever source be conveyed to you through this  
14 form with regard to someone's reading of those studies as of that time?

15 A It indicates that no acute disease, normal x-ray, no  
16 fracture, no mal-alignment, no foreign body.

17 Q Would you agree that this would not be the reading  
18 of this x-ray by Dr. Alajaji?

19 A Definitely not.

20 Q You would definitely agree then?

21 A Definitely I agree.

22 Q With me?

1 A With you.

2 Q Referring again to Dr. Alajaji's report of the x-rays  
3 taken August 22, 2002, which is exhibit number 3 that I marked.

4 A Okay.

5 Q What is your understanding of superior subluxation  
6 of the navicular bone compared to the talus?

7 A I didn't think much of it. I'm sure it meant something to  
8 me but it didn't, certainly didn't mean there was a fracture. I mean  
9 it's a --you would have to get an expert to answer that, that's sort of  
10 a questionable thing. I mean you might see that on one x-ray and not  
11 on another x-ray. Subluxation just means a little slippage. It's pretty--  
12 it would be a difficult thing for certainly an emergency room doctor  
13 to interpret, but it would have a questionable significance to my thinking.

14 Q Did you contact Dr. Alajaji in any way to ask him what that  
15 was or what the significance of that was in his expert opinion?

16 A No, I didn't.

17 Q When it talks about superior subluxation of the navicular  
18 bone compared to the talus, did you recognize that as an abnormal  
19 condition?

20 A It wasn't normal.

21 Q Did you recognize that as two adjacent bones being out  
22 of the normal position?

1 A Yes.

2 Q And there is indication in this report that there is  
3 advanced degeneration in the navicular bone with a large accessory  
4 ossicle noted medially.

5 A Right.

6 Q What did you understand from that?

7 A Accessory ossicle is just a piece of bone that is a  
8 coincidental finding, you may have one as you set there. It has little  
9 significance to me.

10 Q What is your understanding of advanced degeneration  
11 in the navicular bone?

12 A That would, to me, indicate that there has been other  
13 injuries, wear and tear. The navicular bone has poor circulation to  
14 begin with as the one in the wrist does. Just indicates that there was prior  
15 injury to that or prior wear and tear, be a runner or bicyclist or somebody  
16 that certainly used their foot and ankle a lot.

17 Q Did you understand that advanced degeneration of the  
18 navicular bone to be an abnormal condition?

19 A At that point in time, no, because we see that every day  
20 on x-ray reports.

21 Q Did you ask Dr. Alajaji by contacting him by telephone,  
22 mail, or any other fashion, to further explain what the advanced

1 degeneration in the navicular bone consisted of?

2 A No, I didn't.

3 Q In your reading of x-rays, have you ever described

4 degeneration with regard to a fracture site?

5 A In my interpretation of an x-ray?

6 Q Yes. Do you recall ever doing that?

7 A I recognize degeneration, yes.

8 Q Can you have degeneration in conjunction with a fracture?

9 A Degeneration--yes.

10 Q In time, after an acute fracture, does degeneration of an

11 untreated fracture occur?

12 A The degeneration of an untreated fracture occur?

13 Q Yes.

14 A Yes.

15 Q And what might you see on an x-ray that would indicate  
16 to you that there would be degeneration occurring in that acute fracture?

17 A I don't know that you would see any degeneration, quote,  
18 acute fracture. Degeneration indicates it's been an ongoing process.

19 Q If you were looking at an x-ray knowing that there had  
20 been an earlier fracture but you see now what you feel are degenerative  
21 changes in that fracture, what types of things on x-rays would indicate  
22 that to you?

1 MR. JOHNSON: I lost that question.

2 MR. SLIMAK: Let me re-ask it.

3 BY MR. SLIMAK:

4 Q If you were aware of the acute fracture of a navicular  
5 bone and in looking at that x-ray you recognized there is advanced  
6 degeneration associated with that acute fracture, what types of  
7 changes of the fracture would you be seeing that would, in your mind,  
8 indicate that there was advanced degeneration occurring?

9 THE WITNESS: Is this hypothetically?

10 BY MR. SLIMAK:

11 Q Yes.

12 A Again, degeneration is an ongoing process. You could  
13 have a degeneration there and then a fracture. A fracture line would be  
14 acute.

15 Q That's exactly what I want to explore. What is an acute  
16 looking fracture?

17 A I'm not an expert.

18 Q You brought that up and I just want to explore what your  
19 understanding of that would be.

20 A To me an acute fracture, you just have to see it, the  
21 lines are clean so to speak where the degeneration it's just a look that  
22 you recognize.

1 Q And it looks something different than what you just described  
2 as an acute fracture?

3 A Yes. That's my non-orthopaedic x-ray opinion.

4 Q As an emergency room physician?

5 A As an emergency room physician.

6 Q Now, in Dr. Alajaji's report, did you think anything  
7 of the fact that he was reporting both advanced degeneration in the  
8 navicular bone and superior subluxation of the navicular bone  
9 compared to the talus?

10 A At the time I didn't know.

11 Q Looking at it now, does it have some significance?

12 A No.

13 MR. JOHNSON: That's beyond the scope of the  
14 deposition.

15 BY MR. SLIMAK:

16 Q Are you aware generally of what forces it would  
17 take to move the navicular bone to a superior subluxed position compared  
18 to the talus?

19 A No.

20 Q Having receiving Dr. Alajaji's report at some time after the  
21 August 22, 2002 evaluation that you performed of Mr. Saunders at which  
22 time you started physical therapy, did it ever cross your mind that you

1 should look at the actual x-ray to see what Dr. Alajaji was specifically  
2 describing with regard to the advanced degeneration of the navicular  
3 bone or superior subluxation of the navicular bone compared to the talus?

4 A No.

5 Q To this point in time today, have you ever looked at that film?

6 A No.

7 Q Is there any reason why you haven't?

8 A I don't usually review x-ray films. That's why we  
9 have radiologists.

10 Q In your twenty two years of emergency practice,  
11 did you regularly review x-ray films?

12 A I would go over it, yes, because I was on site. It was  
13 actually more acute forced injuries that I was dealing with. You have  
14 to understand I see thirty five, forty people a day, this is just one of them.  
15 So, you know, I don't go see every x-ray that I order.

16 Q In the emergency room if you would have ordered  
17 x-rays, would you have looked at every one of those x-rays?

18 A No.

19 Q Are there times that if a person came in with an  
20 orthopaedic injury due to trauma, that you ordered the x-rays, you  
21 would have routinely reviewed those x-rays from the emergency room?

22 A If it was an orthopaedic injury?

1 Q Yes.

2 MR. JOHNSON: This is nine years before he started  
3 his private practice?

4 MR. SLIMAK: Yes.

5 BY MR. SLIMAK:

6 Q The twenty two years you worked in the emergency room?

7 A No, I didn't routinely go see every x-ray I ordered, if that  
8 is the question. Sure, if it was something that's really questionable or  
9 interesting I would go over and look at it with the radiologist as a learning  
10 experience but I didn't spend a lot of time running back and forth to x-ray.

11 Q In your records of either of your three office visits of  
12 August 22, 2002; August 29, 2002, or September 4, 2002, did you make  
13 any notation whatsoever in those records that you had in fact ever actually  
14 looked at Dr. Alajaji's interpretation of the August 22, 2002 x-ray films?

15 A The only evidence that I looked at it would be my signature  
16 or my little mark that I put on each report. That would be the indicator.  
17 I didn't have any in my notes for those three days, I don't recollect  
18 having.

19 Q I want you to look specifically to your three days of  
20 office notes of August 22, August 29 and September 4, 2002 because  
21 I want to know if in any of those office notes you specifically made  
22 a notation in any way pertaining to Dr. Alajaji's interpretation of the



1 August 22, 2002 x-ray studies of the right foot?

2 A No, I didn't.

3 Q Now, we do know from reviewing your records that as  
4 far as x-rays taken in the emergency room when you reviewed those  
5 or the report of those films, you did make a specific notation in your  
6 chart, correct?

7 A Yes.

8 Q And that's the very first sentence in your exam portion  
9 of your report of August 22, 2002 where you reference, seen in the  
10 emergency department, x-ray negative?

11 A Correct.

12 Q Is it your practice to order physical therapy at the  
13 discretion of the physical therapist where there is a superior subluxation  
14 and advanced degeneration of the navicular bone?

15 A I would have not, I don't think based on what I'm seeing that  
16 I would have changed anything.

17 Q Do you know if the physical therapist at the time they  
18 commenced treatment, was aware of whether or not Dr. Alajaji's  
19 interpretation of the August 22, 2002 x-ray studies had been reported yet?

20 MR. JOHNSON: Objection. No foundation and calls  
21 for speculation.

22 BY MR. SLIMAK:

1 Q I'm just asking first of all if he's aware, then we'll look  
2 at the records of it.

3 A I'm not aware.

4 Q As part of your chart and I think this may be your  
5 signature on it?

6 A Yes.

7 Q We'll mark this then as the next exhibit which I believe  
8 is number 5. I'm going to show you these two pages of the Martin  
9 Maloney physical therapy records from the Dubois Regional Medical  
10 Center on Mr. Saunders for August 23, 2002. Did your chart have a copy  
11 of these records with them?

12 A This one, I believe it does, yes.

13 Q And would it be routine that you would do periodic  
14 reports from Mr. Maloney or whoever was conducting physical  
15 therapy per your direction on one of your patients?

16 A This was the, I believe the intake, when you first saw him.  
17 So I would have that and when he's done with him and then he would have  
18 notes in between which I didn't get.

19 Q At the top of this particular document there appears to be  
20 some fax indications. At the top of this document there is a notation  
21 at the top that appears to be some fax indication or indication these pages  
22 were faxed also at the top of the second page. Do you see that very top

1 line?

2 A Okay.

3 Q Do you know from that type of fax indication whether or  
4 not this document would have been faxed to your office from the  
5 outpatient physical therapy department rather than delivered by  
6 courier?

7 A No, I don't.

8 Q The number that's up there, 814-265-1899, do you  
9 know where that number originates from?

10 A I believe that is their fax but I don't know for sure, I  
11 believe that's what it is.

12 Q And your copy of your records that are in your chart, does  
13 it have that fax information on your copy in your chart?

14 A Same number 814-265-1899.

15 Q So in your copy of the chart, your original records, you  
16 do have a fax indication at the very top of the page that is identical to what  
17 is shown on exhibit number 5?

18 A If that is a fax, it may be his phone.

19 Q Well it says right there where it says phone and fax  
20 number it shows it right there on that page and typewritten form, doesn't  
21 it?

22 A Okay, I see that. I didn't see that.

1 Q That's all right. You were questioning it so I was just  
2 pointing that out for you. Where it says on this form, fax number and it's  
3 typewritten in 814-265-1899, is that the same number then as is indicated  
4 at the very top of the sheet where it says DRMC outpatient therapy and has  
5 a number?

6 A Yes.

7 Q And is there indication of the date in that very top line?

8 A There's a 102.

9 Q Does that, do you think in looking at that page and the second  
10 page there is a 01/02 and then 02/02 is indicative of page one and two?

11 A You are correct, it is. So you are asking if there is a date?

12 Q Yes. What would you take that information to mean that's  
13 up there, 8/29/02, 5:50.

14 A 8/29 is the date.

15 Q Have you seen faxes over time?

16 A Not a lot, I mean I see a lot of faxes that come through  
17 the office but I don't look at the times and dates.

18 Q I understand that. Bear with me. In your experience, when  
19 it has information at the top of the page, such as reflected on this  
20 document, which is the same as the fax number as pre-printed on the  
21 page, would that be your understanding of this document transmitted  
22 by fax as the date and time as indicated on the form?

1 MR. JOHNSON: I object to that question. I mean the  
2 document says whatever the document says. But at least in my experience,  
3 which I think is as relevant as the doctor's with regard to that question,  
4 it depends on whether the machine has been property calibrated or that the  
5 time is proper and I have received lots of faxes with different times. But  
6 the document says what the document says.

7 MR. SLIMAK: Yes, it does. But I'm not asking for  
8 your understanding or your experience, Mr. Johnson, I'm just asking  
9 for Dr. Gordon's experience in working with the Dubois Regional  
10 Medical Center and outpatient therapy and other departments. When you  
11 receive faxes that have information at the very top of the page, including  
12 the fax number such as this, would it be your experience that this is the  
13 indication of when the document was faxed?

14 THE WITNESS: I don't know.

15 BY MR. SLIMAK:

16 Q Now, do you have any documentation in your file that you  
17 can point to other than these two pages that has the fax number on it,  
18 that would indicate for us when you received these documents for your  
19 file?

20 A No.

21 Q Do we know in fact that you received these documents  
22 sometime during the period of the three office visits that you had with Mr.

1 Saunders?

2 A No.

3 Q Do you have some reason to believe that you would have  
4 received these documents from physical therapy after you were no longer  
5 seeing Mr. Saunders?

6 A When did I last see him?

7 Q September 4.

8 A It's very possible, very possible.

9 Q Looking at this document, it says how injury episode  
10 occurred. Do you see where I'm looking at on the first page of that  
11 document?

12 MR. JOHNSON: August 23.

13 MR. SLIMAK: Yes.

14 THE WITNESS: Okay.

15 BY MR. SLIMAK:

16 Q What does it indicate in that portion of that form with  
17 regard to x-rays?

18 A Says patient had x-ray Saturday that was negative. And says  
19 x-ray again yesterday, results not known yet.

20 Q Does this document reflect to you that physical therapy  
21 was actually started before the physical therapist at least was aware of  
22 the results of x-rays of August 22, 2002?

1           A     Certainly evaluation was started. Treatment, whirlpool,  
2     general range of motion. I don't know what your point is. I don't know if  
3     you are trying to say this therapy and that one day made this worse.  
4     I don't think—

5           Q     I wasn't making any argument at all. I'm only asking  
6     whether or not you have any information as to when the physical therapy  
7     people, if ever, were aware of the results of Dr. Alajaji's interpretation  
8     of the August 22, 2002 x-ray studies?

9           A     No, I'm not aware. I haven't studied this with a fine tooth  
10    comb either.

11          Q     On the issue that you were just mentioning, per your  
12    own evaluations of Mr. Saunders on August 22, 2002; August 29, 2002,  
13    and September 4, 2002, based on your physical examinations, interview  
14    and discussions with Mr. Saunders, were you seeing improvement in his  
15    pain complaint as he went through physical therapy?

16          A     Based on my notes, yes.

17          Q     And in fact, did you specifically make notations that as Mr.  
18    Saunders was going through physical therapy as of August 29, 2002, that  
19    he was reporting to your nursing staff, that he was feeling better at times?

20          A     Based on the notes, yes.

21          Q     And in your own handwritten note of that day, August 29,  
22    2002, did Mr. Saunders report to you if he was feeling better or not

1 with the physical therapy

2 A Let me look again but my recollection is that I reported  
3 improvement, yes.

4 Q Specifically, did you write in your chart, feels better?

5 A Yes, I did.

6 Q And based on that information, back up. What do you have  
7 there above the, it says swelling and ecchymosis on August 29, what does  
8 that symbol mean to you?

9 A Decrease.

10 Q Is it correct then as of August 29, 2002 that you were aware  
11 that Mr. Saunders had actually been going through some physical  
12 therapy at that point in time, correct?

13 A Correct.

14 Q However many days he had been in so far, correct?

15 A Correct.

16 Q And despite that physical therapy or with that physical  
17 therapy, were you finding on his reporting to you or physical examination  
18 or a combination of both that he was having decreased swelling and  
19 ecchymosis and he reported that he felt better?

20 A That would have been on physical examination and  
21 questioning.

22 Q Was it based on that examination that you then wrote



1 on your chart, continue physical therapy?

2 A Yes.

3 Q Was it the reports of Mr. Saunders as to how he was  
4 feeling and the improvement of your physical examination which were  
5 the most significant factors to you as of August 29, 2002 about whether or  
6 not to continue with physical therapy?

7 A That was part of the decision making if he was improving and  
8 doing better then yes, keep doing it.

9 Q Now, as of September 4, 2002, you next saw Mr. Saunders.  
10 Would he or did Mr. Saunders report to your nursing staff how he was  
11 feeling at that point in time after--or how much physical therapy he had  
12 undergone through that point in time?

13 A Yes.

14 Q What was he reporting to the nursing staff?

15 A This was five day check, doing a lot better, right ankle. I  
16 apparently disagreed with him.

17 Q Now as of that point, September 4, 2002, are you saying  
18 that on your physical examination you found some abnormality that  
19 you thought that he was, I guess, what?

20 A He wasn't doing as well as I would have liked him to  
21 be doing.

22 Q Is that to say that he wasn't doing better than he had been?

1           A     No. I think he probably was doing better but my feeling  
2           was that he wasn't doing as well as my experience tells me he should have  
3           been doing.

4           Q     Now, based on that, did you now order an additional  
5           radiographic study to be obtained?

6           A     No.

7           Q     Did you order some type of specific study—strike that.  
8           Were you considering ordering some other type of study than a plain  
9           film x-ray to further try to delineate what abnormalities there may be in Mr.  
10          Saunder's foot as of that point in time, September 4, 2002?

11          A     Correct.

12          Q     What were you considering ordering at that point in  
13          time to further delineate what might be going on?

14          A     An MRI.

15          Q     And why were you no longer requesting or suggesting  
16          further plain film x-rays but were moving to a different type of study?

17          A     Well, retrospectively I'm thinking that—

18                   MR. JOHNSON: He's talking about your thinking as  
19          of September 4.

20          BY MR. SLIMAK:

21          Q     Yes. Which could still be retrospectively.

22          A     We had two films that were really not showing any

1 'fractures'. And apparently wasn't doing as well as I thought he should  
2 be doing. The next step would be to do an MRI or to do a study,  
3 be it a bone scan, having a CT. I'm not sure which one would give him the  
4 best information but I think I probably said hey, let the orthopaedists  
5 decide that.

6 Q When you originally had ordered a study of Mr. Saunder's  
7 right ankle and right foot on August 22, 2002, what study did you select  
8 to be performed at that point in time?

9 A I did both.

10 Q Yes, with regard to the plain film x-ray or a CT or MRI?

11 A When I saw him the first time and ordered x-rays?

12 Q Yes.

13 A I ordered plain film, the regular x-ray.

14 Q Did you only desire at that point in time the plain film  
15 x-ray be taken and interpreted by the radiologist?

16 A Yes.

17 Q On August 22, 2002, am I correct that you did not ask for  
18 an MRI study at that time, you did not ask for a CT scan of the foot at that  
19 time?

20 A Wouldn't have been indicated.

21 Q Can you tell us why not?

22 A Well, it's a very expensive test and we don't, seeing a

1 person for one weeks time because he's not having the perfect  
2 response to whatever, you don't order a thousand dollar x-ray. That's my  
3 answer.

4 Q When you say a thousand dollar x-ray, are you referring  
5 to a CT scan or an MRI?

6 A Probably either one. I don't know the correct price but  
7 they are not cheap. If I order an x-ray on every patient like that, they would  
8 be hanging me by the arms.

9 Q On September 4, 2002, did you note a diagnosis that  
10 you were making?

11 A My diagnosis was improved severe sprain.

12 Q Did you feel that after physical therapy that had been  
13 performed through that point in time, that there had been improvement  
14 in what you were assessing as a severe sprain?

15 A Based on my note, yes.

16 Q Based on your evaluation of Mr. Saunders from  
17 August 22 through September 4, 2002, were you able to determine  
18 if the physical therapy had helped or had caused harm to Mr. Saunder's  
19 foot?

20 A I don't know. I mean based on my notes, it was helping him  
21 but it wasn't completely resolved by any stretch of the imagination,  
22 otherwise I would have gone through the rest of this.

1 Q What is your understanding of a comminuted fracture?

2 A What is my understanding of a comminuted fracture?

3 Q Yes.

4 A Fragments, not a clear fracture, not a clear break as pieces.

5 Q In your experience is there any difference between  
6 displacement of bone, subluxation of bone and dislocation of bone?

7 A Yes.

8 Q What is your understanding?

9 A Dislocation is demonstrated when pieces are, they are  
10 out of alignment completely. Subluxation, it's a very vague thing.  
11 Subluxation could mean a little move like this or a little move like  
12 this (indicating) or millimeters. It's not a real dynamic type of  
13 description.

14 Q To your mind, does subluxation mean that there is some  
15 movement between adjacent bones but the extent of it is not exactly  
16 sure unless it's actually specified or what?

17 A Right. And in my thinking the subluxation would  
18 almost go with a sprain. A sprain means usually some of the ligaments  
19 are tore off the bone and in doing that you sort of move the bone  
20 a little bit. So it's not a very conclusive type—it's not something you  
21 look at and say, oh my God, he has subluxation you better get him to  
22 the bone specialist.

1 Q Now, whenever you have a sprained ligament, what is  
2 your understanding of that is?

3 A Sprained, strain, if you go visualize your foot inverting  
4 like this (indicating) and the ligaments that hook down, the ligaments  
5 always hook on to the bones. It will tear some of the little strands of  
6 ligaments and that's when you get the bleeding in there, that is the  
7 ecchymosis we described. That's what a bad sprain is. It eventually heals.  
8 The whole foot may be black and blue but it's because of the  
9 bleeding right at the site of the injury.

10 Q Now, the ligaments are connected to the bones, correct?

11 A Correct.

12 Q And do the ligaments sometimes tear and injure the bone  
13 in the process?

14 A Yes, they do, yes, ligaments, tendons, depending on the  
15 force type of injury.

16 Q Can degeneration occur with regard to that injury to the  
17 bones?

18 A Any time there is injury to a joint or a bone, like if you had  
19 a fracture when you were a young kid playing baseball, at this time  
20 in your life if you get x-rays it's going to show some degenerative  
21 changes, osteoarthritis is a common name for it, wear and tear disease.

22 Q Now, is it your understanding that there are studies

1 other than plain film x-rays that, if ordered, can provide some additional  
2 information with regard to the nature or extent of an injury of a boney  
3 process or a boney part?

4 A Correct.

5 Q And is there sort of a hierarchy then among those  
6 tests, what you would start with and then going to a more sophisticated  
7 test that might show more detail or greater detail?

8 A Correct.

9 Q And would that process or hierarchy be, the most  
10 basic study would be plain film x-ray?

11 A Yes.

12 Q Then go to what level next?

13 A That I don't know for sure, but it would be your MRI,  
14 CT, bone density, bone scan. But I think the bigger part of the question  
15 is when would you do these?

16 Q Tell me about that so I understand where you are coming  
17 from.

18 A You certainly wouldn't do it within a weeks time, no,  
19 not unless you had a patient screaming at you and hollering at you  
20 and complaining, which we get and we do it just to keep them quiet  
21 sometimes. But it wouldn't be, I mean we treat athletes every day  
22 and we don't do MRI's and CT's. Maybe a couple weeks after a

1 conservative management or physical therapy, whirlpool, athletic  
2 training techniques, strapping, and non-weight bearing or splinting,  
3 whichever is needed. Then if you don't see a response then, yes, it's  
4 appropriate to do a specialized test. A lot of the orthopaedists do not  
5 prefer for the family doctors to do them any more. They say, hey, let us  
6 order what we want.

7 Q Now, with regard to the reporting that you got from the  
8 physical therapist. After receiving the report dated August 23, 2002,  
9 what is the next date of report that you received from physical therapy?

10 A Which one did you say?

11 Q The initial one we talked about which was August 23,  
12 2002, physical therapy initial evaluation report?

13 A Yes, that was initial evaluation.

14 Q I just want to confirm for our record, what were the next  
15 report or reports that you received from physical therapy?

16 A Let's see. Got one for 8/23. I have one for 9/4. Wait,  
17 excuse me. I have one for 8/22 or 23, that was the initial one. And I guess  
18 this other one, 8/22. That was just a referral date and discharge date.  
19 So there would have been one other one in between there, looks like  
20 that would have been on 9/4.

21 Q So is it correct you got the report that was dated  
22 August 23, 2002, you got one that was dated September 4, 2002,



1 and you got one dated September 17, 2002?

2 MR. JOHNSON: I think it's August 23.

3 THE WITNESS: Yes, I have August 23, that was the  
4 initial evaluation. Referral date and discharge looks like 9/4. I have  
5 one for 9/4 and then 9/17 which is just a discharge date. So there were  
6 three reports.

7 BY MR. SLIMAK:

8 Q Do you know when you would have received this  
9 September 4, 2002 report from the physical therapist?

10 A September 4 report? I don't know. I just know that I made a  
11 note there that, you know, about seeing the orthopaedist.

12 Q Did you sign that and date that note?

13 A I signed it 9/4/02.

14 Q And if the report was September 4, 2002, you believe that  
15 you would have reviewed that then on September 4, 2002, the date  
16 you signed it?

17 A That's what it looks like, yes. This was probably, again,  
18 probably faxed to me, I don't know. But I got it on my desk and looked  
19 at it and checked it and made a little note additional orders, and the  
20 additional order was he's going to be going to the orthopaedist.

21 Q And at the top of the page in your original chart of the  
22 one that you signed September 4, 2002, does it have some indication of

1 a fax date and time?

2 A Now that you taught me where to look, 9/4/02.

3 Q On that report from the physical therapist of September 4,  
4 2002, was the physical therapist indicating to you whether or not Mr.  
5 Saunders was making improvement with the physical therapy that  
6 you had initiated for him?

7 A Pain level decreasing.

8 Q Is there a pain scale indicated of what his level was at that  
9 point?

10 A I'm just looking down here where it says and see if I can  
11 find one of those pain scales. Pain level, current progress, pain level  
12 one to two on a scale of ten.

13 Q Does it say, going across the sheet, what his pain level  
14 was at the initiation or condition of treatment?

15 A Six to seven on a scale of ten.

16 Q Would that indicate to you there had been a decreasing  
17 pain level being reported by the physical therapist?

18 A Yes, and that's what I was seeing in my notes, that it  
19 was showing improvement but it wasn't to my liking.

20 MR. SLIMAK: Okay. That's all the questions I have for  
21 you at this time.

22 MR. GORDON: I have one.

## RE-DIRECT EXAMINATION

BY MR. JOHNSON:

Q Doctor, why did you state that you never order a single x-ray of the ankle or a single x-ray of the foot?

A It's just been my experience. Maybe I was burnt sometime twenty years ago or something but, if you are going to--your foot and ankle are so closely related that if you are doing one you better do the other because the ligament structure, the boney structure, the tendons, everything, are so closely related that it's just been my experience that if you have a sprained ankle you better look at the foot too and you know really--

Q And vice versa?

A And vice versa. And often times even look at the upper fibula because when the foot turns in or out you can often times get a fracture up high.

Q Is that the responsibility of the person ordering the x-rays or the responsibility of the radiologist?

A The person ordering the x-rays.

MR. JOHNSON: That's all.

MR. SLIMAK: Nothing further.

MR. JOHNSON: We'll read.

(Whereupon, the deposition was concluded at 3:50 p.m.)

1 (Whereupon, the reading and signing of the deposition  
2 was not waived.)  
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## CERTIFICATE

COMMONWEALTH OF PENNSYLVANIA ;

COUNTY OF CLEARFIELD ;

I, FRANCINE M. WEBER, Court Reporter - Notary Public, in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, DR. DANIEL S. GORDON, D.O. was by me, first duly sworn to tell the truth, the whole truth, and nothing but the truth, and that the above deposition was recorded in stenotype by me and reduced to typewriting by me.

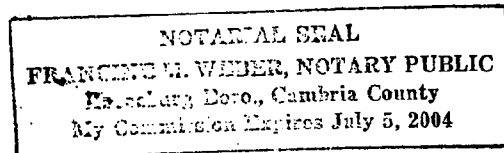
I FURTHER CERTIFY, that the said deposition constitutes a true record of the testimony given by said witness, that the foregoing deposition was taken at the time and place stated herein.

I FURTHER CERTIFY that I am not a relative, employee or attorney or counsel of any of the parties, or a relative or employee of such attorney or counsel or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 2nd day of March, 2004.

Francine M. Weber

Francine M. Weber  
Court Reporter - Notary Public





DUKE REGIONAL MEDICAL CENTER  
100 Hospital Ave, DuBois, PA 15801

SAUNDERS, JOHN D  
815 MCCULLOUGH AVE  
BROCKWAY PA 15824

SER  
Age 27Y

Unit # 000309481  
Acct # D0223400263

Date: 08/22/02 Time: 1450

GORDON, DANIEL S  
REYNOLDSVILLE MEDICAL CTR  
REYNOLDSVILLE PA 15851

GORDON, DANIEL S  
REYNOLDSVILLE MEDICAL CTR  
REYNOLDSVILLE PA 15851

Chk-in #	Order	Exam	
556079	0001	44024	XR-ANKLE MIN 3*R Ord Diag: PAIN
556079	0001	44026	XR-FOOT MIN 3*R Ord Diag: PAIN/SWELLING

RIGHT ANKLE:

The bones are intact. The joint relationships are normally maintained.  
The soft tissues are unremarkable.

IMPRESSION: NEGATIVE.

RIGHT FOOT:

There is advanced degeneration in the navicular bone with a large accessory ossicle noted medially. There is superior subluxation of the navicular bone compared to the talus. The rest of the foot is preserved.

/READ BY/ JERJIS T ALAJAJI, Radiologist  
/Released By/ JERJIS T ALAJAJI, Radiologist

08/23/02 1250  
RAW



Complete

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

JOHN D. SAUNDERS and BRENDA A.

SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,

a corporation, t/d/b/a/ DRMC,

Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,

Additional Defendant.

No: 03 - 1051 - C.D.

JURY TRIAL DEMANDED

JOHN D. SAUNDERS and BRENDA A.

SAUNDERS, husband and wife,

Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,

a corporation, t/d/b/a DRMC, and DANIEL S.

GORDON, D.O.,

Defendants.

No. 04 - 780 - C.D.

JOHN D. SAUNDERS and BRENDA A.

SAUNDERS, husband and wife,

Plaintiffs,

vs.

GEORGE M. KOSCO, M.D.,

Defendant.

No. 04 - 1245 - C.D.

**RULE TO SHOW CAUSE**

AND NOW, this 15 day of November, 2005, the Plaintiffs are directed to show cause, if any they have, why Additional Defendant Dr. Alajaji's Motion in Limine re Plaintiffs' Economic Expert Report, should not be granted.

This Rule is returnable for Answer and argument is scheduled for the 21<sup>st</sup> day of November, 2005, at ~~1:30~~ <sup>3:00</sup> p.m. in Courtroom #2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

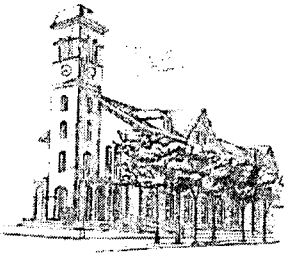
*John K. Reilly Jr.*  
Honorable John K. Reilly Jr., S.J.

FILED

NOV 16 2005

WCC  
Amy Shmak





## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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

Sincerely,

William A. Shaw  
Prothonotary

X You are responsible for serving all appropriate parties.

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

\_\_\_\_\_ Plaintiff(s)/Attorney(s)

\_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

CONSOLIDATED

Nos: 03 - 1051 - C.D.

04 - 780 - C.D.

04 - 1245 - C.D.

Type of Pleading:

*Dr. Alajaji's Motion in Limine  
re Plaintiffs' Economic Loss  
Expert Report*

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,  
Defendants

Filed on Behalf of Defendant:

*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:

*Darryl R. Slimak, Esquire*

Pa. Supreme Court I.D. # 41695

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

GEORGE M. KOSCO, M.D.,  
Defendant.

McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Counsel for Plaintiffs:

*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

FILED <sup>NO</sup>CC  
013:3761  
NOV 14 2005 <sup>CD</sup>

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	
	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

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JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	
	:	

**DR. ALAJAJI'S MOTION IN LIMINE RE**  
**PLAINTIFFS' ECONOMIC LOSS EXPERT REPORT**

AND NOW comes, Additional Defendant, JERJIS T. ALAJAJI, M.D., by and through his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and moves the Court in limine to preclude certain testimony by Plaintiffs' economic loss expert consultant, Jay K. Jarrell, on the following bases:

1. The instant action concerns alleged worsened disability for failure to timely diagnose and institute treatment for a right foot fracture.

2. During the course of discovery, Plaintiffs have provided a report of Plaintiffs' forensic economist, Jay K. Jarrell, a copy of which is attached hereto as Exhibit "A."

3. Mr. Jarrell's report on the second and fourth pages makes reference to and reliance on various hearsay publications including "The New Work Life Expectancy Tables 2002," Vocational Econometrics, Lewisville, KY; a Human Resources Center 1978 pamphlet entitled published under the title "Employer Attitudes Toward Hiring Persons With Disabilities"; a U.S. Department of Labor unidentified study report which purportedly indicates that there is unemployment of disabled veterans which is twice the rate of unemployment of veterans without disability; a 1977 study by "Levitan & Taggart" showing that 71.2% of males ages 20-64 and not working, were disabled or working in lower paying/less prestigious positions; an unidentified 1975 survey by the Social Security Administration purportedly showing that "occupationally disabled earned 53.5% of the earnings of the general population"; a 1985 study by Johnson and Lambrinos published in the 1985 issue of "The Journal of Human Resources," discussing the supposed effect of "a handicap on earnings. . .". Mr. Jarrell then summarizes his conclusions related to such supposed "diminished work life expectancy alone," equaling 30.25 years and "19% erosion," to derive at a supposed loss of "work life expectancy," adding in 29.2% "benefits," for \$334,880.

4. The gist of Mr. Jarrell's postulated supposed diminished work life expectancy calculation is fundamentally flawed because the reality is that since the bicycle injury, Mr. Saunders has gone to college and his actual future earnings capacity is substantially increased. Mr. Jarrell notes at page 3 he is pursuing a career in secondary education as a high school

mathematics teacher. As stated by Plaintiffs' expert, "[i]f he is successful in completing his schooling and finding work as a public school teacher, he will have **restored** his earning capacity." (Exhibit "A," p. 3) (emphasis supplied).

5. The essence of Mr. Jarrell's opinion and report is to concoct a purported "diminished work life expectancy" so as to project a loss in this regard of over \$334,000, based on the faulty premise that potential employers will illegally discriminate against Mr. Saunders due to his injury and any supposed handicap related thereto.

6. As a matter of law, the Defendant physicians and hospital herein, cannot be saddled with the responsibility for speculative and illegal future discrimination of Mr. Saunders by his future actual or potential employers.

7. The Pennsylvania Standard Jury Instructions recognize standard tables for life expectancy, but do not recognize work life tables issued by any particular authority. See, e.g., SSJI No. 6.21,

8. In any event, the sources of employers' supposed discriminatory attitudes towards handicapped persons cited by Mr. Jarrell precede the enactment of the American With Disabilities Act and the Pennsylvania Human Relations Act and are not reasonably relied on by experts and thus are improper under Rule 703. See Pa.R.E. 703.

9. Reliance on a past history of employer discrimination against the disabled is not reasonable in light of its illegality and available remedies should same occur.

10. Regardless, even if Plaintiffs can persuade the court that testimony based on supposed "statistics" concerning disabled workers gathered in the 1970s and 1980s is somehow relevant to this case, Plaintiffs must still overcome the barrier of Rule 403. Mr. Jarrell's calculations in his report are unduly speculative and conjectural, and there is a very high

likelihood of the jury being misled and/or confused, and the Defense prejudiced by virtue of said “data,” as it is proposed to be relied upon. See Pa.R.E. 403.

11. In addition to the foregoing problems with Mr. Jarrell’s report, in calculating supposed “past lost earnings,” Mr. Jarrell does not cite to or rely on actual fringe benefits information as regards Mr. Saunders’ time of injury employment at Domino’s Pizza, but rather, he arbitrarily assumes, based on a United States Department of Labor (“USDL”) Bulletin 04-2490), that Mr. Saunders had previously been entitled to and received benefits “standard 29.2%”, on income he was making from Domino’s and Papa John’s working in the pizza business until his serious bicycle accident occurred on August 17, 2003. (See Exhibit “A,” p. 2).

12. In addition to calculating “past lost earnings — 9/27/02 - 7/31/03” of \$76,925, including benefits, Mr. Jarrell proposes to project additional losses due to supposed “diminished work life expectancy.”

13. Mr. Jarrell postulates income lost commencing arbitrarily on September 27, 2002, without any factual basis for same. (Id.). In fact, Plaintiff’s treating orthopedic expert, Dr. Jeffrey Kann, cited in Mr. Jarrell’s expert report of September 1, 2005, indicates in his report of June 13, 2003, that Mr. Saunders would have had arthritis and needed surgery, rehabilitation, and recuperation, irrespective of the alleged negligence of the Defendants herein:

Although post-traumatic arthritis would most likely have been the outcome of Mr. Saunders’ injury **regardless of treatment**, the time frame for the development of that arthritis and the functional deficit in Mr. Saunder’s foot was clearly expedited by the lack of recognition of his fracture and the treatment provided him....As a result Mr. Saunders going to physical therapy and moving his fractured foot **increased** the morbidity of those injuries...In addition, Mr. Saunders will require a right foot triple arthrodesis in the future... In my opinion, Mr. Saunders **would have been less disabled** had his right foot fractures been recognized and appropriately treated.

(Dr. Kann's report of 6/13/03, pp. 2-3) (emphasis supplied).

14. Mr. Jarrell's report either does not take into consideration the medical evidence in this case and/or sets forth arbitrary calculation dates of supposed damages.

15. Plaintiffs produced in discovery the attached letter dated October 9, 2002 (a copy of which is attached hereto as Exhibit "B") from Plaintiffs' time of injury employer, Domino's Pizza. The document indicates that the reason Mr. Saunders was terminated from Domino's Pizza was because of the lengthy period of recuperation necessitated by the injury, not because he was disabled.

16. In Mr. Jarrell's March 26, 2004 report, he projects lost household services by Mr. Saunders of \$115, 026. (See reference in Exhibit "A," p. 4).

17. There is no medical basis for Mr. Jarrell attributing lost household services post the bicycling accident to the purported negligence as opposed to the underlying and inevitable disability that would be caused by the underlying condition as noted in the report of Plaintiff's treating physician, Dr. Kann. (See supra, ¶ 11).

18. An expert cannot provide a report creating his own factual scenario in which to project future economic losses. See Auerbach v. Philadelphia Transp. Co., 421 Pa. 594, 221 A.2d 163, 170 (1966); Collins v. Hand, 431 Pa. 378, 246 A.2d 398, 404 (1968); Hamlin v. Bashline, 481 Pa. 256, 392 A.2d 1280 (1978); Childers v. Power Line Equipment Rentals, Inc., 452 Pa.Super. 94, 681 A.2d 201, 209 (1996).

19. Neither Plaintiffs' medical experts' reports nor Mr. Jarrell's reports delineate that any postulated future care and medical expense would be due to the negligence of Dr. Alajaji and/or any particular Defendant for that matter, as opposed to the underlying injury. As such,

Mr. Jarrell's opinions and proposed testimony as set forth in his reports should be precluded from the trial of this matter as a matter of law. To allow same would cause the jury to improperly speculate as to whether such care is due to alleged negligence of any defendant, and if so, which one(s). Also, Mr. Jarrell is per Rule 4003.5 limited to his expert reports, which do not address this issue.

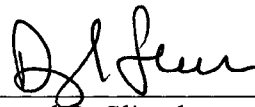
20. Mr. Jarrell's report also violates 40 P.S. §1303.510 of the MCARE statute, in that his report does not address, provide "competent evidence" regarding, nor reduce to present value the claims of supposed economic loss, as is now required under applicable Pennsylvania law in medical malpractice actions.

WHEREFORE, Plaintiffs' expert economist, Jay K. Jarrell, must be precluded from presenting any claim of future diminished work life expectancy and related supposed income losses.

Respectfully submitted,

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_



Darryl R. Slimak  
Attorneys for Additional Defendant  
JERJIS T. ALAJAJI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: November 14, 2005



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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

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JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2005, upon consideration of Dr.

Alajaji's Motion in Limine regarding Plaintiffs' forensic economist, Jay Jarrell, said Motion is GRANTED. Mr. Jarrell is precluded from testifying at the trial of this matter.

BY THE COURT

\_\_\_\_\_  
Honorable John K. Reilly, Jr. S.J.

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

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JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Dr. Alajaji's Motion in Limine re Plaintiffs' Economic Expert Report in the above-captioned matter was sent via facsimile and mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 14<sup>th</sup> day of November, 2005 to the attorney(s) of record:

James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.  
124 North Allegheny Street  
Bellefonte, PA 16823

McQUAIDE, BLASKO  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_



Darryl R. Slimak  
Attorneys for Additional Defendant  
JERJIS T. ALAJAJI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624



JAY K. JARRELL  
239 Fourth Avenue  
Suite 1917 - Investment Building  
Pittsburgh, PA15222

Phone: (412) 281-8235

Fax: (412) 281-9417

September 1, 2005

James G. Gordon, Esquire  
1000 Main Street  
Pittsburgh, PA 15215-2406

Dear Mr. Gordon:

You asked that I become familiar with the background and current circumstances of your client, John D. Saunders and then prepare an opinion as to the labor economic consequences of his partial disability, the cause of which prompted the Civil Action in which you represent him.

To this end, I spoke with Mr. Saunders after I reviewed the several documents cited below:

1. Complaint in Civil Action;
2. Answers to Interrogatories;
3. Report and Notes of Dr. Jeffrey Kann;
4. Records from Hanger Prosthetics and Orthotics;
5. Wage and Employment Records from the Department of Labor & Industry;
6. Medical Bills;
7. Income Tax Returns for the Years 1997 through 2002;
8. Employment Records from Domino's Pizza; and,
9. Food Stamp Assistance Transcript.

Subsequently I received the additional documents noted below and I again spoke with Mr. Saunders to refresh and update my understanding of his situation.

10. A copy of the transcript of Mr. Saunders' Deposition taken 8/24/04.
11. Elementary and Secondary School Records as well as a transcript of his courses and grades as a student at Penn State DuBois Campus.
12. Federal Income Tax Returns for 2003 and 2004 and year-to-date earnings records 2005.
13. Records of worklife earnings (1991 through 2004) as provided by the Social Security Administration.

John Saunders was born on 3/27/75. He graduated from DuBois Area High School in 1993. He worked in the pizza business (Domino's and Papa John's) during most of the time from 1993 until his disability caused him to leave his position as a Store Manager of a Domino's in Clearfield, Pennsylvania owned by Gregory and Company in September, 2002. He has been unable to return to that job, or to similar work, because of his foot and ankle problems. Most recently he has been working part time in cellular phone sales where he can sit 80% of the time.

The various notes authored by Dr. Jeffrey N. Kann of Tri-State Orthopaedics describe Mr. Saunders's right foot injuries, their treatment and the likely need for surgery — standard triple arthrodesis (letter dated 2/18/03).

At this point, Mr. Saunders is unable to walk normally, has chronic right ankle/foot pain aggravated by walking. There can be no thought of returning to the pizza business. He is limited to purely sedentary work.

At Domino's Mr. Saunders was paid \$425 per week salary plus performance bonuses. In the almost nine months of 2002, before his physical limitation forced him to leave Domino's, Mr. Saunders had earned \$24,085 (\$16,000 wages, \$8,025 performance bonuses), or \$32,958 annualized. He currently earns \$7.70 per hour in part-time retail sales. Even if he were able to work full time in this or a similar sedentary position, his annual earnings at this point would not likely exceed \$16,640 (\$8.00/hour X 2,080 hours/year).

John Saunders was born on 3/27/75. If not partially disabled, he would have a future worklife of 31.6 years (*The New Worklife Expectancy Tables 2002 Vocational Econometrics, Louisville, KY*). With a work disability characterized as Not Severe, that figure drops to 24.0 years.

#### **Past Lost Earnings – 9/27/02-7/31/03**

##### Wages

	<u>Expected</u>	<u>Actual</u>	<u>Loss</u>
2002	\$ 32,958	\$24,478	\$ 8,480
2003	32,958	14,157 <sup>1</sup>	18,801
2004	32,958	20,300	12,658
2005 YTD	<u>19,225</u>	<u>11,120</u>	<u>8,105</u>
	\$118,099	\$70,055	\$48,044

Benefits – Standard 29.2% (USDL Bulletin 04-2490) versus 8% Payroll-Related Only with Current Employer

\$34,485 less \$5,604	\$28,881
Total Past Lost Earnings	\$76,925

<sup>1</sup> All unemployment compensation.

Unable to return to the type of work he did prior to his injury, Mr. Saunders has found work in retail sales of a type where he is able to alternate sitting and standing. Indeed, he sits most of the time. Last year, his first full year in the job, he earned \$20,300 versus the \$32,958 rate of earnings that he enjoyed at Domino's in 2002 — an erosion of 38.4%. If this pattern persists, the losses attributable to his diminished worklife expectancy and diminished earning capacity may be stated as:

**Losses Due to Diminished Worklife Expectancy – 7.6 Years**

Wages	\$32,958/year X 7.6 years	\$250,048
Benefits	8% (payroll-related only) <sup>2</sup>	<u>20,038</u>
		\$270,086

**Losses Due to Diminished Occupational Earning Capacity**

Wages	\$32,958/year less \$20,300/year X 24 years	\$303,792
Benefits	8% (payroll-related only)	<u>24,303</u>
		\$328,095

Past Earnings Losses	\$ 76,925
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<b>Net Lost Earnings and Value of Diminished Earning Capacity</b>	<b>\$675,106</b>
---	------------------

At this time, John Saunders is pursuing a degree in Secondary Education with the intention of becoming a high school Mathematics Teacher. This Fall he will begin commuting to Clarion State University (1.5 to 2 hours per day commute) and will have to cut back his work hours at the kiosk. His plan is to graduate in the Spring of 2008 and begin teaching in the 2008-2009 school year. If he is successful in completing his schooling and finding work as a public school teacher, he will have restored his earning capacity. As a college graduate, *The New Worklife Expectancy Tables 2002* in mid-2008 would assign him 30.25 worklife years were he to have no work disability, and 24.5 years with a disability characterized as Not Severe — an erosion of 5.75 years, or 19%.

This diminution reflects the effects of a disability on participation in the workforce. There have been a number of studies comparing the labor force participation, employment status, earnings and types of occupations of the handicapped population with those of the general population. Many of these were summarized in a 1978 pamphlet prepared by the Human Resources Center and published under the title *Employer Attitudes Towards Hiring Persons with Disabilities*. A 1974 U.S. Department of Labor study reported unemployment of disabled veterans twice the rate of the unemployment of veterans without disabilities. A 1977 study by Levitan and Taggart showed that 71.2% of males ages 20-64, not in the labor force, were disabled. That same study

<sup>2</sup> Conservatively assumes discretionary, employer-paid, employee benefits of equal worth in each occupation.

indicated that disabled workers were more likely to be represented in lower paying and less prestigious positions. A 1975 survey done by the Social Security Administration showed that the occupationally disabled earned 53.5% of the earnings of the general population. A very careful study by Johnson and Lambrinos reported in the spring 1985 Issue of *The Journal of Human Resources* attempted to isolate the effect of a handicap on earnings from the effects of sex, race, training and experience on such earnings. These finding indicated that the observed wages of handicapped males because of their handicaps were 17.1% less than the observed wages of the non-handicapped.

#### **Losses Due to Diminished Worklife Expectancy Alone**

Wages	\$45,097/year X 30.25 years X 19% erosion	\$259,195
Benefits	29.2%	<u>75,685</u>
		\$334,880

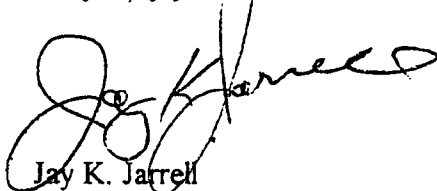
If we are to accept that Mr. Saunders' efforts to restore his earning power through a new career are successful, it is appropriate that the expenses he has and will incur in that process are calculated and included in his loss claim.

Those costs in tuition and books for course work at Penn State are set forth as \$20,800, and the costs of finishing his undergraduate degree at Clarion at current (2005-2006 school year) rates will be \$25,200. Total \$46,000.

Thus, the value of his eroded worklife expectancy, \$334,880, and the cost of obtaining the undergraduate degree, \$46,000, total \$380,880, and the total of those losses plus his actual net lost earnings to date are \$457,805.

Finally, as explained in my 3/26/04 report, the value of Mr. Saunders' lost household services is calculated as \$115,026.

Very truly yours,



Jay K. Jarrell

Accredited Personnel Diplomat

Certified Personnel Consultant

Member, National Association of Forensic Economists

JKJ/tam



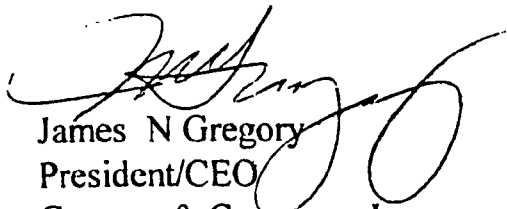




October 9, 2002

To whom it may concern:

I, James Gregory, no longer employ John Saunders at Domino's Pizza. Due to the extended time period required for his injury to heal, I had to fill the position and it is no longer available. I would be willing to consider him for employment provided a position is available.



James N Gregory  
President/CEO  
Gregory & Company, Inc.  
1085 E Cardinal Drive  
Lock Haven, PA 17745

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,  
Defendants

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

GEORGE M. KOSCO, M.D. ,  
Defendant.

CONSOLIDATED

Nos: 03 - 1051 - C.D.  
04 - 780 - C.D.  
04 - 1245 - C.D.

Type of Pleading:

*Certificate of Service Regarding  
Rule to Show Cause on Additional  
Defendant Dr. Alajaji's Motion  
in Limine re Plaintiffs' Economic  
Expert Report*

Filed on Behalf of Defendant:  
*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:  
*Darryl R. Slimak, Esquire*  
Pa. Supreme Court I.D. # 41695

McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Counsel for Plaintiffs:  
*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

FILED <sup>NO</sup>  
01/2 3481 CC  
NOV 18 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Rule to Show Cause Regarding  
Additional Defendant Dr. Alajaji's Motion in Limine re Plaintiffs' Economic Expert Report in  
the above-captioned matter was sent via facsimile only on this 18<sup>th</sup> day of November, 2005, to  
the attorney(s) of record:

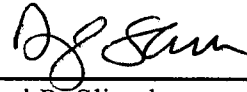
James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.  
124 North Allegheny Street  
Bellefonte, PA 16823

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_



Darryl R. Slimak  
Attorneys for Additional Defendant  
JERJIS T. ALAJAJI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**RULE TO SHOW CAUSE**

AND NOW, this 15<sup>th</sup> day of November, 2005, the Plaintiffs are directed to show cause, if any they have, why Additional Defendant Dr. Alajaji's Motion in Limine re Plaintiffs' Economic Expert Report, should not be granted.

This Rule is returnable for Answer and argument is scheduled for the 21<sup>st</sup> day of November, 2005, at ~~1:30~~ <sup>3:00</sup> p.m. in Courtroom #2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.


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

BY THE COURT:   
/s/ JOHN K. REILLY, JR.

Honorable John K. Reilly, Jr., S.J.

NOV 16 2005

Attest

  
Notary Public/  
Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,  
Defendants

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

GEORGE M. KOSCO, M.D. ,  
Defendant.

CONSOLIDATED

Nos: 03 - 1051 - C.D.

04 - 780 - C.D.

04 - 1245 - C.D.

Type of Pleading:

*Supplemental Exhibit to Defendant  
Dr. Alajaji's Motion for Reasonable  
Expenses to Attend Plaintiffs'  
Expert Trial Depositions in Ohio*

Filed on Behalf of Defendant:

*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:

*Darryl R. Slimak, Esquire*

Pa. Supreme Court I.D. # 41695

McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Counsel for Plaintiffs:

*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

FILED<sup>NO</sup>  
01/4/06  
NOV 21 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**SUPPLEMENTAL EXHIBITS TO DEFENDANT**  
**DR. ALAJAJI'S MOTION FOR REASONABLE**  
**EXPENSES TO ATTEND PLAINTIFFS' EXPERT**  
**TRIAL DEPOSITIONS IN OHIO**

1. Attached hereto as Exhibit "A" are Defense counsel's receipts for expenses incurred to attend the deposition of Plaintiffs' expert emergency room physician, Dr. John Tafuri, in Westlake, Ohio on November 8, 2005.



- a. Excess mileage beyond 100 miles from Clearfield County Courthouse to Westlake, Ohio and return: 214 miles at \$.485 per mile equals \$103.79
- b. Dinner on November 8<sup>th</sup> : \$5.07
- c. Toll charges: \$5.10
- d. Excess travel time round trip more than 100 miles from the Clearfield County Courthouse to Westlake, Ohio and return: 5.2 hours @ \$130/hour equals \$676.00

TOTAL EXPENSES                      \$789.96

2. Attached hereto as Exhibit "B" are Defense counsel's receipts for expenses incurred to attend the deposition of Plaintiffs' expert radiologist, Dr. Gregory Baran, in Lyndhurst, Ohio on November 17, 2005:

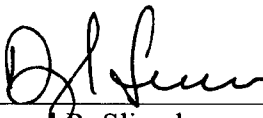
- a. Excess mileage beyond 100 miles from Clearfield County Courthouse to Lyndhurst, Ohio, and return: 198 miles at \$.485 per mile equals \$96.03
- b. Dinner on November 18<sup>th</sup>: \$8.92
- c. Toll charges: \$2.30
- d. Excess travel time round trip more than 100 miles from the Clearfield County Courthouse to Lyndhurst, Ohio and return: 4.4 hours @ \$130/hour equals \$572.00

TOTAL EXPENSES:                      \$679.25

3. Total amount requested for reimbursement:                      **\$1,469.21**

Respectfully submitted,

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_

Darryl R. Slimak

Attorneys for Additional Defendant

JERJIS T. ALAJAJI, M.D.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

Dated: November 21, 2005

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Supplemental Exhibits for Defendant Dr. Alajaji's Motion for Reasonable Expenses to Attend Plaintiffs' Expert Trial Depositions in Ohio in the above-captioned matter was hand delivered on this 21<sup>st</sup> day of November, 2005, to the attorney(s) of record:

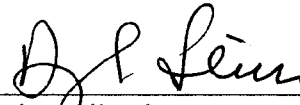
James G. Gordon, Esquire  
James G. Gordon & Associates  
1000 Main Street  
Pittsburgh, PA 15215

David R. Johnson, Esquire  
Thompson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219

Tracey G. Benson, Esquire  
Miller, Kistler, Campbell, Miller, Williams & Benson, Inc.  
124 North Allegheny Street  
Bellefonte, PA 16823

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: \_\_\_\_\_



Darryl R. Slimak  
Attorneys for Additional Defendant  
JERJIS T. ALAJAJI, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624



OHIO TURNPIKE FARE RECEIPT  
08-Nov-05

Entry	Class	Exit	Coll. #
218	01	152	0934

Payment: Cash

Time	Axles	Time	Amount
07:37	02	08:41	\$2.55

THANK YOU FOR  
CHOOSING ARBY'S

# 1

1 SUPER	\$	2.99
1 CHOCOLATE	\$	1.79
2 HRSY SAUCE	\$	0.00
1 CAR		
6 SALES		194539
SUBTOTAL	\$	4.78
TAX	\$	0.29
TOTAL	\$	5.07
YOUR ORDER NUMBER IS		39

OHIO TURNPIKE FARE RECEIPT  
08-Nov-05

Entry	Class	Exit	Coll. #
152	01	218	1507

Payment: Cash

Time	Axles	Time	Amount
15:15	02	16:10	\$2.55

AMT TENDERED \$ 5.07  
CHANGE \$ 0.00

TIME 7:45PM DATE 11/08/05



OHIO TURNPIKE FARE RECEIPT  
17-Nov-05

Entry	Class	Exit	Coll. #
218	01	187	1315
Payment: Cash			
Time	Axles	Time	Amount
11:03	02	11:40	\$1.15

OHIO TURNPIKE FARE RECEIPT  
17-Nov-05

Entry	Class	Exit	Coll. #
187	01	218	1507
Payment: Cash			
Time	Axles	Time	Amount
19:35	02	20:03	\$1.15

\*\*\*\*\*  
\* Thank You \*  
\* For Shopping At \*  
\* Sheetz \*  
\*  
\* Sheetz #248 \*  
\* 2721 Salt Springs Road \*  
\* Girard, Ohio \*  
\* (330)-530-2375 \*  
\*\*\*\*\*

Order Point/order # : 33

1	NY TEA DT ICD T	1.09TF
1	PEPSI DIET 20	1.25TF
1	CELLAS CHERRIES	0.25 F
2	CHICKEN FAJITAZ	
	@ 2.49 ea.	4.93
1	2/\$4.49 FAJITA	-0.49
1	SIDE COLESLAW	1.29 F
	SUBTOTAL:	8.37
	TAX:	0.15
	TOTAL:	8.52

Cash : 20.00  
CHANGE: 11.48

0615629 11/17/05 20:21:59  
By: AM Drawer: C



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

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a/ DRMC,  
Defendant,

vs.

JERJIS T. ALAJAJI, M.D.,  
Additional Defendant.

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

DUBOIS REGIONAL MEDICAL CENTER,  
a corporation, t/d/b/a DRMC, and  
DANIEL S. GORDON, D.O.,  
Defendants

---

JOHN D. SAUNDERS and BRENDA A.  
SAUNDERS, husband and wife,  
Plaintiffs,

vs.

GEORGE M. KOSCO, M.D. ,  
Defendant.

CONSOLIDATED

Nos: 03 - 1051 - C.D.  
04 - 780 - C.D.  
04 - 1245 - C.D.

Type of Pleading:

*Dr. Alajaji's Motion/Brief for  
Rulings on Objections to  
Deposition of Plaintiffs'  
Emergency Room Physician,  
Dr. John Tafuri*

Filed on Behalf of Defendant:  
*Jerjis T. Alajaji, M.D.*

Counsel of Record for This Party:  
*Darryl R. Slimak, Esquire*  
Pa. Supreme Court I.D. # 41695

McQuaide, Blasko, Schwartz,  
Fleming & Faulkner, Inc.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Counsel for Plaintiffs:  
*James G. Gordon, Esquire*

JURY TRIAL DEMANDED

FILED NO  
04:0030 cc  
NOV 21 2005

William A. Shaw  
Prothonotary/Clerk of Courts

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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	
	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

---

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	
	:	

**DR. ALAJAJI'S MOTION/BRIEF FOR RULINGS ON  
OBJECTIONS TO DEPOSITION OF PLAINTIFFS'  
EMERGENCY ROOM PHYSICIAN, DR. JOHN TAFURI**

AND NOW comes Additional Defendant, JERJIS T. ALAJAJI, M.D., by and through his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and respectfully requests this Honorable Court to rule on the following deposition objections, on the bases indicated:

## **Preliminary Statement**

Dr. Tafuri's trial deposition transcript has been separately filed of record. Copies of his various expert reports were filed as part of Plaintiffs' various Pretrial Conference Memoranda.

### **1. Objection/Legal Discussion: Page 35, line 20**

#### **Section to Strike: Page 34, lines 20 to 24**

Counsel for Defendant radiologist, Dr. Alajaji, objects to emergency room physician Dr. Tafuri's rendering of an opinion or personal view that "It's unethical to testify and charge more than you would otherwise make working your clinical position."

There are multiple reasons for the exclusion of such testimony. First, no report was provided indicating that Dr. Tafuri would be offering an opinion on the ethics of an expert's fee arrangements. See e.g., Pa. R.C.P. No. 4003.5. In light of the authority set forth in detail below,<sup>1</sup> this alone constitutes more than sufficient grounds to strike said testimony.

Second, said comment was in no way related to the subject matter of the deposition, i.e., an expert opinion on whether medical standards of care were violated, and the Defense objections must be sustained on the basis of relevancy and the confusion of issues which would result from such irrelevant inquiries. Pa. Rule of Evidence No. 402 (Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible); No. 403 (Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time) (Prejudicial testimony is to be excluded that would cause the jury to based its decision on something other than the legal issues relevant to the case, or which divert their attention from weighing evidence impartially, or which suggests a decision should be made on an improper basis. See West's Penna. Practice, at p. 168 and footnotes 16-17).

Third, no foundation was laid for what could be perceived as an (unfounded) attack on respected, board certified, and well published physicians retained by the Defense. Dr. Tafuri's opinion on appropriate fees (his is comparatively low at \$150/hour compared to customary expert

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<sup>1</sup> For purposes of brevity, Defendant Alajaji incorporates by reference the detailed analysis of Pennsylvania law on the proper scope of expert testimony that is set forth in his second objection regarding Dr. Tafuri's improper "opinions" on the radiology standard of care.

fees seen in medical malpractice matters of \$350/hour or greater) tends to put a burden on the Defense to present evidence on the collateral matter of what Defense experts make in their clinical practices, under the assumption that these fees are what is “ethical” for such experts to charge. Moreover, Dr. Tafuri presented no foundational basis and has no qualifications pertaining to market analysis, etc., that would permit him to set forth an opinion as an expert on the matter. Also, expert opinions are not admissible unless rationally based and helpful to the jury to understand the evidence or determine a fact in issue. And, expert opinions are always discretionary with the Court. See Rule 701; 702. Moreover, Plaintiffs will have the opportunity to cross examine the Defense experts on fee related issues, without the need to usurp the role of the jury in weighing the testimony in this regard by proffering Dr. Tafuri’s personal views on the matter. Thus, Defense counsel’s objections at page 35, line 20 must be sustained with said testimony being stricken. See also Mohn v. Hahnemann, 357 Pa. Super. 173, 515 A.2d 920, 923-25 (1986) (holding that evidence regarding expert’s receipt of fees not related to the one being tried was inadmissible because “[t]here must be, and is, a point beyond which inquiry is/will be held to be prejudicial, too intrusive and only serving to divert the case into collateral matters”); Spino v. John S. Tilley Ladder Co., 448 Pa. Super. 327, 671 A.2d 726, 739 (1996) (quoting Mohn, for the proposition that “the emptying of one’s pockets and turning them inside out so that one’s financial worth can be open to scrutiny” is irrelevant and beyond the proper scope of cross-examination), aff’d, 548 Pa. 286, 696 A.2d 1169 (1997).

**2. Objection/Legal Discussion: Page 15, line 2 to page 29, line 9; page 33, line 4; page 42, line 16**

**Section to Strike:   Page 42, line 5 to page 45, line 25  
                              Page 52, lines 15 to 23  
                              Page 53, line 23 to page 60, line 23**

On behalf of Defendant radiologist, Dr. Alajaji, objection was raised to any opinions of Dr. Tafuri, an emergency room physician, that pertain to the radiology standard of care and specifically with interpreting x-rays in said regard. There are several parameters to Defendant’s objections in this regard.

*a. Dr. Tafuri is not qualified under common law and MCARE to testify as to proper x-ray interpretation*

At page 15, line 16 through page 19, line 7, Dr. Tafuri concedes he has no qualifications as a radiologist and admits that he would defer the proper interpretation of x-ray films to a radiologist, and is not qualified to act as a radiologist in the practice of medicine. It is critically important that Plaintiffs' experts be limited to providing expert testimony within their particular specialty. Decisions regarding the qualifications of expert witnesses are within the discretion of the trial judge. Flanagan v. Labe, 547 Pa. 254, 257, 690 A.2d 183, 185 (1997). The general rule is that a witness is only qualified to testify where he or she "has a reasonable pretension to specialized knowledge on the subject matter in question." Id.<sup>2</sup> By his own explicit admission, Dr. Tafuri is not qualified to testify to matters of radiology.

The foregoing admission of his lack of competency to testify as to radiologic issues is magnified by the caselaw precedent. Under the common law, the courts of this Commonwealth have **limited the degree to which a physician of a given specialty may render opinions upon another distinct medical specialty**. See, e.g., Gottlob v. Hillegas, 195 Pa.Super. 453, 461, 171 A.2d 868, 872 (1961). In Gottlob, an expert in peripheral vascular disease who treated the patient for blood clots in the legs, was **not qualified** to render an opinion as to the heart and, therefore, his testimony as to causation, i.e. that an automobile accident caused a serious heart condition, was properly stricken. Id.

The Superior Court undertook an in-depth analysis of the subject of cross-specialty testimony in Dambacher by Dambacher v. Mallis, 336 Pa.Super. 22, 485 A.2d 408 (1984). The court began by acknowledging that:

"Sometimes it may appear that the scope of the witness's experience and education embraces the subject in question in a logical, or fundamental, sense. In such a case, the witness is qualified to testify even though he has no particularized knowledge

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<sup>2</sup> Pennsylvania Rule of Evidence 702 ("Testimony by Experts"), which became effective October 1, 1998, provides as follows: "If scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise."

of the subject as such; for he will be able to reason from the knowledge he does have.”

Dambacher, 336 Pa. Super. at 42, 485 A.2d at 418. The court then went on to survey opinions from numerous jurisdictions wherein physicians of one specialty were held incompetent to testify on the subject of another specialty, as follows:

**“Other times it may appear that the scope of the witness’s experience and education may embrace the subject in question in a general way, but the subject may be so specialized that even so, the witness will not be qualified to testify.** Thus, every doctor has a general knowledge of the human body. But an ophthalmologist, for example, is not qualified to testify concerning the causes and treatment of heart disease. (citing cases such as: Hunt v. Bradshaw, 251 F.2d 103 (4th Cir. 1958) (radiologist not qualified to testify as to proper surgical procedure in chest operation); Harris v. Campbell, 2 Ariz. App. 351, 409 P.2d 67 (1965) (discretionary exclusion of general practitioner in malpractice action against gynecologist who performed vaginal hysterectomy); Huffman v. Lindquist, 37 Cal.2d 465, 234 P.2d 34 (1951) (autopsy surgeon not qualified as to treatment for brain injury); Moore v. Belt, 34 Cal.2d 525, 212 P.2d 509 (1950) (autopsy surgeon not qualified as to existing standards in practice or urology); Pearce v. Linde, 113 Cal. App.2d 627, 248 P.2d 506 (1952) (specialist in internal medicine not qualified as to orthopedics) Dolan v. Galluzzo, 77 Ill.2d 279, 32 Ill.Dec. 900, 396 N.E.2d 13 (1979) (physician unlicensed in podiatry not qualified to testify in malpractice action against podiatrist); Swanson v. Chatterton, 281 Minn. 129, 160 N.W.2d 662 (1968) (internist not qualified as to orthopedic surgery); State v. Askin, 90 Mont. 394, 3 P.2d 654 (1931) (general practitioner not qualified to testify as to brain injury); Whitehurst v. Boehm, 41 N.C.App. 670, 255 S.E.2d 761 (1979) (orthopedic surgeon unfamiliar with practice of podiatry not qualified to testify as to standard of care required of podiatrist); Capan v. Divine Providence Hospital, 270 Pa. Super. 127, 410, A.2d 1282 (1980) (anesthesiologist not qualified as to autopsy report).”

Id. at 43-44, 485 A.2d at 419 (emphasis supplied).

The Dambacher case has been cited with approval by the Superior Court in numerous subsequent opinions, including the cases to follow. In McDaniel v. Merck, Sharp & Dohme, 367 Pa. Super. 600, 533 A.2d 436 (1987), appeal denied, 520 Pa. 589, 551 A.2d 215 (1988), the

Superior Court held that the trial court had properly ruled that an anesthesiologist was not qualified to give an opinion as to the propriety of the use of a particular antibiotic and as to whether the antibiotic caused the decedent's fatal illness, even though both deal with medications. Id. at 610-611, 533 A.2d at 441-442. The plaintiff's expert was likewise excluded from testifying about whether the hospital had improperly supervised its staff, as he lacked requisite experience in that area. Id. at 611, 533 A.2d at 441-442. Although the Superior Court acknowledged that "experts in one area of medicine have been ruled qualified to address other areas of specialization where the specialties overlap in practice, or where the specialist has experience in another related field," this was not such a case. Id. at 612, 533 A.2d at 442 (emphasis supplied).

The common law with regard to the requisite qualifications for an expert to testify concerning a breach of the standard of care in a medical malpractice action has been significantly changed and became more restrictive with the enactment of the Medical Care Availability and Reduction of Error Act ("MCARE"), 40 P.S. §§ 1303.101 - 1303.910. The MCARE Act imposes specific requirements that a medical expert must meet prior to offering expert medical opinions at trial concerning the care and treatment at issue. See 40 P.S. § 1303.512, titled "Expert Qualifications."

Section 512(a) of the MCARE Act — "Expert Qualifications" provides:

"(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 education, training, knowledge and experience to provide credible, competent testimony **and fulfills the additional qualifications set forth in this section as applicable.**" 40 P.S. §1303.512 (emphasis added).

Section 512(b) provides:

"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 determined that the expert is otherwise competent to testify about medical or scientific issues by virtue of education, training or experience.”

Section 512(c) (40 P.S. § 1303.512(c)), on “**Standard of Care**” states that **in addition** to the above, **an expert testifying as to a physician’s standard of care also** must also meet the following qualifications:

“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 similar approved board, except as provided in subsection (e).”

The foregoing provisions mark a **major change** from the previously “wide open” standard for expert qualification, which allowed testimony merely based on “any reasonable pretension to specialized knowledge on the subject under investigation.” See Corrado v. Thomas Jefferson Univ. Hospital 790 A.2d 1022, 1027 (Pa.Super. 2001). As Judge Cullen remarked in Spotts v. Small, 61 Pa. D. & C.4th 225 (Lancaster 2003):

“Based upon the language employed, the purpose of §512 of the MCARE Act is to establish a **more stringent standard for the admission of expert medical testimony in medical malpractice actions.**”

Spotts, 61 Pa. D&C 4<sup>th</sup> at p. 228 (emphasis added).



Indeed, in the April 5, 2004 Superior Court Decision in Wexler v. Hecht, M.D., 847 A.2d 95 9Pa. Super. 2004), alloc. granted; 583 Pa. 700, 879 A.2d 1258 (2005), the appellate court likewise recognized this new, **higher burden** on Plaintiffs' experts' qualifications and testimony in medical malpractice cases:

Subsection (1) provides that the expert must, first, have "sufficient education, training, knowledge and experience to provide credible, competent testimony" **and second, fulfill the additional qualifications set out in § 1303.512**. In our view, the first part of subsection (1) restates the common law standards for rendering an expert medical opinion. **The Act then adds new requirements in addition to the common law requirements**, in subsections (b) through (d)."

Id. 847 A.2d at 103 (emphasis added). While under the old Pennsylvania standards, a doctor had good deal of leeway in testifying, MCARE was enacted to control that dangerous practice. As such, this Court must prohibit Plaintiffs from offering standard of care and causation evidence at the trial of this matter when the physician rendering the opinion is admittedly not qualified pursuant to the provisions of §512 of the MCARE Act.

Defendant Dr. Alajaji is a board certified radiologist while Plaintiffs' expert Dr. Tafuri is an emergency room physician. As such, Dr. Tafuri is not qualified to render an opinion on the radiology standard of care under the well-established common law principles of this Commonwealth and the MCARE Act, with regard to interpreting Plaintiff's x-rays. As detailed in the transcript, Dr. Tafuri admittedly lacks the qualifications to testify to the area of radiology on which he was in part questioned. Dr. Tafuri utterly fails to meet the minimum standards for expert qualification to testify to the extent he did. Moreover, Plaintiffs have a proper expert to so opine and do not need their emergency medicine physician to do so. Same is thus unnecessarily cumulative, if it were admissible. See Pa. R. Evid. 403. Perhaps Dr. Tafuri said it best at page 149, line 4 through 6: "I'm not a radiologist, and it wouldn't be appropriate to give an expert opinion for a radiologist."

***b. Dr. Tafuri's testimony was beyond the scope of his report***

Keeping the foregoing in mind, at page 42, line 16, Defendant radiologist Dr. Alajaji's counsel objected to Dr. Tafuri being shown and discussing x-rays because there is no indication in the Doctor's report that in fact he had ever reviewed x-rays nor that he was going to re-interpret the films himself, and as such, said testimony is beyond the scope of his report and highly prejudicial.

Pursuant to Pennsylvania Rule of Civil Procedure 4003.5, a party may discover the identity of and the facts known and opinions held by an expert witness of the opposing party. This may be accomplished by serving the opposing party with interrogatories requesting the expert so identified to state the "substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion." Pa.R.C.P. 4003.5(a)(1)(b). Rule 4003.5(a)(1)(b) allows the party answering the interrogatories to submit a report prepared by the expert in lieu of answering each individual interrogatory. If a party chooses to answer expert interrogatories in this fashion, the expert's testimony at the time of trial may not exceed the "fair scope" of his expert report.

Rule 4003.5(c) provides as follows:

"To the extent that the facts known or opinions held by an expert have been developed in discovery proceedings under subdivision (a)(1) or (2) of this Rule, his direct testimony at the trial may not be inconsistent with or go beyond the fair scope of his testimony in the discovery proceedings as set forth in his deposition, answer to interrogatory, separate report or supplement thereto."

The comment to Rule 4003.5(c) indicates that this Rule serves "to prevent incomplete or 'fudging' of reports which would fail to reveal fully the facts and opinions of the expert or his grounds there-fore."

The right protected by Rule 4003.5 is the opposing party's right to a fair trial. Sindler v. Goldman, 305 Pa.Super. 7, 454 A.2d 1054, 1056 (1982). The Sindler Court further found:

"The purpose of the discovery rules is to prevent surprise and unfairness and to allow a trial on the merits. When expert testimony is involved, it is even more crucial that surprise be prevented, since the attorneys will not have the requisite knowledge of the subject with which to effectively rebut

unexpected testimony. By allowing for early identification of expert witnesses and their conclusions, the opposing side can prepare to respond appropriately instead of trying to match years of expertise on the spot. Thus, the rule serves as more than a procedural technicality; it provides a shield to prevent the unfair advantage of having a surprise witness testify.”

Sindler, 309 Pa. Super. at 12, 452 A.2d at 1056. If expert testimony is admitted in violation of a pretrial discovery request or order, another problem that can occur is that the party will be deprived of effective rebuttal which can lead to the inability to afford a fair trial. Id., at 14-15, 452 A.2d at 1058.

Pennsylvania Rule of Civil Procedure 4003.5(c) precludes the introduction of any expert testimony at trial inconsistent with or beyond the fair scope of the report of that expert which was provided through discovery. While it may be impossible to formulate a hard and fast rule for determining whether an expert has exceeded the fair scope of his report, the controlling principle is whether the purpose of Rule 4003.5 is being served. Wilkes-Barre Iron and Wire Works, Inc. v. Pargas of Wilkes-Barre, Inc., 348 Pa. Super. 285, 209, 502 A.2d 210, 212 (1985). The liberal discovery allowed by Pa.R.C.P. 4003.5 with respect to expert testimony "...disfavors unfair and prejudicial surprise." Wilkes-Barre Iron, supra, quoting Augustine v. Delgado, 322 Pa. Super 194, 481 A.2d 319, 321 (1984).

The purpose of requiring a party to disclose the substance of the facts and opinions to which the expert is expected to testify is to avoid unfair surprise by enabling the adversary to prepare a response to the expert testimony. Id. [*citing Augustine v. Delgado, supra*].

“The question to be answered is whether, under the particular facts and circumstances of the case, the discrepancy between the expert’s pretrial report and his trial testimony is of a nature which would prevent the adversary from preparing a meaningful response, or which would mislead the adversary as to the nature of the appropriate response.”

Wilkes-Barre Iron and Wire Works, Inc., 348 Pa. Super. at 290, 502 A.2d at 212-213; DiBuono v. A. Barletta & Sons, Inc., 127 Pa. Cmwlth. 1, 560 A.2d 893, 898 (1989). For example, where a medical expert’s report identified “misdiagnosis or communication problems between involved physicians” as the cause of the plaintiff’s death, he could not, at trial, offer an opinion about an

individual physician's negligence. Richardson v. LaBuz, 81 Pa.Cmwlth. 436, 447, 474 A.2d 1181, 1191 n.6 (1984). Likewise, where an expert's pretrial report is limited to liability issues, that expert may not present testimony at trial relevant only as to damages. Estate of Hannis v. Ashland State General Hospital, 123 Pa.Cmwlth. 390, 554 A.2d 574, 576 (1989), appeal denied, 524 Pa. 632, 574 A.2d 73 (1989). Also of note, where an expert's pretrial report is confined to an opinion with respect to a plaintiff's actual injuries from an accident, he may not testify at trial as to possible future complications. DiBuono, supra, 127 Pa. Cmwlth. at 10, 560 A.2d at 898.

It is clear from Dr. Tafuri's report that he never reviewed x-rays and that there was no indication that he was going to review or re-interpret the films himself, during his trial testimony. Moreover, he is admittedly not qualified to do so. As mandated by the law of this Commonwealth, said testimony is beyond the scope of his report and highly prejudicial to the Defense and, as such, must be stricken. In addition, to add insult to injury, Plaintiffs' counsel had been previously asked whether or not there were any such exhibits coming up and he indicated that there were not, but then such exhibits were then shown to the jury. These improper tactics are further evidence of Plaintiffs' "sandbagging" and seeking to ambush the defense, and should not be countenanced by this Honorable Court.

See also, the discussion of Objection No. 4, set forth hereinbelow.

### **3. Objection/Legal Discussion: Page 46, line 5**

#### **Section to Strike: Page 45, line 8 to page 57, line 19**

Defense counsel objects to exhibits being shown on a computer screen and which are being drawn on by the witness, copies of which were not provided to Defense counsel who were then extremely prejudiced as they were unable in this setting to use same to cross examine the witness. These are **not** records Dr. Tafuri cites in his reports nor produced and marked in other witnesses' depositions, but new exhibits created on the spot. The primary problem was that there was no apparent way for defense counsel to keep track of what was being drawn, as "hard" copies were not printed out and provided at the time. Plaintiffs' counsel was apparently trying to achieve an unfair advantage in the case. See Pa. R.E. §611 (purpose of testimony is to "make the

interrogation and presentation effective for the ascertainment of the truth.”); see cf. Pa. R.E. §612 (“[A]n adverse party is entitled to have the writing or other item produced at the hearing, trial or deposition, to inspect it, to cross-examine the witness on it and to introduce in evidence those portions that relate to the testimony of the witness”).

4. **Objection/Legal Discussion: Page 52, line 25; page 57, line 10 and line 19; page 59, line 6 and line 19; also page 22, lines 7 to 9**

**Section to Strike: Page 52, line 15 to page 60, line 23**

Dr. Alajaji objects to Dr. Tafuri’s standard of care, disability, and damages opinions.

First, it should be noted that at page 22, lines 7 to 9, Dr. Tafuri admitted he is not qualified to give disability projections on the basis of any injury.

Also, in the second objection discussed hereinbefore, Dr. Tafuri’s lack of qualifications to testify as to standard of care issues, particularly in the field of radiology, were discussed.

At the pages indicated, Counsel for Defendant radiologist, Dr. Alajaji, also objected to opinions being given beyond the scope of Dr. Tafuri’s expert reports, on issues of standards of care, injuries and damages. No report was provided indicating that Dr. Tafuri would be offering an opinion that it would “be beyond the acceptable time frame for treatment of a significant foot fracture” for “a physician” or an “emergency department physician” to “tell the serious foot fracture patient to wait a month or so to see how things worked out.” See question at page 52, lines 15 to 23.

The Doctor was also asked questions and testified over objection regarding various other issues which were beyond the fair scope of and not referenced in any way whatsoever in any of Dr. Tafuri’s reports, specifically, his opinions regarding why early diagnosis and treatment would be important in cases of foot fractures, that such treatment may include surgery, immobilization or casting, and that physical therapy, exercises, and weight bearing are improper initial treatment. There is nothing in any of Dr. Tafuri’s reports, most specifically the substantive one of January 3, 2005, that indicates Dr. Tafuri would have any opinions regarding such issues. His reports merely address the issue of standard of care of an emergency room physician and that violations of the standard of care of an emergency room physician due to failure to take x-rays of both the

foot and ankle, resulted in a failure to diagnose the navicular fracture and increased the risk to Mr. Saunders that he would have a decreased chance of a positive outcome. The multiple other sweeping theories and opinions on causation of harm and violations of the standard of care (which could be inferred from this testimony to apply generally to **all** the Defendants, including radiologist, Dr. Alajaji), are in no way, manner or form, suggested or indicated in Dr. Tafuri's reports.

See discussion of law in Section 2 hereof.

**5. Objection/Legal Discussion: Page 92, line 22 to page 95, line 25**

**Section to Strike: Page 88, line 5 to page 97, line 18**

Counsel for Defendant radiologist, Dr. Alajaji, objects to Plaintiffs' counsel reading in various deposition testimony of a variety of nonparty witnesses, including that of Plaintiff John Saunders himself, during Plaintiffs' emergency room expert's testimony. The objection is multifold. It is beyond the fair scope of his reports as there is no indication in any of Dr. Tafuri's reports that he was intending to testify to or cite any portion of any deposition testimony. Moreover, same was inadmissible hearsay, as a party may not offer his own prior sworn testimony in his case in chief. See, Rules of Evidence No. 801 (Hearsay Defined); No. 802 Hearsay Rule (Hearsay is not admissible except as provided by the rules, etc.); No. 803 (Hearsay Exceptions — (25): Admissions by a party (**opponent**) are admissible). Additionally, Defense counsel was thus unable to prepare to cross examine Dr. Tafuri based on such tactics and was also precluded from the Defense's right to have other portions of the deposition related thereto read into the record as required by Pa. R.C.P. No. 4020. Said Rule provides in pertinent part as follows:

“(4) If only part of a deposition is offered in evidence by a party, **any other party may require the offering party to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts.**

As the foregoing makes evident, Plaintiffs improper use of the Plaintiff-husband's own deposition testimony as part of their examination of their own expert interjected improper

hearsay and prejudicially deprived Defense counsel from preparing his cross examination and/or to insist on other portions of Plaintiff-husband's testimony being read in as per Defendants' right under Rule 4020. Said actions must not be countenanced by this Court and Defendant Alajaji's Objection should be granted in this regard.

**6. Objection/Legal Discussion: Page 186, line 22 to page 187**

**Section to Strike: Page 186, line 14 to page 188, line 12**

Defense counsel for Dr. Alajaji objects to Plaintiffs' counsel proceeding on "triple redirect" to go back in time (several questions earlier) and start redirecting Dr. Tafuri regarding whether medicine was an art and not a science. See question at page 186, lines 14 to 21.

In addition, the question as reconstituted by Plaintiffs' counsel misstated the whole premise of an earlier question by Defense counsel, and the answer at page 159, line 11 to page 161, line 127. At those pages, counsel for Dr. Alajaji had asked Dr. Tafuri, and he agreed, that "The standard of care does not demand that you make a correct diagnosis in every case." It was also asked and answered in the affirmative that "Can you meet the standard of care and nevertheless not make the correct diagnosis because medicine is not an exact science?" See page 160. No question was asked at the time regarding whether medicine is an "art," rather than a science, as was explored in Plaintiffs' attempted triple-redirect.

Furthermore, Plaintiffs' counsel at page 186, line 15, bumbles and misstates the prior question by Dr. Alajaji's counsel, and the answer given previously by Dr. Tafuri, as does the question at page 187, line 22 through page 188, line 12.

The context of Plaintiffs' counsel's improper "triple redirect" questions should also be noted. After counsel for Dr. Alajaji had asked the original question at page 160, to confirm that medicine was not an exact science, there was then cross examination by Attorney Benson on behalf of Dr. Kosco, which did **not** touch upon the subject of medicine's not being an exact science. There was then redirect examination by Attorney Gordon at page 166 that did **not** touch on this subject. There was then recross examination by Attorney Johnson on behalf of DuBois Regional Medical Center/Dr. Gordon at page 179, that did **not** touch on the subject.

The objection at issue was then raised as Plaintiffs' counsel then launched into a **third** redirect examination at page 182 that, by page 186, trying to go back in time to redirect on issues discussed 27 pages earlier in the transcript and several cross examinations, redirects, and recross examinations ago.

Further objection was lodged to various questions in this series on the basis that same were leading (and indeed, argumentative): "Does this case fall into the category of incorrect diagnosis based upon the facts of record?" and "Was this case just a case of a wrong diagnosis that was excusable?" See pages 187-188.

The caselaw confirms that Plaintiffs' counsel's questions were improper on multiple bases:

"The scope of redirect examination is a matter . . . (of) discretion of the trial court. . . however, the practice is uniform that a party's examination is normally limited to answering any new matter drawn out in the next previous examination of the adversary."

Hawthorne v. Dravo Corp., 508 A.2d 298, 306 (Pa. Super. 1986), *citing to and quoting from* McCormick on Evidence, §32, at 69 (3d. Ed. 1984). See also, Pa. Rule of Evidence, 611, Mode and Order of Interrogation and presentation (confirming control of court in examination of witnesses, and disallowing leading questions on direct examination); Commw. v. Hoss, 469 Pa. 195, 364 A.2d 1335 (1976) (argumentative questions include those which assume as true matters in dispute); McCormick, Evidence §7 (5<sup>th</sup> Ed. 1999); Commw. v. Chambers, 528 Pa. 558, 599 A.2d 630 (1991) (leading questions "puts the desired answer in the mouth of the witness").

Respectfully submitted,

McQUAIDE, BLASKO,  
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Dated: November 21, 2005



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

JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No: 03 - 1051 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	JURY TRIAL DEMANDED
a corporation, t/d/b/a/ DRMC,	:	
Defendant,	:	
vs.	:	
JERJIS T. ALAJAJI, M.D.,	:	
Additional Defendant.	:	
	:	

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JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	
Plaintiffs,	:	No. 04 - 780 - C.D.
vs.	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
a corporation, t/d/b/a DRMC, and DANIEL S.	:	
GORDON, D.O.,	:	
Defendants.	:	

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JOHN D. SAUNDERS and BRENDA A.	:	
SAUNDERS, husband and wife,	:	No. 04 - 1245 - C.D.
Plaintiffs,	:	
vs.	:	
GEORGE M. KOSCO, M.D.,	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**


I hereby certify that a true and correct copy of the Dr. Alajaji's Motion/Brief for Rulings on Objections to Deposition of Plaintiffs' Emergency Room Physician, Dr. John Tafuri in the above-captioned matter was hand delivered on this 21<sup>st</sup> day of November, 2005 to the attorney(s) of record:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOHN D. SAUNDERS and :  
BRENDA A. SAUNDERS :  
VS. : NO. 03-1051-CD  
DUBOIS REGIONAL MEDICAL CENTER : NO. 04-780-CD  
VS. :  
JERJIS T. ALAJAJI, M.D., and :  
GEORGE M. KOSCO, M.D. :  
JOHN D. SAUNDERS and :  
BRENDA A. SAUNDERS :  
VS. :  
DUBOIS REGIONAL MEDICAL CENTER :

O R D E R

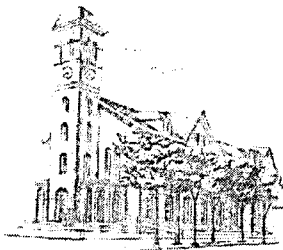
NOW, this 23rd day of November, 2005, upon consideration of Plaintiffs' Motion in Limine to preclude reference to the expert opinion of Dr. Piasio with regards to Defendant Kosco's negligence, it is the ORDER of this Court that said motion be and is hereby granted and no reference thereto shall be made by counsel for any party during trial.

BY THE COURT,

/s/ JOHN K. REILLY, JR.

John K. Reilly, Jr.  
Senior Judge  
Specially Presiding

FILED orig. to 03-1051-CD  
01/10:28/01 1cc Mrs. J. Gordon  
NOV 29 2005 ③ D. Johnson  
William A. Shaw ③ D. Slimak  
Prothonotary/Clerk of Courts T. Benson



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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Sincerely,

William A. Shaw  
Prothonotary

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  X   Plaintiff(s)/Attorney(s)

  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

COPY

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

JOHN D. SAUNDERS and :  
BRENDA A. SAUNDERS :  
VS. : NO. 03-1051-CD  
DUBOIS REGIONAL MEDICAL CENTER : NO. 04-780-CD  
VS. :  
JERJIS T. ALAJAJI, M.D., and :  
GEORGE M. KOSCO, M.D. :  
JOHN D. SAUNDERS and :  
BRENDA A. SAUNDERS :  
VS. :  
DUBOIS REGIONAL MEDICAL CENTER :

FILED orig. to  
03-1051-CD  
01/10/28/05  
NOV 29 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
J. Gordon  
D. Johnson  
D. Slinn  
T. Benson

O R D E R

NOW, this 23rd day of November, 2005, this matter coming before the Court on Motions in Limine filed on behalf of Defendant Dr. Kosco; following argument and briefs thereon, it is the ORDER of this Court that, in his testimony on behalf of Plaintiff, Dr. Gregory Baran shall be and is hereby precluded from basing any opinion of negligence on the part of Dr. Kosco on the alleged four-day delay from the date of accident to the date of Defendant Kosco's submission of his report on Plaintiff's x-rays.

It is the further Order of this Court that Defendant

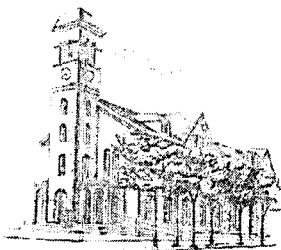
Kosco shall be permitted to offer the opinion of Dr. Jeffrey Kann regarding Defendant Kosco's negligence at trial, the weight thereof to be determined by the jury. However, Dr. Baran may testify to the applicable radiological standard of care owed to the Plaintiff by Dr. Kosco.

The second and third Motions have been determined by counsel to be moot.

BY THE COURT,

/s/ JOHN K. REILLY, JR.

John K. Reilly, Jr.  
Senior Judge  
Specially Presiding



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Prothonotary/Clerk of Courts

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X\_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

JOHN D. SAUNDERS and :  
BRENDA A. SAUNDERS :  
VS. : NO. 03-1051-CD  
DUBOIS REGIONAL MEDICAL CENTER : NO. 04-780-CD  
VS. :  
JERJIS T. ALAJAJI, M.D., and :  
GEORGE M. KOSCO, M.D. :  
JOHN D. SAUNDERS and :  
BRENDA A. SAUNDERS :  
VS. :  
DUBOIS REGIONAL MEDICAL CENTER :

COPIES

FILED Orig. to  
010:28/03-1051-CD  
NOV 29 2005 cc Atty's:  
William A. Shaw J. Gordon  
Prothonotary/Clerk of Courts D. Johnson  
D. Slimak  
T. Berson

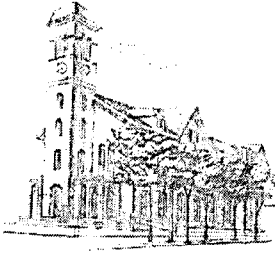
O R D E R

NOW, this 23rd day of November, 2005, upon consideration of Defendants' Motion for Scheduling Order, it is the ORDER of this Court that said motion be and is hereby granted and counsel for Plaintiff shall submit its trial schedule to include dates and times specific witnesses will be called to opposing counsel and this Court within forty-eight (48) hours following receipt of this Court's Orders on all outstanding pretrial motions.

BY THE COURT,  
/s/ JOHN K. REILLY, JR.

John K. Reilly, Jr.  
Senior Judge  
Specially Presiding





## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

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  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

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

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS,

vs.

DUBOIS REGIONAL MEDICAL CENTER

vs.

JERJIS T. ALAJAJI, M.D., and  
GEORGE M. KOSCO, M.D.,

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS,

vs.

DUBOIS REGIONAL MEDICAL CENTER

NO. 03-1051-CD  
NO. 04-780-CD

FILED 11/18/05  
DEC 05 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
Orig. to 03-1051-CD  
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Gordon  
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Benson

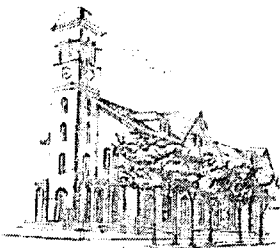
**ORDER**

NOW, this 2nd day of December, 2005, upon consideration of the Motion for Reasonable Expenses to Attend Plaintiffs' Expert Trial Depositions in Ohio filed November 21, 2005 on behalf of Defendant Jerjis Alajaji, M.D. and additional Defendants; it is the ORDER of this Court that ruling thereon shall be stayed pending resolution of the Complaints on their merits.

BY THE COURT,

/s/ JOHN K. REILLY, JR.

JOHN K. REILLY, JR.  
Senior Judge, Specially Presiding



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

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Deputy Prothonotary

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  X   Defendant(s)/Attorney(s)

       Other

       Special Instructions:

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

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS,

vs.

DUBOIS REGIONAL MEDICAL CENTER

vs.

JERJIS T. ALAJAJI, M.D., and  
GEORGE M. KOSCO, M.D.,

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS,

vs.

DUBOIS REGIONAL MEDICAL CENTER

NO. 03-1051-CD  
NO. 04-780-CD

FILED  
DEC 05 2005

William A. Shaw  
Prothonotary/Clerk of Courts

icc Atty's  
Gordon  
Johnson  
Slimak  
Benson

Copy to CIA

**ORDER**

NOW, this 2nd day of December 2005, upon consideration of Defendant  
Dr. Jerjis Alajaji's Motion in Limine for Rulings on Objections to the Deposition of  
Plaintiffs' Expert Dr. John Tafuri, the Court hereby finds as follows:

1. The request to strike Page 34, Line 20 to 24 is MOOT based upon prior  
Order of the Court.
2. Defendant's request to strike the following is hereby GRANTED:
  - (a) Page 42, line 5 to page 45, line 25;
  - (b) Page 52, lines 15 to 23; and
  - (c) Page 53, line 23 to page 60, line 23.
3. Any portion of Dr. Tafuri's Video Deposition for use at trial that includes  
exhibiting to him: any document, report, item, that was not  
contemporaneously made available to defense counsel is hereby  
STRICKEN.

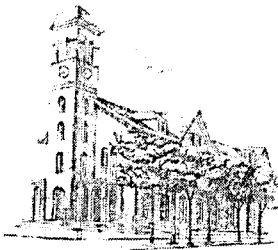
4. Unless the Plaintiffs can qualify Dr. Tafuri as an expert to testify in a relevant field, his opinion shall be precluded.
5. Defendant's request to exclude that portion of Dr. Tafuri's Video Deposition allegedly involving "triple redirect" is hereby DENIED.

BY THE COURT,

/s/ JOHN K. REILLY, JR.

---

JOHN K. REILLY, JR.  
Senior Judge, Specially Presiding



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

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  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

COPY

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

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS,

vs.

DUBOIS REGIONAL MEDICAL CENTER

vs.

JERJIS T. ALAJAJI, M.D., and  
GEORGE M. KOSCO, M.D.,

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS,

vs.

DUBOIS REGIONAL MEDICAL CENTER

NO. 03-1051-CD

NO. 04-780-CD

FILED 1cc Atty's:  
9/28/04 Gordon  
DEC 05 2005 Johnson  
Slimak  
Berson  
Copy Orig. to 03-1051-CD

ORDER

NOW, this 2nd day of December 2005, upon consideration of DuBois  
Regional Medical Center's Motion in Limine to Limit and Strike the Testimony of  
Plaintiffs' Expert Dr. Tafuri, the Court hereby finds as follows:

1. As referenced in Defendant's Motion in Limine, Paragraph 15, the  
following requests shall be DENIED: (a), (b), (f), (g), and (h). The  
following requests shall be GRANTED: (c), (d), (e) and (i).
2. The testimony of Plaintiffs' Expert, Dr. Tafuri relating to the ethical  
nature of an expert's fee is hereby GRANTED. Page 34, Lines 21-25  
and Page 35, Lines 1-8 are stricken.
3. Any testimony by Dr. Tafuri or transcripts relied on by him must  
previously have been testified to in the presence of the jury and subject

to cross-examination by defense counsel. Any transcripts not relied upon shall be excluded.

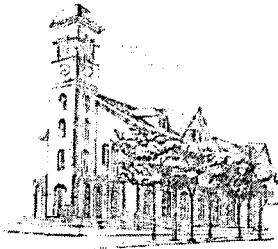
BY THE COURT,

/s/ JOHN K. REILLY, JR.

---

JOHN K. REILLY, JR.  
Senior Judge, Specially Presiding





## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

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  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

COPY

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

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS,

vs.

DUBOIS REGIONAL MEDICAL CENTER

vs.

JERJIS T. ALAJAJI, M.D., and  
GEORGE M. KOSCO, M.D.,

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS,

vs.

DUBOIS REGIONAL MEDICAL CENTER

NO. 03-1051-CD  
NO. 04-780-CD

FILED DEC 5 2005  
William A. Shaw  
Prothonotary/Clerk of Courts  
Gordon Johnson  
Skimack Benson  
Orig. to 03-1051-CD

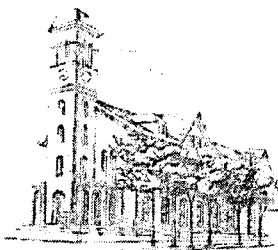
ORDER

NOW, this 2<sup>nd</sup> day of December, 2005, upon consideration of the Motion in  
Limine re Plaintiffs' Economic Expert Report filed November 14, 2005, on behalf of Dr.  
Jerjis Alajaji and additional Defendants, the Court hereby finds as follows:

1. The objection of any speculative opinions of future damages that relies on  
the speculation concerning criminal activity or discrimination of any future  
employer is SUSTAINED; and
2. The Plaintiffs' Economic Expert may testify if a proper foundation can be laid  
as to that portion of future damages attributable to the alleged negligence of  
each specific Defendant.

BY THE COURT,  
/s/ JOHN K. REILLY, JR.

JOHN K. REILLY, JR.  
Senior Judge, Specially Presiding



## Clearfield County Office of the Prothonotary and Clerk of Courts

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Prothonotary/Clerk of Courts

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  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

copy

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

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS,

vs.

DUBOIS REGIONAL MEDICAL CENTER

vs.

JERJIS T. ALAJAJI, M.D., and  
GEORGE M. KOSCO, M.D.,

JOHN D. SAUNDERS and  
BRENDA A. SAUNDERS,

vs.

DUBOIS REGIONAL MEDICAL CENTER

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NO. 03-1051-CD  
NO. 04-780-CD

FILED  
01/12/25/04  
DEC 05 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

cc: Mr. Gordon  
Johnson  
Slimak  
Benson

Orig. to 03-1051-CD

ORDER

NOW, this 2nd day of December 2005, upon consideration of Defendant  
Dr. Jerjis Alajaji's Combined Motions in Limine filed on November 14, 2005, the  
Court hereby finds as follows:

1. Defendant's request to preclude any testimony against Dr. Alajaji  
because the expert reports do not establish the alleged negligence is  
DENIED at this time without prejudice. The issue may be raised at the  
conclusion of the trial in the nature of a Demurrer.
2. Plaintiffs' Expert, Dr. Jeffrey Kann, shall be precluded from testifying as  
to Dr. Alajaji's standard of care for the specific care at issue:  
interpretation of x-ray films by a radiologist.

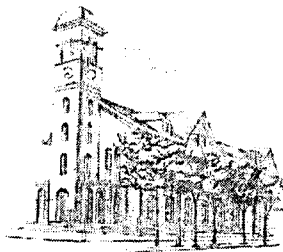
3. The Motion is GRANTED to the extent that Plaintiffs' Expert, Dr. Jeffrey Kann, must, as any expert, specifically relate future damages to the alleged negligence of the specific Defendant. Dr. Kann shall not be permitted to testify as to opinions not contained in reports submitted during Discovery to counsel for Defendants.

BY THE COURT,

/s/ JOHN K. REILLY, JR.

---

JOHN K. REILLY, JR.  
Senior Judge, Specially Presiding



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Prothonotary/Clerk of Courts

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X\_\_\_\_\_ Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:

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

JOHN D. SAUNDERS and BRENDA :  
A. SAUNDERS, husband and wife, :  
vs. :  
DUBOIS REGIONAL MEDICAL :  
CENTER, a corporation, t/d/b/a DRMC : No. 03-1051-CD  
vs. : CONSOLIDATED WITH  
JERJIS T. ALAJAJI, M.D., : No. 04-780-CD  
:  
JOHN D. SAUNDERS and BRENDA A.:  
SAUNDERS, husband and wife :  
vs. :  
DUBOIS REGIONAL MEDICAL :  
CENTER, a corporation, t/d/b/a DRMC, :  
and DANIEL S. GORDON, D.O., :  
:  
JOHN D. SAUNDERS and BRENDA A.:  
SAUNDERS, husband and wife :  
vs. :  
GEORGE M. KOSCO, M.D. and :  
DUBOIS RADIOLOGIST, INC., :

CC. Y

**ORDER**

NOW, this 6<sup>th</sup> day of December, 2005, it is the ORDER of this Court that all remaining and outstanding pre-trial motions/petitions shall be scheduled to be heard on Monday, December 12, 2005, at 8:30 a.m. before the Honorable John K. Reilly, Jr., Senior Judge, specially presiding, in Court Room No. 1 of the Clearfield County Courthouse, Clearfield, PA. It is the FURTHER ORDER of this Court that counsel shall submit any and all brief(s) to the Clearfield County Office of the Court Administrator in support of their position on or before 12:00 P.M. on Friday, December 9, 2005, relating to said motions and/or petitions.

BY THE COURT,

/s/ JOHN K. REILLY JR.

Hon. John K. Reilly, Jr., Sr. Judge,  
Specially Presiding

FILED

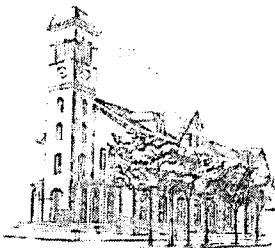
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Gordon  
Johnson  
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Benson

(Orig. to 03-1051-CD)

am A Shaw  
Prothonotary/Clerk of Courts



## Clearfield County Office of the Prothonotary and Clerk of Courts

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Prothonotary/Clerk of Courts

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Solicitor

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  X   Defendant(s)/Attorney(s)

\_\_\_\_\_ Other

\_\_\_\_\_ Special Instructions:





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FILED No CC  
01126201 Orig. to  
DEC 21 2005 03-1051-CD  
Prothonotary

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

JOHN D. SAUNDERS and : NO. 03-1051-CD  
BRENDA A. SAUNDERS : NO. 04-780-CD  
VS. : NO. 04-1245-CD  
JERJIS T. ALAJAJI, M.D. :

V E R D I C T

1. Do you find the Defendant to be negligent?

Yes \_\_\_\_\_ No X

If your answer to Question No. 1 is YES, proceed to Question No. 2.

If your answer to Question No. 1 is NO, then you have found in favor of Defendant and shall return to the courtroom.

2. Do you find the Defendant's negligence to be a substantial factual factor in causing harm to Plaintiffs?

Yes \_\_\_\_\_ No \_\_\_\_\_

If your answer to Question No. 2 is YES, proceed to Question No. 3.

If your answer to Question No. 2 is NO, then you have found in favor of Defendant and shall return to the courtroom.

3. Do you find any other medical providers negligent and such negligence a substantial factual factor in causing harm to Plaintiffs?

Yes \_\_\_\_\_ No \_\_\_\_\_

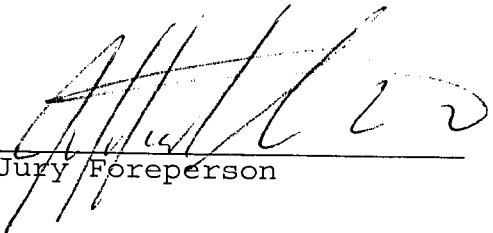
4. If your answer to Question 3 was YES, state the percentage of negligence attributable to Defendant and the percentage of negligence attributable to all other care providers.

Dr. Jerjis T. Alajaji \_\_\_\_\_ %

All other Care Providers \_\_\_\_\_ %

5. State the total amount of damages that you find Plaintiffs are entitled to recover without reducing this figure by any percentage.

\$ \_\_\_\_\_

  
\_\_\_\_\_  
Jury Foreperson

Date 12-21-05