

04-1828-CD
MARK MANNING vs. SHIRISH N. SHAH, MD. et al.

Mark Manning vs Shirish Shah et al
2004-1828-CD

Civil Other

Date		Judge
11/17/2004	✓ Filing: Civil Complaint Paid by: Derek J. Cordier, Esq. Receipt number: 1890559 Dated: 11/17/2004 Amount: \$85.00 (Check) 1 CC to Atty. 3 CC to Shff.	No Judge
12/3/2004	✓ Praecipe For Appearance, on behalf of Susan Manning, filed by s/ David R. Johnson, Esquire. No CC	No Judge
12/8/2004	✓ Preliminary Objections filed by Atty. Johnson 1 CC to Atty.	No Judge
12/9/2004	✓ Sheriff Return, NOW, Nov. 30, 2004, served the within on Shirish N. Shah, MD, Defendant Now Nov. 19, 2004 served the within on Susan Manning, Defendant. So answers Chester A. Hawkins, Sheriff, by s/Marilyn Hamm	No Judge
12/21/2004	✓ Praecipe For Entry of Appearance, filed on behalf of Shirish N. Shah, M.D., by s/ David R. Johnson, Esquire. No CC	No Judge
12/29/2004	✓ Preliminary Objections, filed on behalf of Shirish N. Shah, M.D. by s/Brad R. Korinski, Esq. One CC Attorney Korinski	No Judge
1/20/2005	✓ Order, AND NOW, this 19th day of Jan., 2005, it is the Order of the Court that argument on Defendant Shah's Preliminary Objections filed in the above-captioned matter has been scheduled for the 22nd day of Feb., 2005 at 1:30 p.m. in Courtroom No. 1, Clfd. Co Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC & Memo to Atty Karinski	Fredric Joseph Ammerman
	✓ Order, AND NOW, this 19th day of Jan., 2005, it is the Order of the Court that argument on Defendant Manning's Preliminary Objections filed in the above-captioned matter has been scheduled for the 22nd day of Feb., 2005 at 1:30 p.m. in Courtroom No. 1, Clfd. Co Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC & Memo to Atty Johnson	Fredric Joseph Ammerman
1/28/2005	✓ Affidavit of Service filed. Copy of Jan. 19, 2005 Order served upon plaintiff's counsel on Jan. 21, 2005. Filed by s/ Brad R. Korinski, Esquire. No CC	Fredric Joseph Ammerman
2/10/2005	✓ Amended Civil Complaint, filed by Atty. Cordier 3 Cert. to Att.	Fredric Joseph Ammerman
2/22/2005	✓ Motion To Compel Responses to the Second Set of Interrogatories and Second Set of Requests For Production of Documents Served Upon Plaintiff, filed by s/ Brad R. Korinski, Esquire. No CC	Fredric Joseph Ammerman
3/1/2005	✓ Preliminary Objections to Plaintiff's Amended complaint filed by Atty. Johnson. 1 CC to Atty.	Fredric Joseph Ammerman
	✓ ORDER, filed. 2 Cert. to Atty. AND NOW, this 1st day of March, 2005, ORDERED that Plaintiff shall file full and complete answers to defendant's 2nd set of interrogatories and second set of request for production of documents within 30 days.	Fredric Joseph Ammerman
3/23/2005	✓ Plaintiff Mark Manning's Answer To Defendants' Interrogatories, filed by s/ Kelli J. Brownwell, Esquire. No CC	Fredric Joseph Ammerman
3/30/2005	✓ Order, AND NOW, this 28th day of March, 2005, it is Ordered that oral argument on defendants' preliminary objections to plaintiff's amended complaint is scheduled for the 29th of April, 2005 at 2:00 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Atty Korinski w/memo Re: service	Fredric Joseph Ammerman
4/5/2005	✓ Affidavit of Service filed. A true and correct of March 28, 2005 Scheduling Order & a true and correct copy of the Preliminary Objections to Plaintiff's Amended Complaint served upon plaintiff's counsel on March 31, 2005. Filed by s/Brad R. Korinski, Esquire. No. CC	Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

IN RE :
MAGISTERIAL DISTRICT JUDGES :

ORDER

NOW, this 1st day of April, 2008, it is the Order of this Court that Magisterial District Judge James Hawkins, 46-3-04, be and is hereby assigned to preside over the Civil cases in the matters of Linda London vs. Brady Township, Magisterial Docket No., CV-110-08, and Magisterial Docket No., CV-111-08 to be heard at Magisterial District Judge Patrick Ford's Office, 46-3-01, on April 29, 2008 at 11:00 A.M, to avoid a potential conflict.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

Civil Other

Date		Judge
4/18/2005	✓ Motion To Compel answers to the Second Set of Interrogatories and Second Set of Requests For Production of Documents Served upon Plaintiff, filed by s/ Brad R. Korinski, Esquire. 1CC Atty Korinski	Fredric Joseph Ammerman
	✓ Plaintiff's Answers to Defendant's Preliminary Objections, filed by s/ Derek J. Cordier, Esquire. No CC	Fredric Joseph Ammerman
4/20/2005	✓ Motion For Continuance, filed by s/ Derek J. Cordier, Esquire. 1CC Atty Cordier	Fredric Joseph Ammerman
4/21/2005	✓ Order Of Court, AND NOW, on this 20th day of April , 2005, it is ORDERED that oral argument on defendant's motion to compel is scheduled for the 29th day of April, 2005, at 2:00 p.m. before Judge Ammerman in Courtroom no. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC to Atty	Fredric Joseph Ammerman
4/22/2005	✓ Order, AND NOW, this 22nd day of April 2005, it is hereby Ordered that the hearing in the above captioned matter is continued until May 13, 2005 at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Cordier	Fredric Joseph Ammerman
4/28/2005	✓ Affidavit of Service, Copy of Judge Ammerman's April 20, 2005 Scheduling Order along with a copy of the Motion to Compel served on Derek Cordier, Esquire. Filed By Brad R. Korinski, Esquire. No CC.	Fredric Joseph Ammerman
5/17/2005	✓ Order, NOW, this 13th day of May, 2005, following argument on the Motion to Compel Answers to Second Set of Interrogatories and Second Set of Request for Production of Documents served upon the Plaintiff, it is the ORDER of this Court as follows: (see original). BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Attys: Cordier, D. Johnson	Fredric Joseph Ammerman
	✓ Order, NOW, this 13th day of May, 2005, following argument on the Defendants' Preliminary Objections to Plaintiff's Amended Complaint, it is the ORDER of this Court that counsel for the Plaintiff have no more than 30 days from this date to file a brief with the Court relative the remaining issues as stated within the Preliminary Objections. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2cc Attys: Cordier, D. Johnson	Fredric Joseph Ammerman
5/31/2005	✓ Plaintiff's Supplemental Answers to Defendants' Interrogatories, filed by s/ Derek Cordier, Esquire. No CC	Fredric Joseph Ammerman
6/20/2005	✓ Opinion And Order, NOW, this 20th day of June, 2005, consistent with the foregoing Opinion, it is the Order of this Court as follows in regard to the Defendants' Preliminary Objections to Plaintiff's Amended Complaint filed on March 1, 2005: (see original). BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: D. Codier, D. Johnson, D. Mikesell	Fredric Joseph Ammerman
6/23/2005	✓ Interrogatories Directed to Defendant, filed by s/ Derek J. Cordier, Esquire. No CC	Fredric Joseph Ammerman
7/5/2005	✓ Filing: Praeipce to Enter Judgment Paid by: Johnson, David R. (attorney for Shah, Shirish N. MD) Receipt number: 1904165 Dated: 07/05/2005 Amount: \$20.00 (Check) Kindly enter judgment for Shirish N. Shah, M.D. and against Plaintiff pursuant to the opinion and order of court dated June 20, 2005, attached hereto as Exhibit A. Re: Dismissal of Shirish N. Shah, M.D. Filed by s/David R. Johnson, Esq. Notice to Plaintiff's Attorney Cordier	Fredric Joseph Ammerman
7/19/2005	✓ Motion to Amend the Plaintiff's Amended Complaint, filed by s/Derek Cordier, Esq. Two CC Attorney Cordier	Fredric Joseph Ammerman

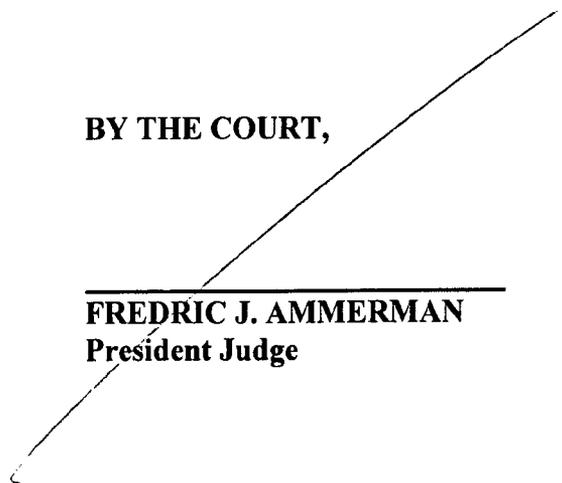
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

IN RE :
MAGISTERIAL DISTRICT JUDGES :

ORDER

NOW, this 1st day of April, 2008, it is the Order of this Court that Magisterial District Judge James Hawkins, 46-3-04, be and is hereby assigned to preside over the Civil cases in the matters of Linda London vs. Brady Township, Magisterial Docket No., CV-110-08, and Magisterial Docket No., CV-111-08 to be heard at Magisterial District Judge Patrick Ford's Office, 46-3-01, on April 29, 2008 at 11:00 A.M, to avoid a potential conflict.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

Civil Other

Date		Judge
7/19/2005	✓ Filing: Notice of Appeal Paid by: Cordier, Derek J. (attorney for Manning, Mark) Receipt number: 1905161 Dated: 07/20/2005 Amount: \$45.00 (Check) One CC Attorney One CC with check to Superior Court	Fredric Joseph Ammerman
7/25/2005	✓ Answer and New Matter filed. By s/ David R. Johnson, Esquire. No CC	Fredric Joseph Ammerman
7/26/2005	✓ Order, Now, this 26th day of July, 2005, argument on Plaintiff's Motion to Amend the Plaintiff's Amended Complaint has been scheduled for the 7th day of September, 2005 at 1:30 p.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty Cordier w/memo Re: Service	Fredric Joseph Ammerman
7/29/2005	✓ Motion for Transcription of Proceedings, filed by s/Derek J. Cordier, Esq. No CC	Fredric Joseph Ammerman
	✓ Amended Proof of Service, Foregoing Documents upon the persons below which service satisfies the requirements of Pa.R.A.P. 121: Honorable President Judge, Fredric J. Ammerman, David R. Johnson, Esquire, Clfd Co. District Court Administrator, and Cathy Warwick-Provost and Tom Snyder. Filed by s/ Derek J. Cordier, Esquire. 1CC Superior Court	Fredric Joseph Ammerman
8/3/2005	✓ Praecipe for Withdrawal of Appeal, filed by Atty. Cordier no cert. Plaintiff hereby withdraws the appeal filed with the Superior Court.	Fredric Joseph Ammerman
8/4/2005	✓ Appeal Docket Sheet, Superior Court of Pa., filed. No CC	Fredric Joseph Ammerman
8/9/2005	✓ Response In Opposition to Plaintiff's Motion To Amend The Plaintiff's Amended Complaint, filed by s/ Brad Korinski, Esquire. No CC	Fredric Joseph Ammerman
8/29/2005	✓ Praecipe To Withdraw Appeal, filed in Superior Court of Pennsylvania.	Fredric Joseph Ammerman
9/8/2005	✓ Order, this 7th day of Sept., 2005, Plaintiff's Motion to Amend the Plaintiff's Amended Complaint is hereby dismissed. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC attys: Cordier, Johnson	Fredric Joseph Ammerman
9/15/2005	✓ Affidavit of Service filed. Notice has been made by U.S. Mail to Derek Cordier Esq., plaintiff's counsel, or the order of court dated September 7, 2005 dismissing plaintiff's motion to amend the plaintiff's amended complaint, filed by s/ David R. Johnson Esq. No CC.	Fredric Joseph Ammerman
9/26/2005	✓ Answer To Defendants New Matter, filed by s/ Derek J. Cordier, Esquire. 1CC to Atty	Fredric Joseph Ammerman
6/28/2006	✓ Motion For Leave to File Amended Answer And New Matter, filed by s/ Brad R. Korinski, Esquire. 2CC Atty. Korinski	Fredric Joseph Ammerman
6/29/2006	✓ Order, NOW, this 29th day of June, 2006, it is Ordered that oral argument on defendant's Motion for Leave to File Amended Answer And New Matter is scheduled for the 15th day of August, 2006, at 1:30 p.m. before Judge Ammerman, in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC to Atty.	Fredric Joseph Ammerman
7/10/2006	✓ Affidavit of Service filed. That a true and correct copy of the Judge Ammerman's June 29, 2006, Scheduling Order, along with a true and correct copy of the Motion for Leave to File Amended Answer and New Matter in the above-captioned case was served on Derek Cordier Esq., filed by s/ Brad R. Korinski Esq. No CC.	Fredric Joseph Ammerman
7/13/2006	✓ Answer to Defendant's Motion for Leave to File Amended Answer and New Matter, filed by s/ Derek J. Cordier Esq. 2CC Atty Cordier.	Fredric Joseph Ammerman
9/11/2006	✓ Amended Answer and New Matter, filed by s/ Brandi R. Korinski Esq. No CC.	Fredric Joseph Ammerman

Civil Other

Date		Judge
3/22/2002	✓ Filing: Civil Complaint Paid by: Kathleen Segmiller, Esquire Receipt number: 1840059 Dated: 03/22/2002 Amount: \$80.00 (Check) Two CC Sheriff	No Judge
4/12/2002	✓ Praeipce For Appearance on behalf of the Defendants, filed by s/David R. Johnson, Esq. Certificate of Service no cc	No Judge
5/7/2002	✓ Sheriff Return, Papers served on Defendant(s). So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
5/22/2002	✓ Answer and New Matter. Filed by s/David R. Johnson, Esq. Verification s/Greg J. Volpe Certificate of Service no cc	No Judge
6/19/2002	✓ Answer and New Matter. Filed by s/David R. Johnson, Esq. Verification s/Keith Zeliger, D.O. Certificate of Service no cc	No Judge
8/19/2002	✓ Motion to Compel. filed by s/David R. Johnson, Esq. Certificate of Service 2 cc to Atty	No Judge
8/22/2002	✓ ORDER, AND NOW, this 22nd day of August, 2002, Plaintiff to file answers within 30 days. Two CC to Atty. Anderson.	John K. Reilly Jr.
9/12/2002	✓ Reply To New Matter of Defendant Keith Zeliger, D.O. filed by s/Kathleen A. Segmiller, Esq. Verification s/Atty Segmiller Certificate of Service no cc	John K. Reilly Jr.
	✓ Reply To New Matter of Defendant Du Bois Regional Medical Center. filed by s/Kathleen A. Segmiller, Esq. Cert of Svc no cc	John K. Reilly Jr.
10/14/2004	✓ Request to Plaintiff for Production of Expert Reports and Certificate of Service, filed by s/David R. Johnson, Esquire. No CC	John K. Reilly Jr.
2/9/2005	Production of Expert Reports Pursuant to PA.R.C.P. 1024.28 (b), filed by Atty. Segmiller No Cert. copies.	John K. Reilly Jr.
	✓ Production of Expert Reports Pursuant to PA.R.C.P. 1024.28(b), filed by s/ Kathlenn A. Segmiller, Esquire. No CC	John K. Reilly Jr.
10/27/2005	✓ Motion To Compel, filed by s/ Jeanette E. Oliver, Esquire. No CC	John K. Reilly Jr.
10/31/2005	✓ Order AND NOW, this 28th day of October 2005, it is hereby ORDERED, ADJUDGED AND DECREED that argument on defendants' motion to compel scheduled to occur on the 20th day of December 2005 at 10:00 a.m. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 2CC Atty Oliver.	John K. Reilly Jr.
11/4/2005	✓ Plaintiff's responses to Defendants' Second Request for Production filed by s/ Kathleen A. Segmiller Esq. No CC.	John K. Reilly Jr.
	✓ Affidavit of Service filed. That a true and correct copy of the Judge Ammerman's October 28, 2005, scheduling Order, along with a true and correct copy of the Motion to Compel in the above-captioned case was served upon plaintiff's counsel, Kathleen Segmiller Esq. on November 2, 2005, filed by Jeanette E. Oliver Esq. No CC.	John K. Reilly Jr.
11/9/2005	✓ Praeipce To Withdraw Motion to Compel, filed by s/ Jeanette E. Oliver, Esquire. No CC	John K. Reilly Jr.
7/10/2006	✓ Motion to Compel, filed by Atty. Oliver 2 Cert. to Atty.	John K. Reilly Jr.
	✓ Motion Requesting Court to Issue Scheduling Order, filed by Atty. Oliver 2 Cert to Atty.	John K. Reilly Jr.

Civil Other

Date		Judge
10/2/2006	✓ Answer to Defendants Amended Answer and New Matter, filed by s/ Derek J. Cordier Esq. No CC.	Fredric Joseph Ammerman
11/13/2006	✓ Motion For Summary Judgment, filed by s/ Brad R. Korinski Esq. 2CC Atty Korinski.	Fredric Joseph Ammerman
11/17/2006	✓ Order, NOW, this 16th day of Nov., 2006, Ordered that oral argument on Def.'s Motion for Summary Judgment is scheduled for the 12th day of Jan., 2007, at 2:00 p.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Derek Cordier, 2CC Atty. David Johnson/ Brad Korinski	Fredric Joseph Ammerman
1/12/2007	✓ Answer to Defendants Motion for Summary Judgment, filed by s/ Derek J. Cordier Esq. 4CC Atty Cordier.	Fredric Joseph Ammerman
1/15/2007	✓ Order, NOW, this 12th day of Jan., 2007, following argument on the Motion for Summary Judgment, Ordered that counsel for the Plaintiff provide a letter brief to the Court within no more than 20 days from this date. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Cordier, Johnson	Fredric Joseph Ammerman
2/8/2007	✓ Order, NOW, this 7th day of Feb. 2007, upon consideration of Defendant's Motion for Summary Judgment, it is the Order of this Court as follows: (see original). By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Cordier, D. Johnson	Fredric Joseph Ammerman
2/25/2008	✓ Motion For Leave to Withdraw as Counsel, filed by s/ David R. Johnson, Esquire. 1CC Atty. Johnson	Fredric Joseph Ammerman
2/27/2008	✓ Order, this 27th day of Feb., 2008, it is Ordered that oral argument on defendant's motion for leave to withdraw as counsel is scheduled for the 8th day of April, 2008 at 10:15 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC	Fredric Joseph Ammerman
3/3/2008	✓ Affidavit of Service filed. Order of Court dated Feb. 29, 2008 setting argument on defendant's motion for leave to withdraw as counsel for April 8, 2008 at 10:15 a.m., was served upon Susan Manning and Derek Cordier, Esquire, by U.S. Mail. Filed by s/ David R. Johnson, Esquire. No CC	Fredric Joseph Ammerman

Civil Other

Date		Judge
7/13/2006	✓ Order, NOW, this 11th day of July, 2006, it is Ordered that oral argument on defendants' motion to compel is scheduled for the 31st day of August, 2006, at 9:30 a.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3Cc Atty. Oliver	Fredric Joseph Ammerman
	Order, NOW, this 11th day of July, 2006, it is Ordered that oral argument on defendants' motion requesting court to issue scheduling order is scheduled for the 31st day of August 2006, at 9:30 a.m. before Judge Ammerman, in Courtroom no. 1. By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Oliver	Fredric Joseph Ammerman
7/17/2006	✓ Plaintiff's Response to Defendants' Motion to Compel, filed by s/ Kathleen A. Segmiller Esq. No CC.	Fredric Joseph Ammerman
7/19/2006	✓ Affidavit of Service filed. That a true and correct copy of the Judge Ammerman's July 11, 2006, Scheduling Orders, along with a true and correct copy of the Motion to Compel and Motion Requesting Court to Issue Scheduling Order in the above-captioned case was sered upon Kathleen A. Segmiller Esq., on July 17, 2006, filed by s/ Jeanette E. Oliver Esq. No CC.	Fredric Joseph Ammerman
8/21/2006	✓ Motion For Continuance, filed by s/ Jeanette E. Oliver, Esquire. No CC	Fredric Joseph Ammerman
8/23/2006	✓ Plaintiff's Motion to Compel, filed by s/ Kathleen A. Segmiller, Esquire. No CC	Fredric Joseph Ammerman
	✓ Order, NOW, this 22nd day of Aug., 2006, it is Ordered that the defendants' motion for continuance is Granted. Oral Arguments on Defendants' Motion to Compel and Motion to Request Scheduling Order will now be presented on Sept. 22, 2006 at 9:30 a.m. before the Honorable Judge Ammerman. 1CC to Atty.	Fredric Joseph Ammerman
8/25/2006	✓ Scheduling Order, NOW, this 23rd day of August, 2006, Ordered that argument on Plaintiff's Motion to Compel has been scheduled to occur on the 22nd day of Sept., 2006, at 9:30 a.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Atty. Segmiller	Fredric Joseph Ammerman
8/28/2006	✓ Affidavit of Service filed. Service has been made by U. S. Mail to all counsel of record of the order dated August 22, 2006, setting argument on defendants' motion to compel and motion to request scheduling order for September 22, 2006 at 9:00 a.m. before the Honorable Judge Ammerman, filed by s/ David R. Johnson Esq. No CC.	Fredric Joseph Ammerman
8/30/2006	✓ Affidavit of Service filed. Service has been made by U.S. Mail to all counsel of record of the Scheduling Order dated August 25, 2006, setting argument on Plaintiff's Motion to Compel for September 22, 2006 at 9:30 a.m. before the Honorable Judge Ammerman, filed by s/ Kathleen A. Segmiller Esq. No CC.	Fredric Joseph Ammerman

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
: Docket No. 04-1828-CD
vs. :
: CIVIL ACTION
SHIRISH N. SHAH, MD : LAW
and :
SUSAN MANNING :
Defendants :

NOTICE

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

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

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2642 EXT.5982

FILED
M 1:4/2A pl 875.00
300 ← Shift 111 to Kelly.
NOV 17 2004

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
 : Docket No. _____
vs. :
 : CIVIL ACTION
SHIRISH N. SHAH, MD : LAW
and :
SUSAN MANNING :
Defendants :

CIVIL COMPLAINT

1. Plaintiff is Mark Manning, who currently resides at 17 Shaffer Street, Sykesville, Pennsylvania 15865.
2. Defendants are, Shirish N. Shah, MD, hereinafter, Dr. Shah, and his current place of practice is located at 629 South Main Street, DuBois, Pennsylvania 15801, and Susan Manning who currently resides at 218 West 2nd Avenue, DuBois, Pennsylvania 15801.
3. On October 2, 2000, the Plaintiff went to the office of the Defendant, Dr. Shah, for a Social Security Disability evaluation.
4. At the evaluation, the Plaintiff disclosed his positive HIV status.
5. In the Spring of 2002, the Defendant, Susan Manning obtained employment at the office of Dr. Shah.
6. The Defendant, Susan Manning, while working within the scope of her employment with Dr. Shah, reviewed the Plaintiff's confidential health records that reveal the HIV status of the Plaintiff. See attached Transcript of Notes.
7. The Defendant then disclosed to numerous family members and acquaintances, the Plaintiff's confidential HIV information that she discovered while employed with Dr. Shah.
8. The Plaintiff, learned of the Defendant, Susan Manning's disclosures through Susan Manning's Husband, John Manning, who is also Plaintiff's brother, in September of 2003.
9. The Defendants violated the Pennsylvania Confidentiality of HIV- Related Information Act by disclosing Plaintiff's confidential HIV information to unauthorized third persons.
10. The breach of privacy on the part of the Defendant's has caused serious emotional devastation to the Plaintiff as he has sought mental health treatment for the anxiety and depression associated with the disclosure.

11. Plaintiff has been ostracized by his social circle, been unable to participate in family activities, and suffered public humiliation at the death bed and funeral of the Plaintiff's nephew.
12. It is believed and averred that upon further discovery, due to the Defendant, Susan Manning's ongoing disclosure of private health information, the Defendants have violated the Health Insurance Portability and Accountability Act of 1996, hereinafter HIPPA.
13. The Plaintiff is seeking compensatory damages for violations of Pennsylvania's HIV- Related Information Act, HIPPA, and invasion of the Plaintiff's right to privacy.
14. The Plaintiff is seeking punitive damages.
15. The Plaintiff is seeking damages for intentional, and negligent, infliction of emotional distress.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

Respectfully submitted by:



Attorney for Plaintiff
Derek Cordier, Esq. #83284
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002

I verify that the statements made in this complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Mark Manning 11-8-04
Mark Manning Date

Attorney for Plaintiff:



Derek Cordie, Esq. #83284
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002



BUREAU OF DISABILITY DETERMINATION
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
POST OFFICE BOX 2500
GREENSBURG, PENNSYLVANIA 15605-2500

GREENSBURG LOCAL TELEPHONE NUMBER: 724-836-5100
ALL OTHER AREAS: 800-442-8018
FAX: 800-358-9954
TTD: 724-832-3278

EXT. 327

MARK A MANNING
RD 2 BOX 158A
REYNOLDSVILLE PA 15851

DATE: 09/22/00
SSN: 183-54-9332

Dear MARK MANNING:

As you may already know, your claim for Social Security disability benefits was sent to this office for a decision. Since receiving your claim, we have tried to obtain medical evidence to document your condition.

The evidence we have obtained is not complete enough for us to make a decision. Therefore, we have arranged for you to be examined by the medical source listed below. **This examination is designed to provide the specific medical information we still need. It may not include evaluation of all your complaints.** During the examination, it may be determined that other tests are needed or that a scheduled test is not needed or should not be done. We will pay all authorized medical costs for this examination. If we have enclosed invoices for this purpose, please take them with you to the examination.

Medical Source Name: SHAH MEDICAL ASSOC
SHIRISH N SHAH M.D.
Address: 629 S MAIN ST
DUBOIS PA 15801
Telephone: (814) 371-0240 ext. 0000

TYPE OF EXAMINATION: Physical Examination
TESTS(S):

Appointment Date: 10/02/00 Time: 02:15 PM

If no appointment date is listed above, please call the physician and schedule an appointment.

SPECIAL INSTRUCTIONS:

Please take the following items with you: eyeglasses, if worn; your current prescription medications, and this letter.

Sincerely,

J. Love/RMS
Disability Claims Adjudicator

E26149

ENCLOSURE: 123, 1001, Pamphlet, Return Envelope
CECL 4/95

EXHIBIT NO. B-9F (6)
CE-10/2/00

NO. PAGES

PENNSYLVANIA BUREAU OF DISABILITY DETERMINATION
P.O. BOX 2500, GREENSBURG, PA 15605
TRANSCRIPTION OF TELERECORDED MESSAGE

SHIRISH SHAH, M.D.
629 S MAIN ST
DU BOIS PA 15801

ADJUDICATOR: J. LORE

RE: ~~MANNING~~, MARK

SSN: 183-54-9312

DATE: 11/07/2000 #19979

TDN#: 0045771517

Phone:

2000 NOV 15 AM 9:21

PA 1000

This 37-year-old male patient who is divorced was seen in office for evaluation of Disability.

The patient drinks mild to moderately. He does not smoke and apparently never did. The patient has a 12th grade education. The patient has two children; none of them live with the patient.

He worked until 1998. He is a self-employed sales person.

The patient is not allergic to known medication.

This is the patient's second application. The first was about three years ago. The patient is applying for Disability based on HIV positive since 1997, depression since 1998, numerous physical conditions since 1998, mental condition, depression since 1998.

The patient can walk about 20 yards on a level road and gets shortness-of-breath. Going up stairs is the same problem. On standing for more than five minutes he feels shortness-of-breath. The patient has no problem getting in and out of the tub and grasping objects is no problem, although it is painful and it aches. The patient does not use an assistive device.

In the past, the patient has gone through facial maxillary surgery in 1981, left arm surgery in 1978 and kidney stones in 1998.

The patient is on Viracept 250 mg one daily which also makes him very tired. The patient is also on Zerit 40 mg one bid, Epivir 150 mg bid, Prevacid 30 mg bid, Maxair 3 puffs tid, malonol 2.5 mg tid, Celestone 6 mg injection 3 times per week, multiple vitamin tablets, loperamide 2 mg prn for diarrhea.

The patient could not work because of the joint pain, tiredness, unable to perform duties and general weakness.

The patient had a job, but the patient could not do the work and, therefore, he was advised to quit the job by his doctor. The patient has seen many doctors and they could not help him for his dizziness or tiredness because of his underlying condition.

The patient has a lack of concentration. He forgets frequently and grasps the situation.

The patient lives in a two-story house. He drives slowly short distance. He has good conversation; clear and understanding. No difficulty getting on and off the examination table. He does not use any assistive device. He sees his family physician about once every one to two months. He sees a specialist, an HIV doctor, every six months. The patient is mentally alert.

FAMILY HISTORY:

The father is alive and suffering from cardiac trouble and bladder problem. The mother is alive and suffering from bone problem, osteoporosis, etc.

PHYSICAL EXAMINATION:

This is a 37-year-old male patient. Height: 67 inches without shoes. Weight: 170 pounds. He used to be 180 about a year ago. Blood Pressure: 110/70 and 110/64. Eye Examination Without Glasses: 20/40 and 20/30. The patient does not use any glasses. Pupils are equal and react to light. Ears, Nose and Throat: Not congested. Neck Examination: Thyroid not palpable. Trachea is in the midline. No neurological deficits. Heart: No murmur. Lungs: Clear. Abdomen: Soft and flat. Bowel sounds present. No masses palpable. Liver and spleen not palpable. Extremities: The range-of-motion is essentially normal. Slow and painful. Deep tendon reflexes normal on all four extremities. Dorsalis pedis pulses 4+/5+ on both sides. No ankle edema. Romberg negative. Babinski negative. No carotid bruits.

IMPRESSION:

1. HIV Positive Complicated with Medications and Side-effects.

Thank you.



SHIRISH SHAH, M.D.

SS/MEDQUIST339

"THIS TRANSCRIPTION WAS MADE FROM THE RECORDING OF THE VOICE OF SHIRISH SHAH, M.D.. A COPY OF THIS REPORT HAS BEEN SENT TO THE DOCTOR FOR REVIEW AND SIGNATURE."

Dear Doctor:

Thank you for promptly telerecording the preceding medical report. The transcription has been included as evidence in this applicant's disability claim.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

PRAECIPE FOR APPEARANCE

Code: 007

Filed on behalf of Susan Manning, one of the
defendants.

Counsel of Record for This Party:

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

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

(412) 232-3400

FILED *ELK*
M 1:53 PM NOCC
DEC 03 2004

William A. Shaw
Prothonotary

PRAECIPE FOR APPEARANCE

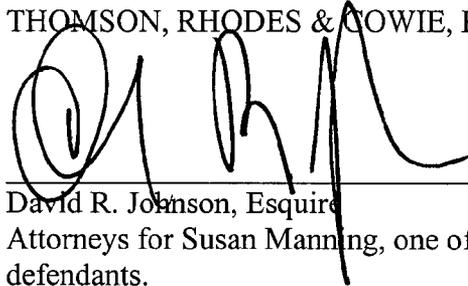
TO: PROTHONOTARY

Kindly enter our appearance on behalf of Susan Manning, one of the defendants.

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. The signature is stylized and cursive.

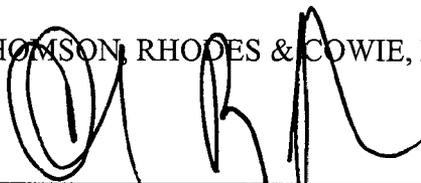
David R. Johnson, Esquire
Attorneys for Susan Manning, one of the
defendants.

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 1st day of Dec., 2004:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for Susan Manning, one of the
defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100010
NO: 04-1828-CD
SERVICE # 1 OF 2

PLAINTIFF: MARK MANNING
vs.
DEFENDANT: SHIRISH N. SHAH, MD et al

SHERIFF RETURN

NOW, November 30, 2004 AT 11:00 AM SERVED THE WITHIN ON SHIRISH N. SHAH, MD DEFENDANT AT 629 SOUTH MAIN ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DEBRA LEHMAN, RECEPTIONIST A TRUE AND ATTESTED COPY OF THE ORIGINAL AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

FILED *EGK*
DEC 09 2004
3:00
William A. Shaver
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100010
NO: 04-1828-CD
SERVICE # 2 OF 2

PLAINTIFF: MARK MANNING
vs.
DEFENDANT: SHIRISH N. SHAH, MD et al

SHERIFF RETURN

NOW, November 19, 2004 AT 2:00 PM SERVED THE WITHIN ON SUSAN MANNING DEFENDANT AT 218 WEST 2ND AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO SUSAN MANNING, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100010
NO: 04-1828-CD
SERVICES 2

PLAINTIFF: MARK MANNING
vs.
DEFENDANT: SHIRISH N. SHAH, MD et al

SHERIFF RETURN

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	CORDIER	1631	20.00
SHERIFF HAWKINS	CORDIER	1632	67.12

Sworn to Before Me This

_____ Day of _____ 2004

So Answers,



Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
 : Docket No. 04-1828-CD
vs. :
 : CIVIL ACTION
SHIRISH N. SHAH, MD : LAW
and :
SUSAN MANNING :
Defendants :

NOTICE

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

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

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2642 EXT.5982

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

NOV 17 2004

Attest.

William A. Brown
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
 : Docket No. _____
vs. :
 : CIVIL ACTION
SHIRISH N. SHAH, MD : LAW
and :
SUSAN MANNING :
Defendants :

CIVIL COMPLAINT

1. Plaintiff is Mark Manning, who currently resides at 17 Shaffer Street, Sykesville, Pennsylvania 15865.
2. Defendants are, Shirish N. Shah, MD, hereinafter, Dr. Shah, and his current place of practice is located at 629 South Main Street, DuBois, Pennsylvania 15801, and Susan Manning who currently resides at 218 West 2nd Avenue, DuBois, Pennsylvania 15801.
3. On October 2, 2000, the Plaintiff went to the office of the Defendant, Dr. Shah, for a Social Security Disability evaluation.
4. At the evaluation, the Plaintiff disclosed his positive HIV status.
5. In the Spring of 2002, the Defendant, Susan Manning obtained employment at the office of Dr. Shah.
6. The Defendant, Susan Manning, while working within the scope of her employment with Dr. Shah, reviewed the Plaintiff's confidential health records that reveal the HIV status of the Plaintiff. See attached Transcript of Notes.
7. The Defendant then disclosed to numerous family members and acquaintances, the Plaintiff's confidential HIV information that she discovered while employed with Dr. Shah.
8. The Plaintiff, learned of the Defendant, Susan Manning's disclosures through Susan Manning's Husband, John Manning, who is also Plaintiff's brother, in September of 2003.
9. The Defendants violated the Pennsylvania Confidentiality of HIV- Related Information Act by disclosing Plaintiff's confidential HIV information to unauthorized third persons.
10. The breach of privacy on the part of the Defendant's has caused serious emotional devastation to the Plaintiff as he has sought mental health treatment for the anxiety and depression associated with the disclosure.

11. Plaintiff has been ostracized by his social circle, been unable to participate in family activities, and suffered public humiliation at the death bed and funeral of the Plaintiff's nephew.
12. It is believed and averred that upon further discovery, due to the Defendant, Susan Manning's ongoing disclosure of private health information, the Defendants have violated the Health Insurance Portability and Accountability Act of 1996, hereinafter HIPPA.
13. The Plaintiff is seeking compensatory damages for violations of Pennsylvania's HIV- Related Information Act, HIPPA, and invasion of the Plaintiff's right to privacy.
14. The Plaintiff is seeking punitive damages.
15. The Plaintiff is seeking damages for intentional, and negligent, infliction of emotional distress.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

Respectfully submitted by:



Attorney for Plaintiff
Derek Cordier, Esq. #83284
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002

I verify that the statements made in this complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Mark Manning 11-8-04
Mark Manning Date

Attorney for Plaintiff


Derek Cordier, Esq. #83284
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002



BUREAU OF DISABILITY DETERMINATION
 COMMONWEALTH OF PENNSYLVANIA
 DEPARTMENT OF LABOR AND INDUSTRY
 POST OFFICE BOX 2500
 GREENSBURG, PENNSYLVANIA 15605-2500

GREENSBURG LOCAL TELEPHONE NUMBER: 724-836-5100
 ALL OTHER AREAS: 800-442-8018
 FAX: 800-358-9954
 TTD: 724-832-3278

EXT. 327

MARK A MANNING
 RD 2 BOX 158A
 REYNOLDSVILLE PA 15851

DATE: 09/22/00
 SSN: 183-54-9332

Dear MARK MANNING:

As you may already know, your claim for Social Security disability benefits was sent to this office for a decision. Since receiving your claim, we have tried to obtain medical evidence to document your condition.

The evidence we have obtained is not complete enough for us to make a decision. Therefore, we have arranged for you to be examined by the medical source listed below. **This examination is designed to provide the specific medical information we still need. It may not include evaluation of all your complaints.** During the examination, it may be determined that other tests are needed or that a scheduled test is not needed or should not be done. We will pay all authorized medical costs for this examination. If we have enclosed invoices for this purpose, please take them with you to the examination.

Medical Source Name: SHAH MEDICAL ASSOC
 SHIRISH N SHAH M.D.
 Address: 629 S MAIN ST
 DUBOIS PA 15801
 Telephone: (814) 371-0240 ext. 0000

TYPE OF EXAMINATION: Physical Examination
 TESTS(S):

Appointment Date: 10/02/00 Time: 02:15 PM

If no appointment date is listed above, please call the physician and schedule an appointment.

SPECIAL INSTRUCTIONS:

Please take the following items with you: eyeglasses, if worn; your current prescription medications, and this letter.

Sincerely,

J. Love/RMS
 Disability Claims Adjudicator

E26149

ENCLOSURE: 123, 1001, Pamphlet, Return Envelope
 CECL 4/95

EXHIBIT NO. CE-10/2/00

B-9F (6)
 NO. PAGES

GREENSBURG
BRANCH

11/01/2000
DATE DICTATED

PENNSYLVANIA BUREAU OF DISABILITY DETERMINATION
P.O. BOX 2500, GREENSBURG, PA 15605
TRANSCRIPTION OF TELERECORDED MESSAGE

SHIRISH SHAH, M.D.
629 S MAIN ST
DU BOIS PA 15801

ADJUDICATOR: J. LORE
RE: MANNING, MARK
SSN: 183-54-9312
DATE: 11/07/2000 #19979

2000 NOV 15 AM 9:21

PA 1000

TDN#: 0045771517

Phone:

This 37-year-old male patient who is divorced was seen in office for evaluation of Disability.

The patient drinks mild to moderately. He does not smoke and apparently never did. The patient has a 12th grade education. The patient has two children; none of them live with the patient.

He worked until 1998. He is a self-employed sales person.

The patient is not allergic to known medication.

This is the patient's second application. The first was about three years ago. The patient is applying for Disability based on HIV positive since 1997, depression since 1998, numerous physical conditions since 1998, mental condition, depression since 1998.

The patient can walk about 20 yards on a level road and gets shortness-of-breath. Going up stairs is the same problem. On standing for more than five minutes he feels shortness-of-breath. The patient has no problem getting in and out of the tub and grasping objects is no problem, although it is painful and it aches. The patient does not use an assistive device.

In the past, the patient has gone through facial maxillary surgery in 1981, left arm surgery in 1978 and kidney stones in 1998.

The patient is on Viracept 250 mg one daily which also makes him very tired. The patient is also on Zerit 40 mg one bid, Epivir 150 mg bid, Prevacid 30 mg bid, Maxair 3 puffs tid, malonol 2.5 mg tid, Celestone 6 mg injection 3 times per week, multiple vitamin tablets, loperamide 2 mg prn for diarrhea.

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The patient had a job, but the patient could not do the work and, therefore, he was advised to quit the job by his doctor. The patient has seen many doctors and they could not help him for his dizziness or tiredness because of his underlying condition.

The patient has a lack of concentration. He forgets frequently and grasps the situation.

The patient lives in a two-story house. He drives slowly short distance. He has good conversation; clear and understanding. No difficulty getting on and off the examination table. He does not use any assistive device. He sees his family physician about once every one to two months. He sees a specialist, an HIV doctor, every six months. The patient is mentally alert.

FAMILY HISTORY:

The father is alive and suffering from cardiac trouble and bladder problem. The mother is alive and suffering from bone problem, osteoporosis, etc.

PHYSICAL EXAMINATION:

This is a 37-year-old male patient. Height: 67 inches without shoes. Weight: 170 pounds. He used to be 180 about a year ago. Blood Pressure: 110/70 and 110/64. Eye Examination Without Glasses: 20/40 and 20/30. The patient does not use any glasses. Pupils are equal and react to light. Ears, Nose and Throat: Not congested. Neck Examination: Thyroid not palpable. Trachea is in the midline. No neurological deficits. Heart: No murmur. Lungs: Clear. Abdomen: Soft and flat. Bowel sounds present. No masses palpable. Liver and spleen not palpable. Extremities: The range-of-motion is essentially normal. Slow and painful. Deep tendon reflexes normal on all four extremities. Dorsalis pedis pulses 4+/5+ on both sides. No ankle edema. Romberg negative. Babinski negative. No carotid bruits.

IMPRESSION:

1. HIV Positive Complicated with Medications and Side-effects.

Thank you.



SHIRISH SHAH, M.D.

SS/MEDQUIST339

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Dear Doctor:

Thank you for promptly telerecording the preceding medical report. The transcription has been included as evidence in this applicant's disability claim.

5

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING
Plaintiff

:

:

: Docket No. 04-1828-0

vs.

:

: CIVIL ACTION

SHIRISH N. SHAH, MD

: LAW

and

:

SUSAN MANNING

:

Defendants

:

NOTICE

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DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2642 EXT.5982

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

NOV 17 2004

Attest.

William D. Shaw
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
 : Docket No. _____
vs. :
 : CIVIL ACTION
SHIRISH N. SHAH, MD : LAW
and :
SUSAN MANNING :
Defendants :

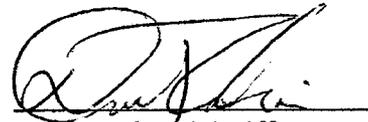
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14. The Plaintiff is seeking punitive damages.
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WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

Respectfully submitted by:



Attorney for Plaintiff
Derek Cordier, Esq. #83284
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002

I verify that the statements made in this complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Mark Manning 11-8-04
Mark Manning Date

Attorney for Plaintiff:


Derek Cordier, Esq. #83284
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002



BUREAU OF DISABILITY DETERMINATION
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
POST OFFICE BOX 2500
GREENSBURG, PENNSYLVANIA 15605-2500

GREENSBURG LOCAL TELEPHONE NUMBER: 724-836-6100
 ALL OTHER AREAS: 800-442-8018
 FAX: 800-358-9954
 TTD: 724-832-3278

EXT. 327

MARK A MANNING
 RD 2 BOX 158A
 REYNOLDSVILLE PA 15851

DATE: 09/22/00
 SSN: 183-54-9332

Dear MARK MANNING:

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The evidence we have obtained is not complete enough for us to make a decision. Therefore, we have arranged for you to be examined by the medical source listed below. **This examination is designed to provide the specific medical information we still need. It may not include evaluation of all your complaints.** During the examination, it may be determined that other tests are needed or that a scheduled test is not needed or should not be done. We will pay all authorized medical costs for this examination. If we have enclosed invoices for this purpose, please take them with you to the examination.

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 SHIRISH N SHAH M.D.
 Address: 629 S MAIN ST
 DUBOIS PA 15801
 Telephone: (814) 371-0240 ext. 0000

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Sincerely,

J. Love/RMS
 Disability Claims Adjudicator

E26149

ENCLOSURE: 123, 1001, Pamphlet, Return Envelope
 CECL 4/95

EXHIBIT NO. B-9F (6)
 CE-10/2/00

NO. PAGES

GREENSBURG
BRANCE

11/01/2000
DATE DICTATED

PENNSYLVANIA BUREAU OF DISABILITY DETERMINATION
P.O. BOX 2500, GREENSBURG, PA 15605
TRANSCRIPTION OF TELERECORDED MESSAGE

SHIRISH SHAH, M.D.
629 S MAIN ST
DU BOIS PA 15801

ADJUDICATOR: J. LORE
RE: ~~MANNING~~, MARK
SSN: 183-54-9312
DATE: 11/07/2000 #19979

2000 NOV 15 AM 9:21

PA 1000

TDN#: 0045771517

Phone:

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The patient is not allergic to known medication.

This is the patient's second application. The first was about three years ago. The patient is applying for Disability based on HIV positive since 1997, depression since 1998, numerous physical conditions since 1998, mental condition, depression since 1998.

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IMPRESSION:

1. HIV Positive Complicated with Medications and Side-effects.

Thank you.


SHIRISH SHAH, M.D.

SS/MEDQUIST339

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Dear Doctor:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

PRAECIPE FOR APPEARANCE

Code: 007

Filed on behalf of Shirish N. Shah, M.D., 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

6K FILED No
m/11/18/04 CC
DEC 21 2004 copy to CIA

William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE FOR APPEARANCE

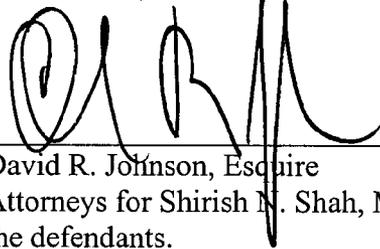
TO: PROTHONOTARY

Kindly enter our appearance on behalf of Shirish N. Shah, M.D., one of the defendants.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

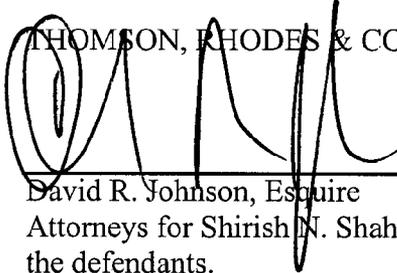
A handwritten signature in black ink, appearing to read 'DRJ', is written over a horizontal line. The signature is stylized and cursive.

David R. Johnson, Esquire
Attorneys for Shirish N. Shah, M.D., one of
the 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 17th day of Dec., 2004:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.


David R. Johnson, Esquire
Attorneys for Shirish N. Shah, M.D., one of
the defendants.

CP

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

MARK MANNING :
 :
 :
 vs. : No. 04-1828-CD
 :
 :
 SHIRISH N. SHAH, M.D. and :
 SUSAN MANNING :
 :

ORDER

AND NOW, this 19th day of January, 2005, it is the Order of the Court that argument on Defendant Shah's Preliminary Objections filed in the above-captioned matter has been scheduled for the 22 day of February, 2005, at 1:30 P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC J. AMMERMAN
President Judge

FILED
O 10:43 AM 2/10/05 Minoto,
Atty Karunski
JAN 20 2005 OK

William A. Shaw
Prothonotary



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

CIVIL DIVISION

Plaintiff,

No. 04-1828-CD

vs.

Issue No.

SHIRISH N. SHAH, M.D. and SUSAN MANNING,

PRELIMINARY OBJECTIONS AND PROPOSED ORDER OF COURT

Defendants.

Counsel of Record:

Code: 007

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

Filed on behalf of Shirish N. Shah, M.D., one of the defendants.

Counsel of Record for This Party:

NOTICE TO PLEAD

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

TO THE PLAINTIFF:

Brad R. Korinski, Esquire
Pa I.D. # 86831

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

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

(412) 232-3400

Brad Korinski

**Brad R. Korinski, Esquire
Attorney for Shirish N. Shah, M.D., one of the defendants.**

FILED *icc*
m/11/15/04
DEC 29 2004 *Att Korinski*
for William A. Shaw
Prothonotary/Clerk of Courts

PRELIMINARY OBJECTIONS

NOW COMES one of the defendants, Shirish N. Shah, by his attorneys, Thomson, Rhodes & Cowie, P.C., and files the following preliminary objections to the plaintiff's complaint.

1. This case involves allegations that, at some unknown time and in an unidentified manner, Susan Manning, the sister-in-law of plaintiff, made disclosures relating to plaintiff's positive HIV status.

2. Plaintiff contends that Susan Manning became aware of his medical information during the course of her employment with co-defendant Shirish N. Shah, M.D. Apparently, Dr. Shah had previously performed a disability evaluation of the plaintiff at which his positive HIV status was revealed and recounted in Dr. Shah's records.

3. Plaintiff has not alleged that Dr. Shah made any disclosures of his medical information.

A. Motion to Strike the Complaint/Motion for a More Specific Pleading

3. Plaintiff's complaint seemingly brings causes of action against each of the defendants for: (a) the violation of the Pennsylvania HIV-Related Information Act; (b) the violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPPA"); (c) intentional infliction of emotional distress; and (d) negligent infliction of emotional distress.

4. However, plaintiff has failed to comply with the simple dictates of Pennsylvania Rule of Civil Procedure 1020 in that his claims have not been properly delineated and plead as independent counts as required by the rules of civil procedure. His failure to comply with this basic requirement results in a confusing pleading which improperly mixes the allegations in this matter, leaving Dr. Shah unaware of the facts pertaining to each claim.

5. Adding further confusion to an already convoluted situation, plaintiff has failed to plead separate counts for each of the defendants in this action, thereby leaving co-defendant Dr. Shah unaware of the particular claims levied against him (as opposed to those pertaining to co-defendant Susan Manning) as well as the factual underpinnings of these claims.

WHEREFORE, this defendant requests that this Honorable Court order plaintiff to amend his complaint so as to comply with Pennsylvania Rule of Civil Procedure 1020 by alleging separate counts and specific claims against this defendant.

B. Motion to Strike/Motion for a More Specific Pleading

6. As noted above, because plaintiff's complaint is not delineated into separate counts against each of the defendants, Dr. Shah cannot be aware of the facts that plaintiff alleges support his liability and damages claims. The plaintiff should be required to identify each count/cause of action he intends to bring against each of the defendants and then to list the specific facts to support that count/cause of action.

7. Moreover, paragraphs 6, 7 and 8 of the complaint should be stricken for the reason that these averments are so non-specific that this defendant cannot prepare an answer or formulate a defense to these allegations. The apparent crux of plaintiff's liability averments are found in paragraphs 6-8. Nevertheless, none of these paragraphs (nor any other paragraphs of the complaint) cite to any specific event or conduct engaged in by Susan Manning relating to the disclosure of plaintiff's HIV information; nor does the complaint specifically identify the person(s) to whom Susan Manning disclosed plaintiff's HIV information and the circumstances of this disclosure. The complaint contains no allegation that Dr. Shah, himself, made any disclosure.

8. The extremely vague and general allegations set forth in the complaint in no way fairly or properly apprise Dr. Shah of the wrongful conduct which he is alleged to have committed or for which he is alleged to be responsible. Such a complaint fails to comply with the dictates of the Pennsylvania Rules of Civil Procedure as well as the dictates of the Supreme Court in the decision of Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983).

WHEREFORE, this defendant requests that this Honorable Court strike the plaintiff's complaint for failure to comply with Pennsylvania Rule of Civil Procedure 1019(a).

C. Demurrer to Plaintiff's Claim of Intentional Infliction of Emotional Distress

9. In paragraph 15 of the complaint, plaintiff attempts to assert a claim for intentional infliction of emotional distress. The ostensible basis for this claim is Susan Manning's alleged disclosures of plaintiff's medical information on an unidentified date and time, to unidentified individuals and in a non-specific manner. Beyond the words "intentional infliction of emotional distress" no other specific facts can be gleaned from plaintiff's complaint to support their intentional infliction of emotional distress claim.

10. Moreover, Dr. Shah, himself, is not alleged to have made any disclosures of plaintiff's medical information. As a matter of both law and logic, Dr. Shah cannot be liable to the tort of intentional infliction of emotional distress, when there are no allegations to support any conclusion that Dr. Shah acted in an intentional or deliberate manner.

11. The tort of intentional infliction of emotional distress is defined as follows: "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress and, if bodily harms results, then for such bodily harm. Hoy v. Angelone, 720 A.2d 745 (Pa. 1998).

12. To state a *prima facie* case of intentional infliction of emotional distress, a claimant must allege facts which establish extreme or clearly outrageous conduct on the part of the defendant.

13. Even if all of the facts in the complaint are accepted as true, they in no way establish extreme and outrageous conduct intentionally or recklessly engaged in by Dr. Shah. Indeed, the complaint is so non-specific that it is impossible to discern what type, if any, conduct was engaged in by any of the defendants. Accordingly, plaintiff cannot establish a claim for intentional infliction of emotional distress.

WHEREFORE, this defendant respectfully requests that this Honorable Court sustain its preliminary objection and dismiss plaintiff's claim for intentional infliction of emotional distress as contained in paragraph 15 of the complaint.

D. Demurrer to Plaintiff's Claim of Negligent Infliction of Emotional Distress

14. In paragraph 15 of the complaint, plaintiff seeks to make a claim for negligent infliction of emotional distress. As is true of the complaint as a whole, this claim is summarily non-descriptive. Although not alluded to in the complaint, it is presumed that plaintiff's claim is premised upon his being a "direct recipient" of the alleged negligent infliction of emotional distress.

15. This claim for negligent infliction of emotional distress fails for the reason that plaintiff has not plead any direct physical impact or that he stood in the "zone of danger" of such negligent conduct. Stoddard v. Davidson, 513 A.2d 419 (Pa. Super. 1986); Brown v. Philadelphia College, 674 A.2d 1130 (Pa. Super. 1996). Simply put, plaintiff has not averred any facts to support a claim for negligent infliction of emotional distress.

WHEREFORE, this defendant respectfully requests that this Honorable Court sustain its preliminary objection and dismiss plaintiff's claim for negligent infliction of emotional distress as contained in paragraph 15 of the complaint.

E. Demurrer to Plaintiff's Claims Based Upon HIPPA

16. In paragraph 12 of the complaint, plaintiff attempts to assert a claim for violation of the HIPPA statute. However, as is evident from the face of the statute, there is no private civil cause of action created by HIPPA.

WHEREFORE, this defendant respectfully requests that this Honorable Court sustain its preliminary objection and dismiss plaintiff's claim for violation of the HIPPA statute as contained in paragraph 12 of the complaint.

F. Demurrer to Plaintiff's Punitive Damages Claims

17. In paragraph 14 of the complaint, plaintiff asserts that he is seeking punitive damages.

18. Under well-established legal precedent, punitive damages may only be awarded in Pennsylvania where "a person's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct and are awarded to punish that person for such conduct." SHV Coal, Inc. v. Continental Grain Co., 587 A.2d 702 (Pa. 1991).

19. Here, in the instant case, plaintiff has alleged no facts that could support a finding of outrageous conduct on the part of Dr. Shah or any defendant. Rather, plaintiff has failed to plead any facts indicative of the circumstances under which the alleged improper disclosures were made. Additionally, plaintiff has declined to plead any facts to allege that Dr. Shah ever acted in an intentional or willful manner regarding the purported disclosures of plaintiff's

medical information. Having utterly failed to meet his burden to aver specific facts to support his claims, plaintiff cannot properly establish a right to punitive damages in this factual vacuum.

20. Moreover, pursuant to the MCARE Act, specifically 40 P.S. §1303.505, punitive damages may not be awarded against a health care provider who is only vicariously liable for the actions of its agents, servants or employees "unless it can be shown by a preponderance of the evidence that the party knew of and allowed the conduct by its agent that resulted in an award of punitive damages." Here, there are simply no facts plead to support an allegation that Dr. Shah "knew of and allowed" the purported conduct of Susan Manning.

WHEREFORE, this defendant respectfully requests that this Honorable Court sustain its preliminary objections and dismiss plaintiff's claim for punitive damages as set forth in paragraph 14 of the complaint.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Shirish N. Shah,
one of the defendants

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been previously served upon the following counsel of record by US Mails on the 22nd day of December, 2004.

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Shirish N. Shah, M.D,
one of the defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, on this _____ day of _____, 2005, upon consideration of defendant Shirish N. Shah, M.D.'s preliminary objections, it is hereby ORDERED, ADJUDGED and DECREED that said preliminary objections are hereby SUSTAINED.

BY THE COURT:

_____ J.

CA

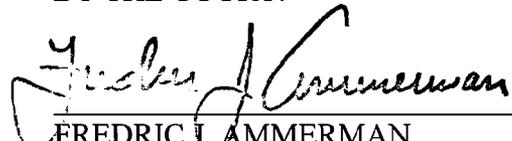
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MARK MANNING :
 :
 vs. : No. 04-1828-CD
 :
 SHIRISH N. SHAH, M.D. and :
 SUSAN MANNING :
 :

ORDER

AND NOW, this 19th day of January, 2005, it is the Order of the Court that argument on Defendant Manning's Preliminary Objections filed in the above-captioned matter has been scheduled for the 22 day of February, 2005, at 1:30 P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



FREDRIC L. AMMERMAN
President Judge

FILED *GC*
01/20/05 BA 211 + Memo to Atty Johnson
JAN 20 2005

William M. Shaw
Prothonotary



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

CIVIL DIVISION

No. 04-1828-CD

vs.

Issue No.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

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

Counsel of Record:

Code: 007

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

Filed on behalf of Susan Manning, one of the
defendants.

Counsel of Record for This Party:

NOTICE TO PLEAD

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

TO THE PLAINTIFF:

Brad R. Korinski, Esquire
Pa I.D. # 86831

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

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

(412) 232-3400



Brad R. Korinski, Esquire
Attorney for Susan Manning, one of the
defendants.

FILED
M 11:50 AM 10/25/04
DEC 08 2004

William A. Shaw
Prothonotary

POs

PRELIMINARY OBJECTIONS

NOW COMES one of the defendants, Susan Manning, by her attorneys, Thomson, Rhodes & Cowie, P.C., and files the following preliminary objections to the plaintiff's complaint.

1. This case involves allegations that, at some unknown time and in an unidentified manner, Susan Manning, the sister-in-law of plaintiff, made disclosures relating to plaintiff's positive HIV status.

2. Plaintiff contends that Susan Manning became aware of his medical information during the course of her employment with co-defendant Shirish N. Shah, M.D. Apparently, Dr. Shah had previously performed a disability evaluation of the plaintiff at which his positive HIV status was revealed and recounted in Dr. Shah's records.

A. Motion to Strike the Complaint/Motion for a More Specific Pleading

3. Plaintiff's complaint seemingly brings causes of action against each of the defendants for: (a) the violation of the Pennsylvania HIV-Related Information Act; (b) the violation of the Health Insurance Portability and Accountability Act of 1996 ("HIPPA"); (c) intentional infliction of emotional distress; and (d) negligent infliction of emotional distress.

4. However, plaintiff has failed to comply with the simple dictates of Pennsylvania Rule of Civil Procedure 1020 in that his claims have not been properly delineated and plead as independent counts as required by the rules of civil procedure. His failure to comply with this basic requirement results in a confusing pleading which improperly mixes the allegations in this matter, leaving the defendant unaware of the facts pertaining to each claim.

5. Adding further confusion to an already convoluted situation, plaintiff has failed to plead separate counts for each of the defendants in this action, thereby leaving co-defendant Susan Manning unaware of the particular claims levied against her as well as the factual underpinnings of these claims.

WHEREFORE, this defendant requests that this Honorable Court order plaintiff to amend his complaint so as to comply with Pennsylvania Rule of Civil Procedure 1020 by alleging separate counts and specific claims against this defendant.

B. Motion to Strike/Motion for a More Specific Pleading

6. As noted above, because plaintiff's complaint is not delineated into separate counts against each of the defendants, this defendant remains unaware of the facts that plaintiff alleges support his liability and damages claims. The plaintiff should be required to identify each count/cause of action he intends to bring against each of the defendants and then to list the specific facts to support that count/cause of action.

7. Moreover, paragraphs 6, 7 and 8 of the complaint should be stricken for the reason that these averments are so non-specific that this defendant cannot prepare an answer or formulate a defense to these allegations. The apparent crux of plaintiff's liability averments are found in paragraphs 6-8. Nevertheless, none of these paragraphs (nor any other paragraphs of the complaint) cite to any specific event or conduct engaged in by Susan Manning relating to the disclosure of plaintiff's HIV information; nor does the complaint specifically identify the person(s) to whom Susan Manning disclosed plaintiff's HIV information and the circumstances of this disclosure.

8. The extremely vague and general allegations set forth in the complaint in no way fairly or properly apprise this defendant of the wrongful conduct which she is alleged to have committed. Such a complaint fails to comply with the dictates of the Pennsylvania Rules of Civil Procedure as well as the dictates of the Supreme Court in the decision of Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (1983).

WHEREFORE, this defendant requests that this Honorable Court strike the plaintiff's complaint for failure to comply with Pennsylvania Rule of Civil Procedure 1019(a).

C. Demurrer to Plaintiff's Claim of Intentional Infliction of
Emotional Distress

9. In paragraph 15 of the complaint, plaintiff attempts to assert a claim for intentional infliction of emotional distress. The ostensible basis for this claim is Susan Manning's alleged disclosures of plaintiff's medical information on an unidentified date and time, to unidentified individuals and in a non-specific manner. Beyond the words "intentional infliction of emotional distress" no other specific facts can be gleaned from plaintiff's complaint to support their intentional infliction of emotional distress claim.

10. The tort of intentional infliction of emotional distress is defined as follows: "One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress and, if bodily harms results, then for such bodily harm. Hoy v. Angelone, 720 A.2d 745 (Pa. 1998).

11. To state a *prima facie* case of intentional infliction of emotional distress, plaintiffs must allege facts which establish extreme or clearly outrageous conduct on the part of the defendant.

12. Even if all of the facts in the complaint are accepted as true, they in no way establish extreme and outrageous conduct on the part of this defendant. Indeed, the complaint is so non-specific that it is impossible to discern what type, if any, conduct was engaged in by this defendant. Accordingly, plaintiff cannot establish a claim for intentional infliction of emotional distress.

WHEREFORE, this defendant respectfully requests that this Honorable Court sustain its preliminary objection and dismiss plaintiff's claim for intentional infliction of emotional distress as contained in paragraph 15 of the complaint.

D. Demurrer to Plaintiff's Claim of Negligent Infliction of
Emotional Distress

13. In paragraph 15 of the complaint, plaintiff seeks to make a claim for negligent infliction of emotional distress. As is true of the complaint as a whole, this claim is summarily non-

descriptive. Although not alluded to in the complaint, it is presumed that plaintiff's claim is premised upon his being a "direct recipient" of the alleged negligent infliction of emotional distress.

14. Plaintiff's claim for negligent infliction of emotional distress fails for the reason that plaintiff has not plead any direct physical impact or that he stood in the "zone of danger" of such negligent conduct. Stoddard v. Davidson, 513 A.2d 419 (Pa. Super. 1986); Brown v. Philadelphia College, 674 A.2d 1130 (Pa. Super. 1996). Simply put, plaintiff has not averred any facts to support a claim for negligent infliction of emotional distress.

WHEREFORE, this defendant respectfully requests that this Honorable Court sustain its preliminary objection and dismiss plaintiff's claim for intentional infliction of emotional distress as contained in paragraph 15 of the complaint.

E. Demurrer to Plaintiff's Claims Based Upon HIPPA

15. In paragraph 12 of the complaint, plaintiff attempts to assert a claim for violation of the HIPPA statute. However, as is evident from the face of the statute, there is no private civil cause of action created by HIPPA.

WHEREFORE, this defendant respectfully requests that this Honorable Court sustain its preliminary objection and dismiss plaintiff's claim for violation of the HIPPA statute as contained in paragraph 12 of the complaint.

F. Demurrer to Plaintiff's Punitive Damages Claims

16. In paragraph 14 of the complaint, plaintiff asserts that he is seeking punitive damages.

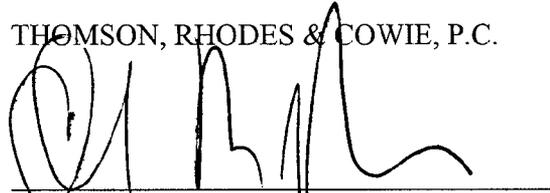
17. Under well-established legal precedent, punitive damages may only be awarded in Pennsylvania where "a person's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct and are awarded to punish that person for such conduct. SHV Coal, Inc. v. Continental Grain Co., 587 A.2d 702 (Pa. 1991).

18. Here, in the instant case, plaintiff has alleged no facts that could support a finding of outrageous conduct on the part of Susan Manning. Rather, plaintiff has failed to plead any facts indicative of the circumstances under which the alleged improper disclosures were made. Having utterly failed to meet his burden to aver specific facts to support his claims, plaintiff cannot properly establish a right to punitive damages in this factual vacuum.

WHEREFORE, this defendant respectfully requests that this Honorable Court sustain its preliminary objections and dismiss plaintiff's claim for punitive damages as set forth in paragraph 14 of the complaint.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.

A handwritten signature in black ink, appearing to read 'D. Johnson', is written over a horizontal line. The signature is stylized and cursive.

David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants

^
Brief ^

BRIEF IN SUPPORT OF THE
PRELIMINARY OBJECTIONS

I. FACTUAL BACKGROUND

This case involves non-specific and unsubstantiated allegations that Susan Manning, plaintiff's sister-in-law, disclosed plaintiff's HIV positive status. Plaintiff contends that Susan Manning learned of this information while she was in the employment of co-defendant Dr. Shah, who had previously seen plaintiff in a connection with a disability examination in 2000. Plaintiff does not aver in the complaint either the time or manner of Ms. Manning's alleged disclosures, nor does he identify the persons to whom the disclosures were made. Indeed, plaintiff's complaint pleads almost no facts.

In addition to its factual paucity, the confusing nature of plaintiff's complaint is compounded by plaintiff's refusal to follow the most basic dictates of the Rules of Civil Procedure by captioning his complaint in individual counts against each of the individual defendants. Thus, we are left with a complaint that allude to four "causes of action" but never specifies the exact nature of the claims made by plaintiff - much less the defendant(s) against whom the claim is made.

II. ARGUMENT

A. Defendant's Motion to Strike the Complaint
For Failure to Comply with Rule of Court Should
Be Granted

Plaintiff has failed to comply with Pennsylvania Rule of Civil Procedure 1020 in that he has failed to set forth his separate causes of action against this defendant in separate counts of the complaint. Indeed, plaintiff's complaint does not contain any counts. Nor does the complaint specify the defendant(s) as to whom these ostensible claims apply. The allegations for each of these claims are intermixed and undistinguishable from each other either as to liability or damages. In drafting their complaint in this confusing manner, plaintiff has clearly run afoul of the dictates of

Pennsylvania Rule of Civil Procedure 1020(a), which provides that "each cause of action and any special damage related thereto shall be stated in a separate count containing a demand for relief."

Accordingly, plaintiff should not be permitted to lump the various and separate claims together, each of which have independent liability and damages elements. Plaintiff should, therefore, be required to file an amended complaint which complies with the requirements of Rule 1020 by setting forth separate and specific causes of action against each of these defendants.

B. Defendant's Motion to Strike/Motion for a More Specific Pleading Should Be Granted

A cursory examination of plaintiff's complaint plainly reveals that plaintiff has not plead any specific facts against this defendant which would tend to provide her with any indication of the wrongful/improper conduct that she is alleged to have committed. Noticeable by their absence are the lack of any facts giving notice of the "who," "what," "when," and "how" elements of the plaintiff's causes of action.

Pennsylvania Rule of Civil Procedure 1019(a) requires that "material facts upon which a cause of action or defense is based shall be stated in concise and summary form." The averments in the complaint must be sufficient to place this defendant on notice of the exact acts or omissions which are alleged to constitute their respective conduct.

In Bruaw v. Weaver, 68 York 13 (C.P. York 1954), the court held that allegations which merely recite legal conclusions as to the culpability of a defendant were insufficient to satisfy the requirements of Pa.R.C.P. 1019(a).

"We think that a physician charged with negligence and unskillfulness in the practice of his profession is entitled to be advised of the specific acts or commissions or omissions which constitute the negligence and unskillfulness complained of, so that plaintiff's proof may be confined to such acts, and so that he may reasonably prepare for his defense." Bruaw, 68 York at 15; see also Gray v. Oech, 49 Pa. D&C2d 358 (1970). In Gray, the court noted that general allegations of negligence in a medical malpractice complaint fail to satisfy the requirement of Pennsylvania Rule of Civil Procedure 1019(a).

Plaintiff's allegations contained in the complaint are conclusory and non-informative in nature and fail to satisfy his duty to plead all material facts upon which the causes of action are based.

The potential prejudice to a defendant where plaintiff had pleaded in such vague and general terms has been illustrated by the Supreme Court in Connor v. Allegheny General Hosp., 501 Pa. 306, 461 A.2d 600 (1983). In Connor, plaintiffs sought to amend their complaint at time of trial to introduce a theory of negligence not specifically pleaded in their complaint. The issue considered by the court was whether plaintiff's proposed amended complaint constituted the assertion of a new cause of action which would be barred by the statute of limitations. The court allowed the amendment finding that the new theory of negligence merely constituted an amplification of plaintiffs' allegation that defendants "otherwise failed (sic) to use due care and caution under the circumstances." In a footnote to the opinion, it was noted that this general allegation of negligence could have been stricken by the defendants through the filing of preliminary objections, but that having failed to do so, defendants had waived their right to preclude new theories of proof at time of trial:

If appellee did not know how it otherwise fail[ed] to use due care and caution under the circumstances, it could have filed preliminary objections in the nature of a request for a more specific pleading or it could have moved to strike that portion of appellant's complaint. Compare Arner v. Sokol, 373 Pa. 587, 592-93, 967 A.2d 854, 856 (1953), citing King v. Brillhart, 271 Pa. 301, 114 A. 515, 516 (1921). ("[T]he [plaintiff's statement] may not be a statement in a concise and summary form of the material facts upon which the plaintiff relies...; but, if not, it was waived by defendant's affidavit to, and going to trial upon the merits...a defendant may move to strike off an insufficient statement, or, if it is too indefinite, may obtain a rule for one more specific. Failing to do either, he will not be entitled to a compulsory non-suit because of the general character of [plaintiff's] statement.). In this case, however, appellee apparently understood this allegation of appellants' complaint well enough to simply deny it in its answer thus appellee cannot now claim that it was prejudiced by the late amplification of this allegation in appellants' complaint.

Conner, 461 A.2d at 602, FN 3.

The Supreme Court's decision in Connor graphically illustrates that in the presence of such "boiler plate" pleading, a defendant is virtually powerless to restrict a plaintiff's proof at time of trial. The potential prejudice to a defendant is obvious. It is the purpose of Pennsylvania Rule of Civil Procedure 1019(a) to avoid evidentiary excursions by requiring the plaintiff to specifically plead material facts thereby confining plaintiff's proof at time of trial to the material facts pleaded in the complaint. Absent such specific pleading, it is impossible for a defendant to prepare to meet the plaintiff's proof at time of trial.

The above-referenced subparagraphs are vague and conclusory and fail to set forth material facts upon which the allegations are based and fail to adequately advise this defendant of the nature of the acts or omissions which are alleged to have caused harm or damages to the plaintiff. For these reasons, it is requested that this Honorable Court strike the allegations made in the plaintiff's complaint and direct the plaintiff to file a pleading in conformance with Rule 1019(a) which sets forth the specific claims against this defendant and lists the specific facts to support such claims.

C. Plaintiff's Claims for Intentional Infliction of Emotional
Distress Should Be Dismissed

In paragraph 15 of the complaint, plaintiff attempts to assert a claim for intentional infliction of emotional distress. The allegations set forth in the complaint fail to establish a *prima facie* case of this tort.

The tort of intentional infliction of emotional distress is defined as follows:

"One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results, for such bodily harm."

Hoy v. Angelone, 720 A.2d 745 (Pa. 1998). In order for plaintiff to state a *prima facie* case of intentional infliction of emotional distress, plaintiff must allege facts which establish extreme or clearly outrageous conduct on the part of the defendant. Id. at 753-754. As the Hoy court noted,

“The conduct must be so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society. Buczek v. First National Bank of Mifflintown, 366 Pa. Super. 551, 558, 531 A.2d 1122, 1125 (1987). Described another way, it has not been enough that the defendant has acted with intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by malice, or a degree of aggravation that would entitle the plaintiff to punitive damages for another tort. *Restatement (Second) of Torts, §46, Comment d*; Dauchen v. Fox, 372 Pa. Super. 405, 412, 539 A.2d 858, 861 (1998). “

Hoy, 720 A.2d at 754. A claim for intentional infliction of emotional distress involves a case “in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and would lead to exclaim “outrageous!” The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions or other trivialities.” Id. at 755. See also Strickland v. University of Scranton, 700 A.2d 979, 987 (Pa. Super. 1997).

There are no facts alleged in the complaint which, even if accepted as true, rise to the level of extreme and outrageous conduct on the part of this defendant as is required to establish a *prima facie* case of intentional infliction of emotional distress. Accordingly, this claim should be dismissed with prejudice.

D. Plaintiff's Claims for Negligent Infliction of Emotional Distress
Should Be Dismissed

A cause of action for negligent infliction of emotional distress can be divided into three categories:

- (1) Where the plaintiff is the direct recipient of the defendant's actions;
- (2) Where the plaintiff is a "bystander" or observer of defendant's behavior upon someone else; and
- (3) Where the plaintiff has been placed in the "zone of danger" because of the actions of the defendant.

Brown v. Philadelphia College, 674 A.2d 1130 (Pa. Super. 1996).

The allegations of plaintiff's complaint do not demarcate under which category of negligent infliction of emotional distress plaintiff wishes to proceed. However, as none of the allegations can be construed to evoke a "zone of danger" being created by this defendant or that plaintiff was a "bystander" of this defendant's negligence, plaintiff's claims will be analyzed through the prism of the "direct recipient" category of negligent infliction of emotional distress.

In those cases where plaintiff is not a "bystander" or has been placed in a "zone of danger" by the defendant's tortious conduct, the basic rule remains that a plaintiff must point toward a direct physical impact by the defendant that caused the emotional distress. Stoddard v. Davidson, 513 A.2d 419 (Pa. Super. 1986); Brown v. Philadelphia College, 674 A.2d 1130 (Pa. Super. 1996).

In Stoddard, the plaintiff motorist brought an action against the second motorist for the intentional and negligent infliction of emotional distress which allegedly occurred when the plaintiff motorist's vehicle ran over a corpse left on the road when from the defendant motorist struck the victim. The defendant argued that the plaintiff was unable to maintain a cause of action based upon a theory of negligent infliction of emotional distress since the facts of the case fell outside of the bystander parameters of Sinn v. Burd and the "zone of danger" context of Niederman v. Brodsky, 261 A.2d 84 (1970). The court agreed with the defendant, citing to the traditional line of cases where plaintiffs have been able to recover for a psychic injury only if they show a "physical impact, however slight." Stoddard, 513 A.2d at 424. Indeed, the court observed that impact remains the basic means to plead the cause of action of emotional distress and, if impact is averred, the requirements of Niederman and Sinn need not be met. Stoddard, 513 A.2d at 421-422. The continued validity of the physical impact rule finds support in a number of other cases as well. Botek v. Mine Safety Appliance Corp., 611 A.2d 1174 (Pa. Super. 1992); Carson v. City of Philadelphia; 574 A.2d 1184 (Pa. Commw. 1990); Brown v. Philadelphia College, 674 A.2d 1130 (Pa. Super. 1996).

Importantly, plaintiff's complaint contains no allegation of physical impact to support his claim.

In conclusion, it is apparent that in reviewing plaintiff's complaint under any theory related to a claim for the negligent infliction of emotional distress, plaintiff has failed to sufficiently plead facts to support such a cause of action or claim. In light of the foregoing, plaintiff has failed to state a cause of action for negligent infliction of emotional distress and these preliminary objections in the nature of a demurrer should, therefore, be sustained and paragraph 15 of plaintiff's complaint should be stricken.

E. Plaintiff's Claims Based on the HIPPA Statute Should
Be Dismissed

In paragraph 12 of the complaint, plaintiff attempts to assert a claim for violation of HIPAA. Pursuant to 42 U.S.C. §1320(d)-6, entitled *Wrongful Disclosure of Individually Identifiable Health Information*, the statute in question creates criminal liability for certain violations of the law. There is no private right of action under HIPAA. Moreover, there are no facts alleged which in any way establish a violation of the HIPAA statute, inasmuch as there are no facts cited that support the allegation that this defendant knowingly violated the statute by disclosing plaintiff's protected healthcare information.

F. Plaintiff's Claim for Punitive Damages Should Be Dismissed

Pennsylvania law provides that punitive damages may be awarded only where "a person's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct and are awarded to punish that person for such conduct." SHV Coal, Inc. v. Continental Grain Co., 526 Pa. 489, 587 A.2d 702 (1991) (citations omitted). Punitive damages will not be awarded where the defendant fails to demonstrate the requisite mental state in the commission of the alleged improper act. Id. In Feld v. Merriam, 506 Pa. 383, 485 A.2d 742 (1984), the Pennsylvania Supreme Court adopted § 908(2) of the Restatement (Second) of Torts which provides, in pertinent

part, that “punitive damages may be awarded for conduct that is outrageous, because of the defendant’s evil motive or his reckless indifference to the rights of others.” The Court further stated that “[t]he state of mind of the actor is vital. The act, or failure to act, must be intention, reckless or malicious.” Feld, 506 Pa. at 396, 485 A.2d at 748.

In the instant case, plaintiff has alleged no facts that could support a finding of outrageous conduct on the part of Susan Manning. Plaintiff’s bare allegations cannot provide any basis for a determination that this defendant acted in an "outrageous" manner. Additionally, the complaint is simply devoid of any facts to support allegations that Susan Manning infringed on the privacy of the defendant. “Wanton conduct requires a state of mind in which the tortfeasor realizes the danger to the plaintiff and disregards it to such a degree that ‘there is at least a willingness to inflict injury, a conscious indifference to the perpetration of the wrong.’” Lewis v. Miller, 543 A.2d 590, 592 (Pa. Super. 1988); Stubbs v. Frazer, 454 A.2d 119, 120 (Pa. Super. 1982). Conduct which suffices to constitute reckless indifference to the rights of others occurs where “the actor knows, or has reason to know, of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act, or fail to act, in conscious disregard of, or indifference to, that risk.” SHV Coal, Inc., 526 Pa. at 494, 587 A.2d at 704. Plaintiff clearly has failed to allege that Susan Manning acted with the state of mind necessary to establish either wanton or willful conduct or reckless conduct.

Punitive damages are specifically designed to punish and deter outrageous conduct. McClellan v. Health Maintenance Organization of Pa., 604 A.2d 1053, 1061 (Pa. Super. 1992). “Thus, a court may not award punitive damages merely because a tort has been committed.” Id., citing Delahanty v. First Pennsylvania Bank, N.A., 464 A.2d 1243, 1263 (Pa. Super. 1983). The non-specific and unsubstantiated allegations brought by plaintiff in his complaint do not indicate any acts or omissions by Susan Manning which warrant damages in the nature of a punishment.

Thus, plaintiff’s claim for punitive damages should be stricken from the complaint.

III. CONCLUSION

For the reasons set forth above, this defendant's preliminary objections should be sustained.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.

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

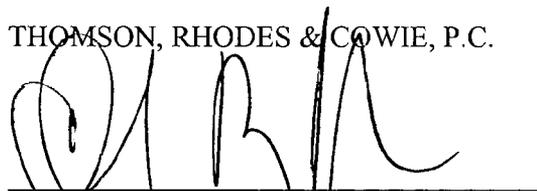
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record by facsimile transmission and via US Mails on this 7th day of December, 2004.

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants

Order

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, on this _____ day of _____, 2005, upon consideration of defendant Susan Manning's preliminary objections, it is hereby ORDERED, ADJUDGED and DECREED that said preliminary objections are hereby SUSTAINED.

BY THE COURT:

_____ J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

AFFIDAVIT OF SERVICE

Code: 007

Filed on behalf 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 ^{6k} ^{NO} ^{cc}
mjl:48/BJ
JAN 28 2005

William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

Before me, the undersigned authority, personally appeared Brad R. Korinski, Esquire, who, being duly sworn, deposes and says that a true and correct copy of the Judge Ammerman's January 19, 2005, Scheduling Order in the above-captioned case was served upon plaintiff's counsel, Derek Cordier, Esquire, 319 South Front Street, Harrisburg, Pennsylvania, 17104-1621, by United States, first class, postage pre-paid mail on January 21, 2005, as shown by the certificate of mailing attached hereto.

THOMSON, RHODES & COWIE, P.C.

Brad Korinski
Brad R. Korinski, Esquire

Sworn to and subscribed before me
this 21st day of January, 2005.

Patricia J. Nicpon
Notary Public

Notarial Seal
Patricia J. Nicpon, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Oct. 28, 2006
Member, Pennsylvania Association Of Notaries

U.S. POSTAL SERVICE		CERTIFICATE OF MAILING	
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE - POSTMASTER			
Received From:			
<u>Brad Korinski, Esq</u>			
<u>Thomson Rhodes & Cowie PC</u>			
<u>Two CHATHAM CTR, 10th FL.</u>			
<u>Pittsburgh PA 15219</u>			
One piece of ordinary mail addressed to:			
<u>Derek Cordier, Esquire</u>			
<u>319 SOUTH FRONT ST.</u>			
<u>Harrisburg Pa 17104-1621</u>			



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

MARK MANNING

vs.

SHIRISH N. SHAH, M.D. and
SUSAN MANNING

:
:
: No. 04-1828-CD
:
:
:

ORDER

AND NOW, this 19th day of January, 2005, it is the Order of the Court that argument on Defendant Shah's Preliminary Objections filed in the above-captioned matter has been scheduled for the 22 day of February, 2005, at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

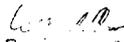
/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

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

JAN 20 2005

Attest.


F. J. [unclear]
Clerk of Courts

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

MARK MANNING

vs.

SHIRISH N. SHAH, M.D. and
SUSAN MANNING

:
:
: No. 04-1828-CD
:
:
:

ORDER

AND NOW, this 19 day of January, 2005, it is the Order of the Court that argument on Defendant Manning's Preliminary Objections filed in the above-captioned matter has been scheduled for the 22 day of February, 2005, at 1:30 P.M. in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

/s/ Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

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

JAN 20 2005

Attest.

W. J. [Signature]
President Judge
Clerk of Courts

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 26th day of

January, 2005:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.

Brad Korinski

David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Shirish N. Shah, M.D., one of the
defendants.

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
vs. : Docket No. 04-1828-CD
SHIRISH N. SHAH, M.D. : CIVIL ACTION
and : LAW
SUSAN MANNING :
Defendants :

NOTICE

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

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

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2642 EXT.5982

FILED

(12)

FEB 10 2005

0/11:55
William A. Shaw

Prothonotary/Clerk of Courts

3 COPY TO ATT

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
 : Docket No. 04-1828-CD
vs. :
 : CIVIL ACTION
SHIRISH N. SHAH, M.D. : LAW
and :
SUSAN MANNING :
Defendants :

AMENDED CIVIL COMPLAINT

AND NOW comes, the Plaintiff, by his attorney, Derek J. Cordier, and files this Amended Complaint.

1. The Plaintiff is Mark Manning, who currently resides at 17 Shaffer Street, Sykesville, Pennsylvania 15865.
2. The Defendant is Shirish N. Shah, M.D., hereinafter, Dr. Shah, and his current place of practice is located at 629 South Main Street, DuBois, Pennsylvania 15801,
3. The Defendant is Susan Manning who currently resides at 218 West 2nd Avenue, DuBois, Pennsylvania 15801.
4. In the Spring of 2002, the Defendant, Susan Manning obtained employment at the office of the Defendant, Dr. Shah.
5. The Defendant, Susan Manning, while working within the scope of her employment with the Defendant Dr. Shah, reviewed the Plaintiff's confidential health records that reveal the HIV status of the Plaintiff. See Transcript of Notes.
6. The Defendant then disclosed to numerous family members and acquaintances the Plaintiff's confidential HIV information that she discovered while employed with Dr. Shah.
7. The Plaintiff's brother, John Manning, learned of the Plaintiff's HIV status from Susan Manning during the Memorial Day weekend of 2002.
8. The Plaintiff, learned of the Defendant, Susan Manning's disclosures through Susan Manning's husband, John Manning, in September of 2003.

9. During the months after September 2003, the Plaintiff also learned that Elizabeth Aravich, Diane Andres, and Melanie Cole, had also been informed of Plaintiff's confidential HIV information by the Defendant, Susan Manning.

10. During conversations with John Manning and Diane Andres, the Defendant, Susan Manning admitted that she learned of the Plaintiff's confidential health information while reviewing the Plaintiff's confidential health records while employed at the Defendant, Dr. Shah's office.

COUNT I.

Mark Manning vs. Shirish N. Shah, M.D.

INVASION OF RIGHT TO PRIVACY

11. Paragraphs 1 through 10 hereof are hereby incorporated herein as if fully set forth.

12. As the employer of the Defendant, Susan Manning, the Defendant, Dr. Shah is responsible for Susan Manning's actions while working within the scope of her employment.

13. As the employer of the Defendant, Susan Manning, Dr. Shah is also responsible for the Defendant, Susan Manning's invasion of Plaintiff's right to privacy, by her disclosure of the Plaintiff's confidential health information to unauthorized third persons.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

COUNT II.

Mark Manning vs. Shirish N. Shah, M.D.

PENNSYLVANIA HIV-RELATED INFORMATION ACT

14. Paragraphs 1 through 13 hereof are hereby incorporated herein as if fully set forth.

15. The Defendant, Dr. Shah violated the Pennsylvania Confidentiality of HIV- Related Information Act by allowing the disclosure of the Plaintiff's confidential HIV information to unauthorized third persons.

16. The Plaintiff has come to fear local Doctors, due to the disclosure, and has been forced to travel to seek medical treatment and relocate his residence.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

COUNT III.

Mark Manning vs. Susan Manning

INVASION OF RIGHT TO PRIVACY

17. Paragraphs 1 through 16 hereof are hereby incorporated herein as if fully set forth.

18. The Defendant, Susan Manning has violated the Plaintiff's right to privacy by disclosing the Plaintiff's confidential health related information to unauthorized persons.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

COUNT IV.

Mark Manning vs. Susan Manning

PENNSYLVANIA HIV-RELATED INFORMATION ACT

19. Paragraphs 1 through 18 hereof are hereby incorporated herein as if fully set forth.

20. The Defendant, Susan Manning, violated the Pennsylvania Confidentiality of HIV-Related Information Act by disclosing Plaintiff's confidential HIV information to unauthorized third persons.

21. The Plaintiff has come to fear local Doctors, due to the disclosure, and has been forced to travel to seek medical treatment and relocate his residence.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of

\$35,000.00 and a jury trial is demanded.

COUNT V.

Mark Manning vs. Susan Manning

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

22. Paragraphs 1 through 21 hereof are hereby incorporated herein as if fully set forth.

23. The actions of the Defendant, Susan Manning have caused serious emotional devastation to the Plaintiff.

24. The Plaintiff has suffered anxiety and depression caused by the disclosure, by the Defendant,
Susan Manning.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

COUNT VI.

Mark Manning vs. Susan Manning

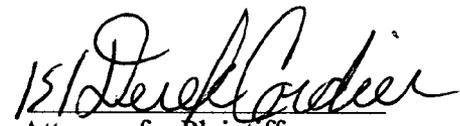
PUNITIVE DAMAGES

25. Paragraphs 1 through 24 hereof are hereby incorporated herein as if fully set forth.

26. Due to the intentionally outrageous conduct on the part of the Defendant, Susan Manning, as
a person put in the position to safeguard the Plaintiff's confidential health related information and who then discloses said information, the Plaintiff is seeking punitive damages.

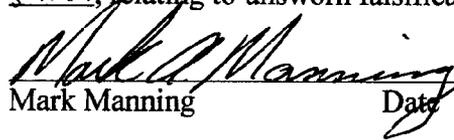
WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

Respectfully submitted by:



Attorney for Plaintiff
Derek Cordier, Esq. #83284
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002

I verify that the statements made in this Amended Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

 2.9.05
Mark Manning Date

GA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

CIVIL DIVISION

Plaintiff,

No. 04-1828-CD

vs.

Issue No.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

**MOTION TO COMPEL RESPONSES TO
THE SECOND SET OF
INTERROGATORIES AND SECOND
SET OF REQUESTS FOR PRODUCTION
OF DOCUMENTS SERVED UPON
PLAINTIFF**

Code: 007

Filed on behalf 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 ^{NO CC}
OK M/11/22/04
FEB 22 2005

William A. Shaw
Prothonotary, Clerk of Courts

MOTION TO COMPEL RESPONSES TO THE SECOND SET
OF INTERROGATORIES AND SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS SERVED UPON PLAINTIFF

NOW COMES, Shirish N. Shah, M.D. and Susan Manning, the defendants, by their attorneys Thomson, Rhodes & Cowie, P.C., and submits the following Motion to Compel Plaintiff's Responses to the Second Set of Interrogatories and Second Set of Requests for Production of Documents Served Upon Plaintiff.

1. This case was commenced by complaint on November 17, 2004. Plaintiff alleges that, sometime in 2002, Susan Manning, then an employee of Dr. Shah, disclosed plaintiff's confidential health information to several individuals, including the fact that plaintiff is HIV-positive. Based upon these purported disclosures, plaintiff has brought civil claims against Dr. Shah and Ms. Manning. Plaintiff has not alleged that Dr. Shah made any disclosure of his medical information whatsoever.

2. Since plaintiff's complaint was completely vague, non-specific and conclusory as to the manner of Ms. Manning's alleged disclosures of plaintiff's health information, these defendants served plaintiff with a Second Set of Interrogatories and a Second Set of Requests for Production of Documents on January 5, 2005. Such discovery is authorized by Rule 4005 and Rule 4009.11 of the Pennsylvania Rules of Civil Procedure.

3. To the date, plaintiff has not responded to the discovery served upon him on January 5, 2005 nor has he filed any objections as to their propriety.

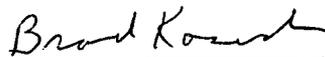
4. By withholding this discoverable information, plaintiff has placed the defendants in the unfair position of having to speculate about their liability and, consequently, has severely prejudiced them in formulating a defense to the very serious allegations lodged against them by plaintiff.

5. Pursuant to Pennsylvania Rule of Civil Procedure 4019, this Court is respectfully requested to enter an Order against the plaintiff, requiring him to set forth full and complete responses to these defendants' Second Set of Interrogatories and Second Set of Requests for Production of Documents within 20-days of the entry of such an Order.

WHEREFORE, these defendants, Shirish N. Shah, M.D. and Susan Manning, respectfully request that this Honorable Court grant their Motion to Compel and enter the attached Order.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for 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 17th day of February, 2005:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, on this 1st day of March, 2005, it is hereby ORDERED, ADJUDGED and DECREED that defendant's motion to compel is GRANTED. Plaintiff shall file full and complete answers to defendant's second set of interrogatories and second set of requests for production of documents within ~~twenty~~ ^{thirty (30)} FJA days or suffer such sanction as this court may impose.

BY THE COURT:

Frederic J. Cummings
 _____ J.

FILED ^{ED}
 03576A 2005 to [unclear]
 MAR 01 2005

William A. Shaw
 Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW on this _____ day of _____, 2005, it is hereby ORDERED, ADJUGED and DECREED that oral argument on defendant's motion to compel is scheduled for the _____ day of _____, 2005, at _____ a.m./p.m. before Judge _____ in Courtroom No. _____ of the Clearfield County Courthouse.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW on this _____ day of _____, 2005, it is hereby ORDERED, ADJUGED and DECREED that oral argument on defendant's motion to compel is scheduled for the _____ day of _____, 2005, at _____ a.m./p.m. before Judge _____ in Courtroom No. _____ of the Clearfield County Courthouse.

BY THE COURT:

_____J.

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

PRELIMINARY OBJECTIONS TO PLAINTIFF'S AMENDED COMPLAINT

Counsel of Record:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

Code: 007

Filed on behalf 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

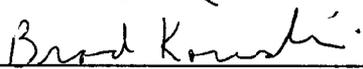
NOTICE TO PLEAD

TO THE PLAINTIFF:

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

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

(412) 232-3400



Brad R. Korinski, Esquire
Attorney for the defendants.

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William A. Shaw
Prothonotary

POS -

**PRELIMINARY OBJECTIONS TO
PLAINTIFF'S AMENDED COMPLAINT**

NOW COME the defendants, Shirish N. Shah, M.D. and Susan Manning, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following preliminary objections to the plaintiff's amended complaint.

1. This case evolves from allegations made by plaintiff that his sister-in-law, Susan Manning, disclosed plaintiff's HIV-positive status to various individuals. Notably, the complaint is silent as to the time, place, context and manner of these purported disclosures.

2. Plaintiff baldly contends that Susan Manning learned of his medical information during the course of her employment with co-defendant Dr. Shah. Dr. Shah had, two years prior to the beginning of Ms. Manning's employment with him in 2002, performed a disability evaluation of the plaintiff at which time Dr. Shah included plaintiff's HIV-positive status as part of plaintiff's medical history.

3. Plaintiff's complaint is totally devoid of any allegation that Dr. Shah negligently, improperly or intentionally caused his medical information to be disclosed. All claims against Dr. Shah are premised solely on the fact that Susan Manning had worked for him.

A. Motion to Strike/Motion for a More Specific Pleading

4. The claims brought by plaintiff hinge upon the information allegedly disclosed by Susan Manning. All of the "facts" which plaintiff avers supports such claims are found in the sparse wording of paragraphs 6-10. Yet, inexplicably given the nature of the claims plaintiff seeks to advance, these keystone paragraphs are woefully barren of any facts concerning the specific circumstances and content of Susan Manning's alleged disclosures of plaintiff's confidential health information.

5. The extremely vague and general allegations set forth in the amended complaint in no way fairly or properly apprises these defendants of specifically how, when and to whom Susan

Manning purportedly disclosed plaintiff's medical information nor does it elaborate upon precisely how, or if, this medical information became a matter of public knowledge. Moreover, as to Dr. Shah, plaintiff has not plead any specific facts to support his contention that Dr. Shah engaged in any harmful or wrongful conduct.

6. Accordingly, plaintiff's complaint fails to comply with the dictates of the Pennsylvania Rules of Civil Procedure, as well as the dictates of the Pennsylvania Supreme Court in the decision of Connor v. Allegheny General Hospital, 461 A.2d 66 (1983).

WHEREFORE, these defendants request that this Honorable Court strike the plaintiff's complaint for failure to comply with Pennsylvania Rule of Civil Procedure 1019(a).

B. Demurrer to Plaintiff's Claim of Invasion of Right of Privacy
Against Susan Manning - Count III of Amended Complaint

7. The factual basis for Count III of plaintiff's amended complaint is set forth in paragraphs 6 through 10. Paragraph 6 alleges that Susan Manning, "disclosed to numerous family members and acquaintances" plaintiff's HIV information. Yet, in the amended complaint, the plaintiff only identifies four persons (one of whom is plaintiff's husband) who apparently comprise this class of "numerous friends and acquaintances." Plaintiff never specifically identifies when, where and how Susan Manning communicated his HIV information to these individuals. Plaintiff never alleges that his HIV information was made a matter of public knowledge.

8. An action for invasion of privacy is actually comprised of four distinct torts: (1) intrusion upon seclusion; (2) appropriation of name or likeness; (3) publicity given to a private life and (4) publicity placing the person in a false light. Marks v. Bell Tel. Co. of Pa., 331 A.2d 424 (Pa. 1975). While plaintiff has not demarcated which theory of the four theories under which his claim falls, given the factual milieu of the amended complaint, it is apparent that plaintiff is contending that Susan Manning invaded his privacy by giving publicity to his private life.

9. As for the elements of an invasion of privacy claim for publicity given to a private life, Pennsylvania courts have adopted the definition set forth in the Restatement (Second) of Torts §652D, which are: (1) publicity, given to; (2) private facts; (3) which would be highly offensive to a reasonable person and (4) which are not of legitimate public concern. Harris by Harris v. Easton Pub. Co., 483 A.2d 1377 (Pa. Super. 1984). The element of "publicity" requires that the matter be made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. Restatement (Second) of Torts § 652D, comment A. Disclosure of information to only one person is insufficient. Nagy v. Bell Tel. Co. of Pa., 436 A.2d 701 (Pa. Super. 1981). Likewise, disclosure to only four persons has been found insufficient. Vogel v. W.T. Grant Co., 327 A.2d 133 (Pa. 1974).

10. To state a *prima facie* case of invasion of privacy, plaintiff must allege facts that establish the defendants "publicized" his HIV information.

11. Even if the all the facts in the amended complaint are accepted as true, they in no way establish that plaintiff's HIV information was made public. Not only does plaintiff's complaint not aver that the public-at-large became aware of this information, the amended complaint specifically states that Susan Manning communicated this information to only four persons. In no way do the facts plead by the plaintiff establish that his HIV information was "made public." Accordingly, plaintiff cannot set forth a claim for invasion of privacy against Susan Manning.

WHEREFORE, these defendants respectfully request that this Honorable Court sustain their preliminary objection and dismiss Count III - invasion of privacy (Susan Manning) - of plaintiff's amended complaint.

C. Demurrer to Plaintiff's Claim of Negligent Infliction of Emotional Distress Against Susan Manning - Count V of Amended Complaint

12. As is true of the amended complaint as a whole, plaintiff's claim for negligent infliction of emotional distress is notably non-descriptive. Although not specifically set forth by the language of the amended complaint, it is presumed that plaintiff's claim is premised upon his being a "direct recipient" of the alleged negligently inflicted emotional distress.

13. This claim fails for the reason that plaintiff has not plead any direct physical impact that caused the distress, nor has plaintiff plead that he stood in the "zone of danger of such negligent conduct. Stoddard v. Davidson, 513 A.2d 419 (Pa. Super. 1986); Brown v. Philadelphia College, 674 A.2d 1130 (Pa. Super. 1996). Simply put, plaintiff has not averred sufficient facts to support a claim for negligent infliction of emotional distress under Pennsylvania law.

WHEREFORE, these defendants respectfully request that this Honorable Court sustain their preliminary objections and dismiss plaintiff's claim for negligent infliction of emotional distress as contained in Count V of the amended complaint.

D. Demurrer to Plaintiff's Claim of Invasion of Privacy
Against Shirish N. Shah, M.D. - Count I

14. In count I of the amended complaint, plaintiff attempts to assert an invasion of privacy claim against Dr. Shah based not on the conduct of Dr. Shah, but on the premise that Dr. Shah employed Susan Manning during the time she allegedly learned of plaintiff's HIV information. There are no allegations in the amended complaint that Susan Manning disclosed the plaintiff's HIV information during the course and scope of her employment with Dr. Shah or that Dr. Shah aid or abetted in such disclosure.

15. As noted above, plaintiff cannot make a *prima facie* case of invasion of privacy, because he has not plead facts that establish the defendants "publicized" his HIV information.

16. Even if plaintiff can support a claim for invasion of privacy, Dr. Shah cannot be liable for it, since, except in special circumstances, an employer is not deemed vicariously liable for

the intentional acts of its employees. R.A. v. First Christ Church, 748 A.2d 692, 699 - 700 (Pa. Super. 2000).

17. Here, plaintiff has plead that Susan Manning engaged in "intentionally outrageous conduct" (§ 26 of amended complaint). There are no facts alleging that this intentional conduct - the disclosure of plaintiff's HIV information - occurred in the course or scope of Susan Manning's employment duties or that Susan Manning was otherwise authorized to engage in such conduct. Accordingly, Dr. Shah cannot be vicariously liable for any invasion of privacy claim.

WHEREFORE, these defendants respectfully requests that this Honorable Court sustain its preliminary objections and dismiss plaintiff's claim for invasion of privacy against Dr. Shah as set forth in Count I of the amended complaint.

E. Demurrer to Plaintiff's Claim of Violation of
HIV-Related Information Act Against Dr. Shah - Count II

18. In Count II of the amended complaint, plaintiff seeks to bring a claim against Dr. Shah under the Confidentiality of HIV-Related Information Act, 45 Pa C.S. § 7601, *et seq.* Inexplicably, plaintiff does not set forth any facts as to how Dr. Shah violated this statute nor does plaintiff cite toward any portion of the statute of which Dr. Shah is in violation. Rather, plaintiff's claims against Dr. Shah are again premised on vicarious liability for the alleged conduct of Susan Manning.

19. 45 Pa. C.S. § 7610 provides that, "Any person aggrieved by violation of this act shall have a cause of action against **the person who committed such violation ...**" (emphasis added). Importantly, Section 7610 does not provide for the imposition of vicarious liability. Moreover, plaintiff has not averred any facts to support that Dr. Shah committed any violation of the HIV-Related Information Act.

WHEREFORE, these defendants respectfully request that this Honorable Court sustain its preliminary objections and dismiss plaintiff's claim against Dr. Shah for violation of the Confidentiality of HIV-Related Information Act as set forth in Count II of the amended complaint.

F. Demurrer to Plaintiff's Punitive Damages Claim

20. In count VI of the Complaint, plaintiff asserts that he is seeking punitive damages against Susan Manning.

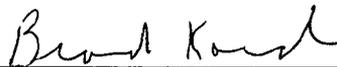
21. Under well-established legal precedent, punitive damages may only be awarded in Pennsylvania where, "a person's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct" and are awarded to punish that person for such conduct. SHV Coal, Inc. v. Continental Grain Co., 587 A.2d 702 (Pa. 1991).

22. Here, plaintiff has alleged no facts to possibly support a finding of outrageous conduct on the part of Susan Manning. Rather, plaintiff has failed to plead any facts indicative of the circumstances under which the alleged improper disclosures were made. Having utterly failed to meet his burden to aver specific facts to support this claim, plaintiff cannot establish a right to punitive damages in this factual and contextual vacuum.

WHEREFORE, these defendants respectfully request that this Honorable Court sustain their preliminary objections and dismiss plaintiff's claim for punitive damages against Susan Manning as set forth in Count VI of the amended complaint.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the PRELIMINARY OBJECTIONS TO THE AMENDED COMPLAINT has been served upon the following counsel of record by facsimile transmission and via US Mails on this 28th day of February, 2005.

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants

Order

THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, on this _____ day of _____, 2005, upon consideration of defendants' preliminary objections to plaintiff's amended complaint, it is hereby ORDERED, ADJUDGED and DECREED that said preliminary objections are hereby SUSTAINED.

BY THE COURT:

_____ J.

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
 : Docket No. 04-1828-CD
vs. :
 : CIVIL ACTION
SHIRISH N. SHAH, M.D. : LAW
and :
SUSAN MANNING :
Defendants :

PLAINTIFF MARK MANNING'S ANSWERS TO
DEFENDANTS' INTERROGATORIES

Plaintiff Mark Manning answers the first set of interrogatories put forth by the defendants as follows:

Answer to Interrogatory No. 1: Plaintiff's date of birth is 4-23-63. He was born in Lewistown, PA. His social security number is 183-54-9332.

Answer to Interrogatory No. 2: Plaintiff received his high school diploma from Dubois Area High School, Dubois PA, 1981.

Answer to Interrogatory No. 3: Plaintiff's place of residence, to the best of his recollection, since 1992: a) with parents at RD4 Box 123B, Dubois PA (1992) b) Broad Street Rockway, PA with ex-wife Beverly Myrtle c) Second Avenue Rockway, PA with ex-wife Beverly Myrtle d) back to parents in 1997 with ex-wife e) RD2 Box 158A Reynoldsville, PA with ex-wife f) back to parents 2000-2001 g) 17 Shaffer Street Sykesville, PA 2002 until present. In 1995/96 Plaintiff spent 60 days in jail in Rockway, PA.

Answer to Interrogatory No. 4: Plaintiff's wife is Adriene Manning; married August 6, 2003 in Dubois PA.

Answer to Interrogatory No. 5: Yes.

Answer to Interrogatory No. 6: Plaintiff's ex-wife is Beverly Myrtle. They were married in August of 1992 in Dubois PA. They were divorced in 1999.

Answer to Interrogatory No. 7: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

Answer to Interrogatory No. 8: Yes

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William A. Shaw
Prothonotary/Clerk of Courts

Answer to Interrogatory No. 9: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 10: (a and b) The Plaintiff was charged with Corruption of Minors in 1986 in Dubois and Indecent Assault in 1995 both in Rockway. (c) The district attorney in the respective counties. (d) The corruption of minors charge resulted in a conviction; the Indecent Assault charge was plead out. (e) Plaintiff received a sentence of 1.5-5 years for his corruption of minors charge (f) no (g) The plea bargain on indecent assault was 60 days to 23.5 months. All remaining information that was not answered is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the information to be provided is irrelevant to the case at hand.

Answer to Interrogatory No. 11: No

Answer to Interrogatory No. 12: Plaintiff is treated at the Dubois RMC Hospital in Dubois, PA.

Answer to Interrogatory No. 13: Plaintiff answers that, to the best of his recollection, most visits were out-patient. Plaintiff cannot recall all exact dates and reasons; therefore this part of the interrogatory is objected to on the basis that it is unduly burdensome. Plaintiff has not been to the hospital on more than 10 times in the last 10 years; this does not include blood work for which there were numerous visits to the hospital.

Answer to Interrogatory No. 14: Plaintiff's doctors, to the best of his recollection are (city is provided if Plaintiff could recall, not specific addresses; unduly burdensome): Dr. Roger Anderson; Dr. Coppes; Dr. Doughty; Dr. Rosco; Dr. Shaw; Dr. Moclock; Dr. Richard Johnson; Clearfield(current); Dr. Timothy Phillips; Clearfield (current); Dr. Malek; Dr. Carol Encarnacion; Dr. Schacter; Dr. Tuesday Stainbrook; Clearfield (current); Dr. Cherry; Dr. Orenkauski; Dr. Eric Lundgren; Dr. Iliuzzi; Dr. Palmer (ER); Dr. Barber; Dr. Turkin, and Dr. Shah **Names of doctors may not be correctly spelled since Plaintiff answered through his recollection of the last 10 years.

Answer to Interrogatory No. 15: Plaintiff's current doctors are: Dr. Stainbrook – treats for HIV; Dr. Johnson; plaintiff's family doctor; Dr. Phillips – treats plaintiff's colon. Plaintiff consulted Dr. Shah for his HIV. Plaintiff could not remember anything else and there are too many dates and times to remember. The remaining part of the interrogatory is objected to on the basis that it is overly broad and unduly burdensome.

Answer to Interrogatory No. 16: Plaintiff's attorney received the medical report of Defendant Dr. Shirish Shah dated November 7, 2000 assessing Plaintiff Mark Manning's evaluation for disability.

Answer to Interrogatory No. 17: All medical records in our possession are available to you for your inspection and copying.

Answer to Interrogatory No. 18: (a) Plaintiff had to explain to family members his illness, he is seeking treatment in another town, he is looking to relocate now because of this disclosure. Plaintiff has confined himself to his residence now more than ever and is afraid to be confronted by his neighbors. (b) No, plaintiff did not.

Answer to Interrogatory No. 19: answer was no to 18(b)

Answer to Interrogatory No. 20: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

** Answer to Interrogatory No. 21: The date that Mark Manning was treated by or examined by Dr. Shirish Shah, M.D. was October 2, 2000. The reason for the examination was a referral by the Bureau of Disability of Determination for Mark Manning to receive social security disability benefits.

Answer to Interrogatory No. 22: Plaintiff was not.

Answer to Interrogatory No. 23: Plaintiff has been confined to his home more than usual, but he is not confined there because of a physical ailment. He remains there because of emotional distress and embarrassment.

Answer to Interrogatory No. 24: No

Answer to Interrogatory No. 25: Answer was not in the affirmative.

Answer to Interrogatory No. 26: No

Answer to Interrogatory No. 27: Answer was not in the affirmative.

Answer to Interrogatory No. 28: Just plaintiff's current doctors and plaintiff's wife knew.

Answer to Interrogatory No. 29: All current doctors know because of Plaintiff's treatments and testing. Wife knows because she was given plaintiff's HIV results.

Answer to Interrogatory No. 30: Disclosures made by Susan Manning about Mark Manning's healthcare information is as follows:

- a. Susan Manning to her husband John Manning in the Spring of 2001. John Manning, 15 ½ East Second Avenue, DuBois, PA 15801; phone 814-375-0810. Approximately two weeks after Susan started working at Dr. Shah's office. The disclosure took place in Susan and John's home. Susan came home from work and told John he would never guess who was a patient at Dr. Shah's. John said he did not know. Susan said one of his brothers, Mark. John asked her what the big deal was. Approximately one week later, Susan again

said to John that he will never believe what his brother Mark is seeing Dr. Shah for. Susan asked John if he knew if anything was medically wrong with Mark. John said not other than his back. Susan replied that Mark was diagnosed with Hepatitis B. John told Susan it was none of her business and has no business spreading around the information. Susan replied that it was her business because it's her office. Mark Manning was not present during this disclosure.

- b. Memorial Day Weekend 2002 at the campground at Treasure Lake in Dubois, PA. John and Susan Manning were camping with their family and friends. John said they were sitting around the campfire when Susan started talking about Mark and blurted out that "Mark has AIDS". This was the first time John heard that Mark had AIDS from Susan and they got into an argument about the accusation. John told Susan to keep her mouth shut and that she has no proof. Susan replied that yes, she does have proof. Also present during these disclosures were Melanie Cole and Rita (Lockwood) Meglio (Adriene Manning's ex-husband's fiancée). See the disclosures made to Melanie Cole for details. Mark was not present at the time this disclosure was made.
- c. At the Dubois Regional Medical Center in October of 2002; disclosure made to John Manning and Rita Gutowski. Kyle Manning, John and Susan Manning's son, was in the hospital. Mark Manning, Adriene Manning, and Amber Manning went to the hospital to visit Kyle. When they arrived, John took them into a room next to Kyle's and told them to wait there. John left and went to Kyle's room. At this point the head nurse, Rita Gutowski was called into Kyle's room. A conversation then took place whereby Susan Manning told Rita Gutowski that when Mark, Adriene and Amber arrive, she (Rita) is to call security to have them removed and that they are not allowed in Kyle's room. Ms. Gutowski asked why and Susan replied because Mark cannot be around Kyle. He has AIDS. This was the second time that Susan had said Mark has AIDS in front of her husband John Manning. Also present during this disclosure were Melanie and Randy Cole. Mark Manning was not in the room but was in a room next door in the hospital.
- d. Disclosure made to Elizabeth Aravich (Mark and John Manning's sister) of 344 South Oakland Street, Mesa, Arizona 85206; phone 480-275-7545. Ms. Aravich is unsure of the date the disclosure took place but it was approximately one week after Kyle Manning's funeral. After Kyle's funeral she would go over to John and Susan Manning's house on a regular basis to see if they needed anything and to see how the other boys were doing. During one visit, Susan and Elizabeth were having a conversation and Susan said to Elizabeth, "The reason I did not allow Mark and Adriene into the funeral home is because Mark has AIDS and my kids were not going to be around him to catch it." "Do you know anything about Bev (Mark's ex-wife) and the sickness she has and the weight she has lost. She has AIDS and Mark got it off of her." Mark Manning was not present when this disclosure was made.
- e. Disclosure made to Diane Andres of 215 Treasure Lake, DuBois, PA 15801; phone 814-371-6515. A conversation with Diane and Susan Manning took place in the Spring of 2002 at Susan's house in the kitchen. Prior to Diane's

private conversation with Susan, Diane said there was a lot of negative conversation about Mark taking place. Susan told Diane during their conversation that she would allow Adriene around, but because she is with Mark she won't allow it anymore. Diane asked Susan what her problem was and Susan replied that she did not want Mark around Kyle because she (Susan) found out through his medical records at Dr. Shah's office that Mark has AIDS and that he is not a regular patient there. Diane was shocked by this information given to her by Susan Manning and all she could think of is if Adriene was sick too. Mark Manning was not present during this disclosure.

- f. Disclosure made to Melanie and Randy Cole of Treasure Lake Road, DuBois, PA 15801; phone 814-371-0165. Approximately October of 2002, Susan Manning called Melanie Cole at work from where Susan was working. Susan told Melanie that she looked in Mark's medical file and said it was bad and serious and it was not safe for the kids to be around Mark. Susan proceeded to tell Melanie that Mark and Adriene are not allowed to visit Kyle in the hospital and that Kyle cannot be exposed. Mark Manning was not present during this telephone conversation between Susan Manning and Melanie Cole. Melanie and Randy were also present during the disclosure to Rita Gutowski in Kyle's hospital room. Melanie recounts that she was in the room when Susan asked Rita Gutowski to call security to have Mark and his family removed. Melanie was also present for the campfire disclosure Memorial Day weekend of 2002 whereby Susan Manning was talking to Rita (Lockwood) Meglio (who is Adriene Manning's ex-husband's fiancée). Susan was telling Rita that she should be tested for AIDS before she and Adriene's ex-husband got married.

All of the preceding information can be found in the attached affidavit dated January 17, 2005.

Answer to Interrogatory No. 31: The answer to this question is fully described in interrogatory number 30. In short, all previously mentioned parties in interrogatory answer 30 were told Mark Manning has AIDS.

Answer to Interrogatory No. 32: In general, plaintiff has incurred expenses for traveling out of town to seek doctors, including dentists, he has confined himself to his home, has undergone emotional distress regarding his neighbors and their knowledge of his disease, plaintiff has been unable to spend much time in Dubois which is where family is, and attorney's fees.

Answer to Interrogatory No. 33: None

Answer to Interrogatory No. 34: Plaintiff is not currently employed. His last date of employment was in April 1999; he is self-employed as an independent contractor in

construction/salvaging/running equipment/welding/cutting/fabricating. Plaintiff has been self-employed since 1994 (until 1999).

Answer to Interrogatory No. 35: Plaintiff was self-employed. The rest of the interrogatory is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 36: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 37 thru 39: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 40: Yes, plaintiff has. The rest of the interrogatory is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

Answer to Interrogatory No. 41: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 42: No, he has not.

Answer to Interrogatory No. 43: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 44: Plaintiff has not received any military disability benefits.

Answer to Interrogatory No. 45: Plaintiff has been receiving disability payments from the United States Government since 2001. The rest of the interrogatory is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 46: Objection on the basis that the interrogatory is overly broad and not specific.

Answer to Interrogatory No. 47: See attached statement dated January 17, 2005. This statement was recorded by Mark Manning. All those who contributed to the statement are named with their address and phone numbers.

Answer to Interrogatory No. 48: None

Answer to Interrogatory No. 49: Plaintiff has a copy of Defendant's proof of employment paid by Dr. Shah. Document is by the doctors who work with Dr. Shah and Dr. Shah regarding a decision for a request of medical records with social security. Please see attached copy dated April 2002 – December 2002.

Answer to Interrogatory No. 50: See attached statement dated January 17, 2005

Answer to Interrogatory No. 51 and 52: None.

**Answer to Interrogatory No. 53: See attached statement dated January 17, 2005

**Answer to Interrogatory No. 54: See attached statement dated January 17, 2005

**Answer to Interrogatory No. 55: See attached statement dated January 17, 2005

Answer to Interrogatory No. 56: Each person in the statement was told by Susan Manning that Mark Manning has AIDS.

**Answer to Interrogatory No. 57: At this time, no one.

**Answer to Interrogatory No. 58: not applicable

**Answer to Interrogatory No. 59: not applicable

**Answer to Interrogatory No. 60: none

Answer to Interrogatory No. 61: No, Plaintiff has not.

Answer to Interrogatory No. 62: No, Plaintiff has not.

Answer to Interrogatory No. 63: Relating to medical bills: (a) Medicaid and Medicare (b-g) too numerous to list; Objection on the basis that this part of the interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

Answer to Interrogatory No. 64: None

Answer to Interrogatory No. 65: At the end of the summer in 1996 by Dr. Mulligan (ex-wife's doctor) at Hahne Cancer Center in Dubois. Actually, the test was done by Dr. Mulligan but plaintiff's wife told him the HIV results. Plaintiff's current doctors are aware and have been treating him for it.

Answer to Interrogatory No. 66: Already answered in interrogatory number 30 and see attached statement dated January 17, 2005.

Answer to Interrogatory No. 67: Objection on the basis that the interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 68: None

Answer to Interrogatory No. 69: In the presence of the entire funeral home and all those present, plaintiff was not aware of Susan's disclosures at this point. Susan Manning told plaintiff's sister he had AIDS (did not say HIV) and therefore was not allowed to go in and see his nephew that died. All family members and family friends were present and witnessed this occurrence. Also, Susan Manning told plaintiff's youngest daughter Amber, who at the time was 10 years old, she wasn't welcome at the funeral. Amber told the plaintiff this information. Therefore, this has also had an effect on plaintiff's immediate family members.

Answer to Interrogatory No. 70: Objection on the basis that the interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 71: Kelli J. Brownwell, Esquire; Derek J. Cordier, Esquire; Plaintiff Mark Manning.

The Law Offices of Derek J. Cordier
and Kelli J. Brownwell

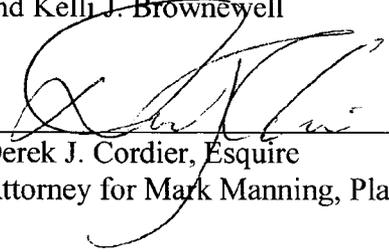
By Kelli J. Brownwell, Esq.
Kelli J. Brownwell, Esquire
Attorney at Law

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 21st day of March, 2005:

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

The Law Offices of Derek J. Cordier
and Kelli J. Brownewell



Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

Interview with Mark Manning: 2/10/04

- Mark saw Dr. Shah as part of his Social Security application in 2000. Mark disclosed his HIV status and how he acquired the disease as part of his consultative exam.
- Sue Manning, Mark's former Sister-in-Law, got a job with Dr. Shah in Spring 2002. Looking through Dr. Shah's patient records she finds Mark's file and discovers his HIV status.
- John contacted Mark and stated that he heard he was Hepatitis positive. John further mentioned that this was confirmed by a blood test. Mark did not respond the comment and changed the subject.
- Some time between August and October, 2002, Mark, Adrienne (his wife) and daughter went to see Kyle, Mark's nephew, at Dubois Regional Medical Center. Sue and Rita Gutkowski, Sue's friend and the nurse at DRMC, informed them that they were not allowed to see Kyle because he is very susceptible to infection. However, other family members were allowed to visit with Kyle. Mark also mentioned that he was told something to effect of Kyle is receiving a blood transfusion and is therefore more susceptible to infection than normal.
- Kyle did spend some time at home during his battle with leukemia. During that time he has a home health aid, Debbie Kirk. Ms. Kirk, according to Mark, was ordered by Sue to not allow Mark and his family to visit Kyle at home.
- In November, 2002, Mark and his family went to Kyle's wake at Monee Yarger Funeral Home (sp). While in line to view the body, Lamar, an employee of the funeral home pulled them from the line and told them that "the mother [Sue] has reasons" for not allowing them to view the body.
- Mark's father asked Sue why Mark was not allowed to view the body. She responded by stating that he should speak to his daughter, Mark's sister, Liz. Mark recalled this anecdote to indicate that Sue has disclosed to Mark's family.
- Rita Gutkowski, was also involved in the funeral home incident but Mark was unclear about how she was involved
- On February 7, 2004, Mark spoke with John about his medical condition. He disclosed that he is HIV+. While John did not have an overtly negative reaction he was clearly nervous as he began chewing on the metal tab of his can of beer.
- Mark lives in a small town of about 5,600 people.
- He longer feels comfortable in the town and seeks medical treatment elsewhere. Also, his wife is experiencing some of the backlash and now has to seek employment in neighboring towns
- As a result of Sue's behavior, Brandy, Mark's oldest daughter, has not spoken to Mark since Kyle's funeral in November, 2002.

Interview with John Manning: 2/11/04

- During Sue's first week at work she came home and told John that Mark his Hepatitis positive.
- At that same time, Sue was telling other people Mark has AIDS. John heard this from the other people Sue was telling about Mark's medical history.
- In the Summer, 2002, John and Sue were at a campsite and Sue told everyone that Mark has AIDS. Mark mentioned this incident too but it is unclear from the notes if he witnessed the disclosure or if he heard about it from his brother, John.
- In late January, 2004, Sue was transferred to a different office because Dubois Regional Medical Center bought Dr. Shah's old practice some time in January, 2003.
- John stated that Sue did not like Mark because he previously spent five years in prison on child molestation charges. Mark HIV+ status and his criminal record were the reasons Sue did not want Mark around their three children, Corey, Joshua and Kyle.
- Adrienne, Mark's wife, and Sue were very close friends until she began dating Mark. Once they began dating the relationship between the two began to sour.
- John stated that he knows people treat him differently now and he believes it is because they know about this HIV status and not because of his criminal record
- According to John, Dr. Shah explained to Sue how cancer spreads to educate her about how to assist in Kyle's care. However, he did not know that Sue was keeping people out on the basis of their HIV status nor did he know about the disclosure.
- John also mentioned that Kyle and Theresa Ball were very close and Sue would keep her away from him because she was jealous of their relationship. It is unclear from the notes how they came to know each other and Theresa's HIV status.
- Debbie Kirk, Kyle's home health aid, was on direct orders not to let Mark and his family visit with Kyle because of their health
- John stated that there are many witnesses that overheard Sue talking about Mark's HIV status.
- John was unsure if anyone else in his family heard about Mark's HIV status from Sue other than John and Liz
- John confirmed that where Mark lives is a very small rural town where very few people are educated about HIV/AIDS and was surprised that people are holding it against him.
- As for John's relationship with Sue, they are currently in the middle of a divorce which began when Sue made a scene at their home in April, 2003, announcing that their marriage is over.
- John moved out of the house in July, 2003

January 17, 2005

Dear Derek,

Please find enclosed all documentation of the conversations of the witnesses that are per say on our side. You will also find all names, addresses, phone numbers of the witnesses we believe were also told of the outlandish comment that would be on Sue's side per say.

We do know that Sue was employed at Dr Shah's office in the early Spring of 2001 until August of 2002. Dr Shah's office was bought out by DuBois Regional Medical Center in the beginning of 2004. The buy out may have started when Sue was employed there but it became final in 2004.

John Manning
15 ½ East Second Avenue
DuBois, PA 15801
(814) 375-0810

CONVERSATION:

John: Approximately two weeks after Sue started working at Dr Shah's office, (Spring of 2001) Sue came home from work and said to me:

Sue: "You will never guess who is a patient at Dr Shah's"

John: "I don't know"

Sue: "One of your brother's and you will never guess which one. Your brother Mark"

John: "What's the big deal?"

Approx. One week later

Sue: "You will never guess what your brother Mark is seeing Dr Shah for". Do you know if there is anything medically wrong with Mark?"

John: "No, other than his back".

Sue: "He was diagnosed with Hepatitis B".

John: "It's none of your business, and you have no business spreading this around".

Sue: "Yes I do, it is my office".

MEMORIAL DAY WEEKEND 2002 at the campground at Treasure Lake, DuBois PA, John, Sue and family were camping with their friends. John said they were sitting around the campfire .

CONVERSATION:

John: Sue was talking about Mark and blurted out "Mark has AIDS". This is the first time I heard of this from Sue. Sue and I got into an argument over this accusation.

"Sue keep your mouth shut, you have no proof".

Sue: "Yes I do".

DUBOIS REGIONAL MEDICAL CENTER OCTOBER 2002

John and Sue's son Kyle was in the hospital at this time, This is when me, Adriene and my daughter Amber went to the hospital to visit Kyle. When we arrived John took us to a room next to Kyle's and said wait here. He left and went into Kyle's room. At that time Rita Gutowski (head nurse) was called into Kyle's room.

CONVERSATION

Sue: "When Mark, Adriene and Amber get here I want you Rita to call Security and have them removed. They are not allowed in Kyle's room".

Rita; "Why?"

Sue: "Because Mark cannot be around Kyle. He has AIDS".

John: "This is the second time I heard Sue say this in front of me."

Elizabeth Aravich (Mark and John's sister)
344 South Oakland Street
Mesa, Arizona 85206
(480) 275-7545

CONVERSATION

Elizabeth: "After Kyle's funeral I would go to John and Sue's house on a regular basis to see if

they needed anything and to see how the other two boys were doing. Approx one week after the funeral I visited Sue at her home.

Sue: " The reason I did not allow Mark and Adriene into the funeral home is because Mark has AIDS and my kids were not going to be around him to catch it". "Do you know anything about Bev,(Mark's ex-wife) and the sickness she has and the weight she has lost, she has AIDS and Mark got it off of her?".

At the funeral home when we got taken out of the viewing line Mark called his immediate family into one of the back rooms that the workers took us to. Mark told his family that at the request of the family Adriene and I are not allowed to see Kyle.

Elizabeth: " Sue started yelling at me saying"

Sue: "Being that the family sided with Mark and Adriene and went back into the room to see them, my kids do not need to have any contact with the family".

Diane Andres
215 Treasure Lake
DuBois PA 15801
(814) 371-6515

Diane: " This conversation took place in the Spring of 2002 at Sue's house in the kitchen. There was a lot of negative conversation about Mark prior to my conversation with her privately".

Sue: "I would allow Adriene around but being that she is with Mark I won't allow it anymore".

Diane: "Sue, What's your problem?"

Sue: "I don't want Mark around Kyle because I found out through his medical records at Dr Shah's office that Mark has AIDS". "He is not a regular patient there".

Diane: "I was shocked at this comment from Sue, and all I could think of was is Adriene sick?"

Melanie and Randy Cole
Treasure Lake Road
DuBois PA 15801
(814) 371-0165

Melanie: "Randy and I have the same information". "My conversation took place over the phone. Sue called me at my work place from her work place approx October 2002.

Sue: "I looked into Mark's medical file and said it was bad and serious and it was not safe for the kids to be around Mark", "Mark and Adriene are not allowed to visit Kyle in the hospital, Kyle cannot be exposed".

Melanie and Randy were in Kyle's room when Adriene and I arrived at the hospital with Amber.

Melanie: "Randy and I were in the hospital room when Rita Gutowski was called in and told to have security remove Mark and Adriene".

Melanie: "I remember a prior conversation at the campground Memorial Day Weekend 2002 between Sue and Rita (Lockwood) Meglio, Adriene's ex-husband's new wife". Sue was telling Rita to be tested for AIDS before her and Adriene's ex-husband got married".

John said that Olivio and Rita Meglio were tested at the DuBois Regional Medical Center.

CONVERSATION

Melanie: This conversation took place at the campground at Treasure Lake in the presence of Sue and her boyfriend Marc Gelfand." In August of 2004 Mark and John's nephew got married, (August 8,2004) in Lewistown. Joshia(John and Sue's oldest boy) went with John to the wedding". "Sue was upset that Joshia was going, and I asked why, there's no reason he cannot be with his family?"

Sue:"You know why Melanie, I told you before".

Melanie: "Sue I don't know what you are talking about".

Sue: "Yes you do, Mark was charged with child molestation".

Melanie said she never heard of this before. She said she grew up in DuBois and never heard anyone talk of this..Melanie said she then put two and two together and realized that Sue tried to confuse me about the prior conversation over the phone when she called me at work and never said one word about Mark's past.

These are the testimonies from our witnesses. The questions we have are:

1. How did Sue know about Mark and Hepatitis B? Mark got tested for Hepatitis at DRMC.
2. How did Sue know about Mark's ex-wife Bev without looking into Mark's file and seeing it

on his medical history.

3. We want to know who the member of the family is that Sue said told her that Mark was HIV positive. There was absolutely no member of the family or any persons with any knowledge of Mark's health whatsoever in this town other than DuBois Regional Medical Center and Dr's which includes Dr Shah as a result of his Social Security evaluation in November? of 2000.

4. Mark is not bound by any Megan's Law, reporting to police of his whereabouts at any time.

As far as Mark being ostracized from the family, this is false and a means of Sue trying to use my past of 10 years ago to cover up her own actions of revealing confidential information to the public at her own discretion and using medical facilities to do so. As there was absolutely no threat to Sue's children any family at any time.

5. By Sue bringing up my past which has nothing to do with her or her family why is she defaming me all the time, when she can be sued for defamation of character on both accounts of her actions.

6. I have fully paid my debt to society years ago and today I have physical custody of my daughter Amber which has been granted to me and there is no threat of my past towards Sue and her family, These lawyers should not be taking pop shots below the belt. I can prove my status with the courts when this case goes to court which I hope will. There was never any reference made to any of the witnesses at any time of this matter.

7. My past has nothing to do with depression or anxiety, or humiliation. This all stems from my health and how I became HIV positive and the medications I am on which are very toxic.

8. The only public humiliation I feel is that my medical history has been broadcasted to the public which is very detrimental to my well being.

9. I have overwhelming proof and witnesses to these accusations in which I had to seek medical treatment in another town.

All of our witnesses have agreed to speak with you as to any additional information or questions you may have for them. There is a possible major witness which worked in the office with Sue that she may have told also, her name is Charlene. We do not know her last name, Sue had her transferred out possibly to another office in the hospital.

Below is a list of possible hostile witnesses (Sue's side) that have pertinent information.

1. Olivio and Rita Meglio
131 Evergreen Street
DuBois PA 15801
(814) 375-4994
2. Deborah Kirk
William Penn Drive
DuBois PA 15801
(814) 375-1218
3. Rita Gutowski
217 North Third Street

DuBois PA 15801
(814) 371-8667

4. Jen Gutowski
552 Locust Street
DuBois PA 15801
(814)371-3314

Thank You,
Mark Manning
1.18.05

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 6-17-02
 EMP. NAME SUSHMA MATHUR
 REGULAR HOURS 64.00
 OVERTIME HOURS 0.00
 TOTAL EARNINGS 512.00
 F.I.C.A. TAX WITHHOLDING 34.17
 MEDICARE TAX WITHHOLDING 29.26
 FED. WITH HOLDING TAX 51.20
 STATE WITH HOLDING TAX 14.37
 TOTAL DEDUCTIONS 128.80
 NET PAY 383.20

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 5-21-02
 EMP. NAME SUSHMA MATHUR
 REGULAR HOURS 64.00
 OVERTIME HOURS 0.00
 TOTAL EARNINGS 610.00
 F.I.C.A. TAX WITHHOLDING 48.96
 MEDICARE TAX WITHHOLDING 42.00
 FED. WITH HOLDING TAX 17.92
 STATE WITH HOLDING TAX 6.16
 TOTAL DEDUCTIONS 115.04
 NET PAY 494.96

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 5-10-02
 EMP. NAME SUSHMA MATHUR
 REGULAR HOURS 64.00
 OVERTIME HOURS 0.00
 TOTAL EARNINGS 610.00
 F.I.C.A. TAX WITHHOLDING 48.96
 MEDICARE TAX WITHHOLDING 42.00
 FED. WITH HOLDING TAX 17.92
 STATE WITH HOLDING TAX 6.16
 TOTAL DEDUCTIONS 115.04
 NET PAY 494.96

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 4-26-02
 EMP. NAME SUSHMA MATHUR
 REGULAR HOURS 64.00
 OVERTIME HOURS 0.00
 TOTAL EARNINGS 610.00
 F.I.C.A. TAX WITHHOLDING 48.96
 MEDICARE TAX WITHHOLDING 42.00
 FED. WITH HOLDING TAX 17.92
 STATE WITH HOLDING TAX 6.16
 TOTAL DEDUCTIONS 115.04
 NET PAY 494.96

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 5-21-02
 EMP. NAME SUSHMA MATHUR
 REGULAR HOURS 64.00
 OVERTIME HOURS 0.00
 TOTAL EARNINGS 640.00
 F.I.C.A. TAX WITHHOLDING 49.16
 MEDICARE TAX WITHHOLDING 54.00
 FED. WITH HOLDING TAX 64.00
 STATE WITH HOLDING TAX 17.92
 TOTAL DEDUCTIONS 185.08
 NET PAY 454.92

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 5-17-02
 EMP. NAME SUSHMA MATHUR
 REGULAR HOURS 64.00
 OVERTIME HOURS 0.00
 TOTAL EARNINGS 616.00
 F.I.C.A. TAX WITHHOLDING 49.12
 MEDICARE TAX WITHHOLDING 54.00
 FED. WITH HOLDING TAX 61.60
 STATE WITH HOLDING TAX 17.28
 TOTAL DEDUCTIONS 182.00
 NET PAY 434.00

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 5-10-02
 EMP. NAME SUSHMA MATHUR
 REGULAR HOURS 64.00
 OVERTIME HOURS 0.00
 TOTAL EARNINGS 616.00
 F.I.C.A. TAX WITHHOLDING 49.12
 MEDICARE TAX WITHHOLDING 54.00
 FED. WITH HOLDING TAX 61.60
 STATE WITH HOLDING TAX 17.28
 TOTAL DEDUCTIONS 182.00
 NET PAY 434.00

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 6-21-02
 EMP. NAME SUSHMA MATHUR
 REGULAR HOURS 64.00
 OVERTIME HOURS 0.00
 TOTAL EARNINGS 608.00
 F.I.C.A. TAX WITHHOLDING 46.51
 MEDICARE TAX WITHHOLDING 52.00
 FED. WITH HOLDING TAX 60.80
 STATE WITH HOLDING TAX 17.02
 TOTAL DEDUCTIONS 176.33
 NET PAY 431.67

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 10-21-02
EMP NAME SAJIDA NAWAZ

REGULAR HOURS	OVERTIME HOURS	TOTAL EARNINGS	FICA TAX	MEDICARE TAX	FED. WITHHOLDING	STATE WITHHOLDING TAX	TOTAL DEDUCTIONS	NET PAY
8	0	518.00	31.67	15.90	11.10	11.10	55.77	462.23
TOTAL EARNINGS								518.00
TOTAL DEDUCTIONS								55.77
NET PAY								462.23

STATEMENT OF EARNINGS AND DEDUCTIONS
DETACH BEFORE CASHING CHECK

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 10-21-02
EMP NAME SAJIDA NAWAZ

REGULAR HOURS	OVERTIME HOURS	TOTAL EARNINGS	FICA TAX	MEDICARE TAX	FED. WITHHOLDING	STATE WITHHOLDING TAX	TOTAL DEDUCTIONS	NET PAY
8	0	518.00	31.67	15.90	11.10	11.10	55.77	462.23
TOTAL EARNINGS								518.00
TOTAL DEDUCTIONS								55.77
NET PAY								462.23

STATEMENT OF EARNINGS AND DEDUCTIONS
DETACH BEFORE CASHING CHECK

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 10-21-02
EMP NAME SAJIDA NAWAZ

REGULAR HOURS	OVERTIME HOURS	TOTAL EARNINGS	FICA TAX	MEDICARE TAX	FED. WITHHOLDING	STATE WITHHOLDING TAX	TOTAL DEDUCTIONS	NET PAY
8	0	518.00	31.67	15.90	11.10	11.10	55.77	462.23
TOTAL EARNINGS								518.00
TOTAL DEDUCTIONS								55.77
NET PAY								462.23

STATEMENT OF EARNINGS AND DEDUCTIONS
DETACH BEFORE CASHING CHECK

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 9-27-02
EMP NAME SAJIDA NAWAZ

REGULAR HOURS	OVERTIME HOURS	TOTAL EARNINGS	FICA TAX	MEDICARE TAX	FED. WITHHOLDING	STATE WITHHOLDING TAX	TOTAL DEDUCTIONS	NET PAY
8	0	467.00	28.23	14.11	10.71	10.71	43.76	423.24
TOTAL EARNINGS								467.00
TOTAL DEDUCTIONS								43.76
NET PAY								423.24

STATEMENT OF EARNINGS AND DEDUCTIONS
DETACH BEFORE CASHING CHECK

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 10-22-02
EMP NAME SAJIDA NAWAZ

REGULAR HOURS	OVERTIME HOURS	TOTAL EARNINGS	FICA TAX	MEDICARE TAX	FED. WITHHOLDING	STATE WITHHOLDING TAX	TOTAL DEDUCTIONS	NET PAY
8	0	467.00	28.23	14.11	10.71	10.71	43.76	423.24
TOTAL EARNINGS								467.00
TOTAL DEDUCTIONS								43.76
NET PAY								423.24

STATEMENT OF EARNINGS AND DEDUCTIONS
DETACH BEFORE CASHING CHECK

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 10-13-02
EMP NAME SAJIDA NAWAZ

REGULAR HOURS	OVERTIME HOURS	TOTAL EARNINGS	FICA TAX	MEDICARE TAX	FED. WITHHOLDING	STATE WITHHOLDING TAX	TOTAL DEDUCTIONS	NET PAY
8	0	560.00	35.00	17.50	13.10	13.10	58.70	501.30
TOTAL EARNINGS								560.00
TOTAL DEDUCTIONS								58.70
NET PAY								501.30

STATEMENT OF EARNINGS AND DEDUCTIONS
DETACH BEFORE CASHING CHECK

SHAH MEDICAL ASSOCIATES, INC.

PERIOD ENDING 10-22-02
EMP NAME SAJIDA NAWAZ

REGULAR HOURS	OVERTIME HOURS	TOTAL EARNINGS	FICA TAX	MEDICARE TAX	FED. WITHHOLDING	STATE WITHHOLDING TAX	TOTAL DEDUCTIONS	NET PAY
8	0	560.00	35.00	17.50	13.10	13.10	58.70	501.30
TOTAL EARNINGS								560.00
TOTAL DEDUCTIONS								58.70
NET PAY								501.30

STATEMENT OF EARNINGS AND DEDUCTIONS
DETACH BEFORE CASHING CHECK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

**SECOND SET OF INTERROGATORIES
DIRECTED TO PLAINTIFF**

Code: 007

Filed on behalf 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

SECOND SET OF INTERROGATORIES
DIRECTED TO PLAINTIFF

NOW COME the defendants, Shirish N. Shah, M.D. and Susan Manning, by their attorneys, Thomson, Rhodes & Cowie, P.C., and direct the following interrogatories to plaintiff in accordance with the Pennsylvania Rules of Civil Procedure. Answers are demanded within 30 days of receipt of these interrogatories in accordance with the Pennsylvania Rules of Civil Procedure. Also, these interrogatories are continuing until time of trial. Within 30 days of receiving supplemental information or information which is contrary to the responses given below, and before trial, you should file supplemental interrogatory answers.

When the word "representative" is used in the interrogatories, it is intended to include any investigator, attorney or representative retained by the party responding to the interrogatories or that party's insurer.

When the word "you" or "your" is used in the interrogatories, it refers to the party or all parties to whom or to which these interrogatories are directed.

1. Set forth the date and place of birth and social security number for Mark Manning.

ANSWER:

2. Summarize Mark Manning's educational background, including all schools attended, the date of graduation from any school, and any degrees which have been received.

ANSWER:

3. Identify with precision all addresses where Mark Manning has resided since 1992, including any places of incarceration or house arrest. With respect to each place identified, you should supply the following information:

- (a) The name of all persons who resided at the location;
- (b) The dates during which residence was at the location.

ANSWER:

4. When, where and to whom is Mark Manning married.

- (a) If the individual listed above does not reside with Mark Manning, you are to identify the current or last known address of that individual.

ANSWER:

5. Has Mark Manning ever been previously married.

ANSWER:

6. If the answer to the preceding interrogatory is in the affirmative, identify the date and place of each previous marriage and, the date and manner of termination of each previous marriage.

ANSWER:

7. Set forth the names, present addresses and dates of birth of all children of Mark Manning.

- (a) As to all of the children listed above, you are to identify whether any court order limited, prescribed or prohibited Mark Manning's rights to visitation, contact and/or involvement with any of those children.
- (b) If the answer to the above sub-paragraph is in the affirmative, you are to identify the circumstances surrounding the entry of the court order, including the name of the case and docket number under which the order was entered.

ANSWER:

8. Was Mark Manning ever a member of the armed forces?

ANSWER:

9. If the answer to the preceding interrogatory is in the affirmative, please identify the particular branch in which he served, beginning and ending dates of service therein, highest rank or rating achieved, and serial number.

ANSWER:

10. State whether either Mark Manning has ever been charged with any criminal offenses, including those offenses related to child molestation and sexual indecency. If so, supply the following information:

- (a) The nature of those charges;
- (b) The criminal docket number and jurisdiction;
- (c) The agency which filed the charges;
- (d) Whether the charge resulted in a conviction;
- (e) Whether any sentence was imposed;
- (f) Whether Mark Manning is currently subject to any terms of probation and/or parole;
- (g) If Mark Manning is currently subject to any terms of probation and/or parole, you are to describe such terms with specificity; and
- (h) Identify any plea bargain or other amicable arrangement by which the charges were disposed, including ARD.

ANSWER:

11. Has Mark Manning been required to register as a sexual predator or child sexual offender under any applicable state or federal law?

ANSWER:

12. Identify by name and address all hospitals where Mark Manning was treated in the 10 year period prior to the events alleged in his complaint or anytime after the events alleged in his complaint.

ANSWER:

13. With respect to each hospital identified in answering the preceding interrogatory, provide the following:

- (a) The first and last date of each visit;
- (b) The reason for each visit;
- (c) Whether each visit was as an in-patient or as an out-patient.

ANSWER:

14. Identify by name and address all physicians, psychiatrists, and psychologists, who have treated Mark Manning in the 10 year period prior to the events alleged in the complaint or anytime thereafter.

ANSWER:

15. With respect to each physician or other person identified in answering the preceding interrogatory, provide the following information:

- (a) The date of the first visit;

- (b) The reason for the first visit;
- (c) The date of the last visit;
- (d) The reason for any continuing treatment if any is being given.

ANSWER:

16. Have you or your attorney or representative received any reports from any person or hospital identified in response to Interrogatories 12 through 15. If so, supply the following information with regard to each report:

- (a) Author;
- (b) Whether item is report or record;
- (c) Date;
- (d) Address;
- (e) Present location of reports or records.

ANSWER:

17. Identify all medical records in your possession or the possession of your attorney or representative by providing the name of the institution or medical practitioner or other person from which the records originated and the period of time covered by each set of records.

ANSWER:

18. Provide the following information with respect to the alleged injuries suffered by Mark Manning:

- (a) Identify each and every injury, illness or disease (physical or mental) which you allege to have suffered as a result of the events set forth in the complaint;
- (b) State whether you ever previously sustained such injuries identified in the preceding sub-interrogatory.

ANSWER:

19. If your response to interrogatory 18 (b) was in the affirmative, provide the following information with respect to each such previous illness, injury or disease:

- (a) The part of the body involved;
- (b) The place and date of such prior injury, illness or disease;
- (c) The name and address of all physicians treating, examining or consulting with Mark Manning relative thereto;
- (d) The date of the last treatment for the injury, illness or disease;
- (e) The name and address of all hospitals or similar institutions in which Mark Manning was ever treated, examined or tested relative to each such injury or illness or disease.

ANSWER:

20. Provide the following information concerning any medical treatment not described in responding to the above interrogatories received by Mark Manning within the five-year period prior to the matter which is alleged in the complaint in this case:

- (a) The date and place of the treatment or care;
- (b) The reason for the treatment or care;
- (c) The name of the medical practitioner, chiropractor or medical facility who or which cared for or treated you;
- (d) Whether you, your attorney or representative have any records or reports pertaining to the treatment or condition and, if you do, the date and present location of each report and set of records.

ANSWER:

21. Identify the specific date(s) on which Mark Manning treated with or was examined by Dr. Shirish Shah, M.D. In addition, you are to provide the specific reasons for such treatments or examinations.

ANSWER:

22. State whether Mark Manning was confined to bed for any period of time as a result of the incident alleged in the complaint in this case and, if he was, state the beginning and ending dates of any and all such confinements.

ANSWER:

23. State whether Mark Manning was confined to his home for any period of time as a result of the incident alleged in your complaint and, if he was, state the beginning and ending dates of any such confinements.

ANSWER:

24. Did Mark Manning suffer any injuries which are not specified in response to the preceding interrogatories which you allege resulted from the incident which is described in the complaint in this case?

ANSWER:

25. If the answer to the preceding interrogatory is in the affirmative, please set forth very specifically the nature of any such injuries, identify specifically any problems, inconvenience or disabilities resulting therefrom, and set forth the beginning and ending dates of any such problems or other items which are described in responding to this question.

ANSWER:

26. Did Mark Manning at any time consult a psychiatrist, psychologist or a family or marriage counselor?

ANSWER:

27. If the answer to the preceding interrogatory is in the affirmative, supply the following information:

- (a) The date of any consultations;
- (b) The reason for any consultations.

ANSWER:

28. Identify by name and present address all persons who have facts or knowledge concerning the physical or mental condition of Mark Manning before the date of the incident described in the complaint in this case, and who potentially may be called to testify as witnesses on this subject at time of trial.

ANSWER:

29. Provide a summary of the information known by each person identified in answering the preceding interrogatory.

ANSWER:

30. In the complaint, plaintiff complains of alleged disclosures of his healthcare information made by Susan Manning. As to those alleged disclosures, you are to identify with specificity:

- (a) The exact date(s) and times(s) of such disclosures;
- (b) The exact location of any such disclosures;
- (c) The manner and circumstance of such disclosures;
- (d) To whom were such disclosures made;
- (e) The content of such disclosures;
- (f) Whether Mark Manning was present at the time such disclosures were made, and, if not, the manner and circumstances through which Mark Manning came to learn of such disclosures;
- (g) Identify by name and present address all persons who have facts or knowledge concerning the alleged disclosures of Mark Manning's healthcare information made by Susan Manning, and who potentially may be called to testify as witnesses at trial.

ANSWER:

31. Provide a summary of the information known by each person identified in answering the preceding sub-interrogatory 30(g).

ANSWER:

32. Specify by item and amount all special, monetary, actual or other damages incurred by Mark Manning as a result of the events alleged in the complaint in this case. Your response to this question should specify all items of damages which are expected to increase beyond the present amount incurred or otherwise increase. Your response should also identify any items of special damages, not yet incurred, which are expected to be incurred as a result of the events alleged in your complaint.

ANSWER:

33. List by health care provider, all amounts actually paid by Mark Manning, or on his behalf by any person or entity, including, but not limited to, any corporation, partnership, insurance company or government agency, as a result of any medical services provided as a result of the events alleged in the complaint in this case.

ANSWER:

34. Identify all places of employment where Mark Manning has worked in the last ten years. Each such place should be identified by name and address and the name of your immediate supervisor should be provided.

ANSWER:

35. With respect to each place of employment identified for Mark Manning in responding to the preceding interrogatory, supply the following information:

- (a) Specify the date when employment began;
- (b) Spccify the date employment ended;
- (c) Specify the reason that the employment ended on the date specified above;
- (d) State the salary or hourly rate when employment began;
- (e) State the salary or hourly rate when employment ended;

- (f) Set forth each job title held with each employer, the dates each position was held, and provide a description of the duties in each job position;
- (g) State whether the employment was full-time or part-time and the average number of hours worked per week;
- (h) Set forth the number of days missed from work, broken down by years, because of sickness and the number of days missed because of injuries;
- (i) Provide a complete description of the injuries and the alleged cause of the injuries which caused Mark Manning to miss the days from work which are specified in the preceding sub-interrogatory.

ANSWER:

36. List by years the earned income by Mark Manning during the last seven years. Your answer should specify each source of income during each year and the amount of income received from each source each year.

ANSWER:

37. Has Mark Manning filed a federal income tax return in the last seven years.

ANSWER:

38. If the answer to the preceding interrogatory is in the affirmative, provide the following information with respect to each income tax return filed:

- (a) Name(s) of person(s) under which your return was filed each year;
- (b) Place where each return was filed.

ANSWER:

39. State whether you have retained copies of any state or federal income tax returns filed by you. If you have, identify the dates of all returns you have retained.

ANSWER:

40. State whether you made application for social security benefits during your life. If so, specify the date when application was made and any benefits which have been received to date or are currently being received. In the event that benefits were denied, specify the reason for the denial.

ANSWER:

41. State whether you have made application for welfare benefits since the date of the occurrence of the matter which forms the basis of the complaint in this case and, if you have, specify the date when the application was received; the amount of any benefits received; whether the benefits are continuing and if they are, the amount of current benefits; and, if the welfare benefits are not continuing, the date when they were stopped and the reason why they were stopped.

ANSWER:

42. State whether Mark Manning received any worker's compensation benefits. If so, specify the amount of benefits received; and the name and address of the worker's compensation carrier.

ANSWER:

43. Identify any pension benefits or similar payments which are currently being made to you or which have been made to you. Your answer should include the frequency of each payment and the name and address of the payor.

ANSWER:

44. State whether Mark Manning, at any time, received any military disability benefits and, if so, supply the following information:

- (a) Date and amount of payments received;
- (b) Reason for payments;
- (c) Name and address of payor;
- (d) Whether payments are continuing.

ANSWER:

45. Identify any other payments ever made to Mark Manning as a result of disability or unemployment which have not been specified in response to the preceding interrogatories.

With respect to each such payment, identify:

- (a) The date when the payment was first received;
- (b) The amount of payments
- (c) The name and address of payor.

ANSWER:

46. Supply the following information regarding any affidavits in your possession or in the possession of your attorney, investigator or representative which relate to any matter pertinent to this lawsuit:

- (a) The date of the affidavit;
- (b) The name and address of the person making the affidavit.

ANSWER:

47. Supply the following information regarding any statements as described in rule 4003.4 of the Pennsylvania Rules of Civil Procedure in your possession or the possession of your attorney, investigator or representatives:

- (a) The date of the statement;
- (b) The name and address of the person taking the statement;

- (c) The name and address of the person who gave the statement;
- (d) State whether the statement was written;
- (e) State whether the statement was recorded;
- (f) If recorded, state whether a transcript of the recording has been prepared.

ANSWER:

48. Identify any photographs, drawings, sketches, movies, diagrams or similar items which are in your possession or the possession of your attorney, investigator or representative which depict any subject which is pertinent to this lawsuit by providing the following information as to each:

- (a) A description of each item;
- (b) A description of what each item depicts;
- (c) When the item was taken or made and by whom;
- (d) The present location of the item.

ANSWER:

49. Do you, your attorneys or representatives have any notes, diaries, records, pamphlets, brochures or other items made by you or given to you which pertain to the matters alleged in your complaint.

ANSWER:

50. If the answer to the preceding interrogatory is in the affirmative, supply the following information:

- (a) A description of each item;
- (b) The date when each item was made by you or, if the item was given to you, the date the item was given to you;
- (c) The present location of each such item.

ANSWER:

51. Identify by name and address any person, other than your attorneys, who has made any investigation of the circumstances or the happening of the matter which is the subject of this lawsuit.

ANSWER:

52. With respect to each person identified in responding to the preceding interrogatory, provide the following information:

- (a) The nature of the person's investigation;
- (b) A summary of the person's conclusion;
- (c) Whether any writing exists which discusses the investigator's investigation or findings;

- (d) The date of any writings and the addressee of any writings referred to in answering the preceding sub-interrogatory;
- (e) Whether the investigation is continuing by each individual named in responding to this interrogatory.

ANSWER:

53. Identify by name, present address and telephone number all persons interviewed, questioned or contacted by your investigators or representatives (other than your attorneys) with regard to the circumstances of the incident which forms the basis for the complaint in this case.

ANSWER:

54. With respect to each person identified in responding to the preceding interrogatory, provide the following information:

- (a) The date or dates upon which the person was contacted, questioned or interviewed;
- (b) The place where the interview took place;
- (c) The interviewer's name and present address;
- (d) Summarize the information given to the interviewer;
- (e) State whether the interviewer has notes from the interview;
- (f) State whether the interviewer made any report or issued any summary or letter concerning the interview, questioning or contact;
- (g) State why no statement was taken from the person being interviewed in the event that one was not taken.

ANSWER:

55. Identify by name and present address any witnesses, or any persons who possess facts or knowledge, or who are believed by you to have information relevant to the occurrence of the matter which forms the basis for the complaint in this case.

ANSWER:

56. Provide a summary of the information believed to be known by each person listed in the preceding interrogatory.

ANSWER:

57. State the name and present address of any person who you or your attorneys expect to call as an expert, opinion or custom witness at time of trial on any subject.

ANSWER:

58. For each person named in response to the preceding interrogatory, supply the following information:

- (a) State the subject matter on which the person is expected to testify;

- (b) State the substance of facts and opinions to which the person is expected to testify;
- (c) State a summary of the grounds for each opinion which the person is expected to express.

Note: Answers to this interrogatory should be signed by each named person or answered in a report signed by the named person in accordance with the Pennsylvania Rules of Civil Procedure.

ANSWER:

59. For each person identified in responding to the preceding two interrogatories, supply the following information:

- (a) Describe with particularity all information and documents submitted to the named person for the purpose of preparing that person to express opinions concerning the subject matter of this litigation;
- (b) Describe with particularity all information and documents relied upon by the named person in forming his opinion concerning the subject matter of this litigation which have not been identified in response to the preceding sub-interrogatory;
- (c) Furnish a curriculum vitae or equivalent statement of the educational background, professional activities and employment, if any, of each such person;
- (d) If the person is a medical practitioner, provide the following information:
 - 1. State the individual's medical specialty, if any;
 - 2. If the following information has not been provided in response to the preceding sub-interrogatories, state whether the individual has been certified for practice in any medical specialty and, if he has,

identify each board or other organization which has certified the individual;

3. If the following information has not been provided in response to the preceding sub-interrogatories, identify each hospital staff affiliation of the individual and describe the character of the affiliation (e.g., courtesy, active, emeritus, etc.). Also, supply the address of each hospital;
- (e) List all publications by the named person upon subjects pertinent to the subject matter of this litigation and his expected testimony.

ANSWER:

60. Identify by date and author any reports issued to you, your attorney or representatives by any person identified in response to the preceding three interrogatories.

ANSWER:

61. State whether you have been a party plaintiff or a party defendant to any lawsuits or to any arbitration proceedings or to any government agency actions, other than the instant case. If you have, supply the following information with respect to each such action:

- (a) The name and address of the original parties;
- (b) The name and address of any additional defendants, third parties or added defendants;
- (c) The date when the suit was brought;
- (d) The court in which the suit was brought;
- (e) The court's docket number;

- (f) A summary of the subject matter of the suit or proceedings;
- (g) A summary of the disposition of the suit or proceedings.

ANSWER:

62. State whether you have made any claim for unemployment compensation in the last 10 years, and if you have, supply the following information as to each claim:

- (a) Date claim made;
- (b) Where claim made;
- (c) Whether unemployment compensation was awarded;
- (d) Amount of unemployment compensation received, specifying dates of receipt and amount received each date;
- (e) Name and address of employer against whom claim was made;
- (f) Reason for unemployment;
- (g) If claim denied, specify why;
- (h) State whether any hearing occurred and if a transcript of the hearing was prepared;
- (i) Jurisdiction where claim was made; and
- (j) Claim number.

ANSWER:

63. Please provide the following information relating to any medical bills. Attach copies of the actual medical bills:

- (a) Name of health care provider;
- (b) Date(s) of service;
- (c) Summary of services rendered;
- (d) Amounts billed;
- (e) Amounts paid to each health care provider by third party payors, including plaintiff's medical insurance carrier(s);
- (f) Amounts paid out of plaintiff's pocket to each health care provider;
- (g) Amounts paid by Medicare, Medicaid, public welfare, public assistance, or any other public source.

ANSWER:

64. Please identify any department of public welfare medical assistance liens, Medicare/Medicaid liens, liens from any public source or any other applicable liens.

ANSWER:

65. Please identify the approximate date on which Mark Manning was diagnosed with the HIV virus, and please identify the manner or mode in which said virus was contracted.

ANSWER:

66. As referenced in paragraph 7 of the complaint, please identify each "family member and acquaintance" to whom Susan Manning is alleged to have disclosed Mark Manning's confidential health information. For each person so identified, you are to set forth

their name, address, relationship to Mark Manning, and the date on which the alleged disclosure was made to that person.

ANSWER:

67. Please identify (by name and address) those persons who comprise Mark Manning's "social circle" as referenced in paragraph 11 of the complaint.

- (a) Did those persons identified in response to interrogatory 67 have knowledge that Mark Manning had been convicted of criminal offenses involving child molestation?
- (b) You are to set forth with specificity the particular ways and manners in which those persons identified in response to interrogatory 67 have "ostracized" Mark Manning since the incident alleged in the complaint.

ANSWER:

68. As referenced in paragraph 11 of the complaint, please set forth with specificity the "family activities" in which Mark Manning has been unable to participate because of the events alleged in the complaint.

ANSWER:

69. As referenced in paragraph 11 of the complaint, please set forth the exact circumstances through which Mark Manning suffered "public humiliation" at the death-bed and funeral of his nephew.

- (a) Please identify any witnesses (including their name, address and relationship to Mark Manning) who have

knowledge of any of the matters set forth in response to paragraph 69.

ANSWER:

70. Did Mark Manning suffer or sustain any humiliation, anxiety, social ostracization or emotional distress following any of his criminal convictions?

ANSWER:

71. Identify all persons who assisted in the preparation of answers to these interrogatories.

ANSWER:

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Shirish N. Shah, M.D. and
Susan Manning, 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 20th day of April, 2005:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.

Brad Korinski
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Shirish N. Shah, M.D. and Susan Manning, the defendants.

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW on this 28th day of March, 2005, it is hereby ORDERED, ADJUGED and DECREED that oral argument on defendants' preliminary objections to plaintiff's amended complaint is scheduled for the 29 day of April, 2005, at 2:00 a.m./p.m. before Judge Chunerman in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:

Judith J. Chunerman J.

FILED acc
 01:10:50 PM Atty Korinski
 MAR 30 2005 w/ memo re: service
 William A. Shaw
 Prothonotary/Clerk of Courts



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

Counsel of Record:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

CIVIL DIVISION

No. 04-1828-CD

Issue No.

AFFIDAVIT OF SERVICE

Code: 007

Filed on behalf 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

m/12:51/21
APR 04 2005

NO
CC

William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

Before me, the undersigned authority, personally appeared Brad R. Korinski, Esquire, who, being duly sworn, deposes and says that a true and correct copy of the Judge Ammerman's March 28, 2005, Scheduling Order, along with a true and correct copy the Preliminary Objections to Plaintiff's Amended Complaint in the above-captioned case was served upon plaintiff's counsel, Derek Cordier, Esquire, 319 South Front Street, Harrisburg, Pennsylvania, 17104-1621, by United States, first class, postage pre-paid mail on March 31, 2005, as shown by the certificate of mailing attached hereto.

THOMSON, RHODES & COWIE, P.C.

Brad Korinski
Brad R. Korinski, Esquire

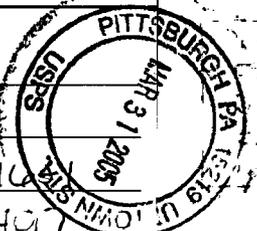
Sworn to and subscribed before me
this 1 day of April, 2005.

Kathleen A. Freiss
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Kathleen A. Freiss, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Nov. 24, 2007
Member, Pennsylvania Association Of Notaries

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE—POSTMASTER	
Received From:	
<u>Thomson Rhodes & Cowie PC</u>	
<u>Two Chatham Ctr., 10th Fl.</u>	
<u>Pittsburgh PA 15219</u>	
One piece of ordinary mail addressed to:	
<u>Derek Cordier, Esq.</u>	
<u>319 South Front St.</u>	
<u>Harrisburg PA 17104-1621</u>	
<u>BRK 11407</u>	

4494 fee for business reply mail



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 13th day of April, 2005:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.

Brad Korinski

David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Shirish N. Shah, M.D., one of the
defendants.

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

CIVIL DIVISION

Plaintiff,

No. 04-1828-CD

vs.

Issue No.

SHIRISH N. SHAH, M.D. and SUSAN MANNING,

Defendants.

MOTION TO COMPEL ANSWERS TO THE SECOND SET OF INTERROGATORIES AND SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS SERVED UPON PLAINTIFF

Counsel of Record:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

Code: 007

Filed on behalf 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 ^{GW}
m/12:51/11 ^{icc}
APR 18 2005 *Atty Korinski*

William A. Shaw
Prothonotary/Clerk of Courts

MOTION TO COMPEL RESPONSES TO THE SECOND SET
OF INTERROGATORIES AND SECOND SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS SERVED UPON PLAINTIFF

NOW COME the defendants, by their attorneys Thomson, Rhodes & Cowie, P.C., and files the following motion to compel stating as follows:

1. The lawsuit concerns allegations made by plaintiff, Mark Manning, that his then sister-in-law, Susan Manning, improperly disclosed information about plaintiff's HIV-positive status. Plaintiff conjectures that Susan Manning became aware of his medical information during her employment by co-defendant Dr. Shah, who, two years prior to Mrs. Manning's becoming employed, had performed a disability evaluation of the plaintiff.

2. As damages in this lawsuit, plaintiff spuriously asserts that he has: "come to fear local doctors", "been forced to travel to seek medical treatment", "relocate his residence", "suffered emotional devastation", and now experiences anxiety and depression.

3. The subject of this motion is a second set of interrogatories and second set of requests for production of documents served upon plaintiff on January 4, 2005. Since plaintiff did not respond to that discovery, recourse was sought with this Court, which issued an Order compelling discovery dated March 1, 2005. This Court's Order stated, in pertinent part, that: "plaintiff shall file **full and complete** answers to defendants' second set of interrogatories within thirty days"

4. On March 23, 2005, plaintiff submitted his answers to discovery. To many of the questions presented to him, plaintiff cavalierly and unjustifiably refused to provide any responsive or substantive information.

5. The interrogatories to which plaintiff declined to respond, and which are the subject of this instant motion, are attached hereto as Exhibit "A." Plaintiff's responses to those

interrogatories are attached as Exhibit "B." This Court will note that plaintiff's failure to respond to these wholly appropriate and relevant interrogatories is clearly contrary to the rules of civil procedure concerning discovery matters as set forth below.

- (a) Interrogatory (7) seeks to learn basic information concerning plaintiff's children. Given that this is essentially a "family dispute", plaintiff's children may have been witnesses to relevant events. Indeed, in plaintiff's statement accompanying his discovery responses, he notes that one of his daughters was present at some of the events complained of in the complaint.
- (b) Interrogatory (9) requests information relative to plaintiff's admitted service in the U.S. Armed Forces. Given the damages here at issue as well as the medical nature of plaintiff's claims, it is anticipated that information concerning plaintiff's military service could yield evidence relevant to this litigation.
- (c) Interrogatories (14) and (15) request information about plaintiff's healthcare treatment. While plaintiff has responded by providing names of healthcare providers, he has refused to list their addresses. Such information is discoverable and should be provided to defendants.
- (d) Interrogatories (36) through (39) seek information about plaintiff's income tax returns. This is basic discovery information that is permitted to any defendant in a lawsuit, since it may yield information relevant to plaintiff's damage claims or to impeach the plaintiff at time of trial. Moreover, plaintiff has refused to produce income tax return documents as sought through defendants' request for production of documents. This information is also discoverable and should be forwarded to defendants.
- (e) Interrogatory (40) looks for information about plaintiff's social security benefits. Plaintiff admits that he is receiving/has applied for such benefits. Yet, inexplicably, plaintiff refuses to provide additional requested information. This avenue of inquiry may potentially produce material relevant to plaintiff's liability and damages claims and is, therefore, discoverable.
- (f) Interrogatory (41) requests plaintiff to provide information concerning welfare benefits. Again, this is basic, discoverable information that is permitted to any defendant in a lawsuit. Such welfare information is properly discoverable under the rules of civil procedure.
- (g) Interrogatory (46) seeks to ascertain whether plaintiff possesses affidavits of any witnesses. Plaintiff objects on the basis that he does not understand

the subject matter of this requests. Affidavits are a generally known term in the legal lexicon. Plaintiff's objection is baseless and frivolous. Plaintiff should be made to answer the question whether or not he possesses any affidavits.

- (h) Interrogatory (67) simply looks to obtain information from witnesses to the events giving rise to this litigation. In paragraph 11 of his original complaint, plaintiff claims that he has been "ostracized" by his "social circle." It is assumed that plaintiff's "social circle" are witnesses to litigation events and that the "ostracization" spoke of is a component of plaintiff's damages. Accordingly, plaintiff's objection to this interrogatory is totally improper.
- (i) Interrogatory (70) requests information regarding plaintiff's criminal past. In 1986, plaintiff was convicted of corruption of the morals of the minor; in 1995, he was convicted of sexual assault. Not only is such information potentially relevant to impugn the plaintiff, it is also pertinent to plaintiff's damage claims. The thrust of plaintiff's damage claim is that he has suffered from anxiety/distress from the disclosure of his HIV-positive status. Therefore, it is an appropriate area of inquiry to determine whether plaintiff experienced similar emotional turmoil or social ostracism after having been convicted of the above crimes, both of which carry with them a social stigmatism.

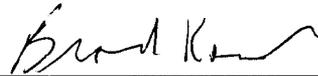
6. All of the information sought by defendants through this motion asks nothing more than to the learn the underpinnings of plaintiff's liability and damage claims. By withholding this information, plaintiff has placed defendants in the unfair position of having to speculate about these matters and, consequently, severely prejudicing them in formulating a defense to the serious allegations levied against them by the plaintiff.

7. Pursuant to Pa.R.C.P. 4019, this Court is respectfully requested to enter an Order against plaintiff requiring him to set forth full and complete responses to the all of the discovery questions identified above within 20 days.

WHEREFORE, these defendants, respectfully request that this Honorable Court grant their motion to compel responses to second set of discovery and enter the attached Order.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

**SECOND SET OF INTERROGATORIES
DIRECTED TO PLAINTIFF**

Code: 007

Filed on behalf 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



SECOND SET OF INTERROGATORIES
DIRECTED TO PLAINTIFF

NOW COME the defendants, Shirish N. Shah, M.D. and Susan Manning, by their attorneys, Thomson, Rhodes & Cowie, P.C., and direct the following interrogatories to plaintiff in accordance with the Pennsylvania Rules of Civil Procedure. Answers are demanded within 30 days of receipt of these interrogatories in accordance with the Pennsylvania Rules of Civil Procedure. Also, these interrogatories are continuing until time of trial. Within 30 days of receiving supplemental information or information which is contrary to the responses given below, and before trial, you should file supplemental interrogatory answers.

When the word "representative" is used in the interrogatories, it is intended to include any investigator, attorney or representative retained by the party responding to the interrogatories or that party's insurer.

When the word "you" or "your" is used in the interrogatories, it refers to the party or all parties to whom or to which these interrogatories are directed.

1. Set forth the date and place of birth and social security number for Mark Manning.

ANSWER:

2. Summarize Mark Manning's educational background, including all schools attended, the date of graduation from any school, and any degrees which have been received.

ANSWER:

3. Identify with precision all addresses where Mark Manning has resided since 1992, including any places of incarceration or house arrest. With respect to each place identified, you should supply the following information:

- (a) The name of all persons who resided at the location;
- (b) The dates during which residence was at the location.

ANSWER:

4. When, where and to whom is Mark Manning married.

- (a) If the individual listed above does not reside with Mark Manning, you are to identify the current or last known address of that individual.

ANSWER:

5. Has Mark Manning ever been previously married.

ANSWER:

6. If the answer to the preceding interrogatory is in the affirmative, identify the date and place of each previous marriage and, the date and manner of termination of each previous marriage.

ANSWER:

7. Set forth the names, present addresses and dates of birth of all children of Mark Manning.

- (a) As to all of the children listed above, you are to identify whether any court order limited, prescribed or prohibited Mark Manning's rights to visitation, contact and/or involvement with any of those children.
- (b) If the answer to the above sub-paragraph is in the affirmative, you are to identify the circumstances surrounding the entry of the court order, including the name of the case and docket number under which the order was entered.

ANSWER:

8. Was Mark Manning ever a member of the armed forces?

ANSWER:

9. If the answer to the preceding interrogatory is in the affirmative, please identify the particular branch in which he served, beginning and ending dates of service therein, highest rank or rating achieved, and serial number.

ANSWER:

10. State whether either Mark Manning has ever been charged with any criminal offenses, including those offenses related to child molestation and sexual indecency. If so, supply the following information:

- (a) The nature of those charges;
- (b) The criminal docket number and jurisdiction;
- (c) The agency which filed the charges;
- (d) Whether the charge resulted in a conviction;
- (e) Whether any sentence was imposed;
- (f) Whether Mark Manning is currently subject to any terms of probation and/or parole;
- (g) If Mark Manning is currently subject to any terms of probation and/or parole, you are to describe such terms with specificity; and
- (h) Identify any plea bargain or other amicable arrangement by which the charges were disposed, including ARD.

ANSWER:

11. Has Mark Manning been required to register as a sexual predator or child sexual offender under any applicable state or federal law?

ANSWER:

12. Identify by name and address all hospitals where Mark Manning was treated in the 10 year period prior to the events alleged in his complaint or anytime after the events alleged in his complaint.

ANSWER:

13. With respect to each hospital identified in answering the preceding interrogatory, provide the following:

- (a) The first and last date of each visit;
- (b) The reason for each visit;
- (c) Whether each visit was as an in-patient or as an out-patient.

ANSWER:

14. Identify by name and address all physicians, psychiatrists, and psychologists, who have treated Mark Manning in the 10 year period prior to the events alleged in the complaint or anytime thereafter.

ANSWER:

15. With respect to each physician or other person identified in answering the preceding interrogatory, provide the following information:

- (a) The date of the first visit;

- (b) The reason for the first visit;
- (c) The date of the last visit;
- (d) The reason for any continuing treatment if any is being given.

ANSWER:

16. Have you or your attorney or representative received any reports from any person or hospital identified in response to Interrogatories 12 through 15. If so, supply the following information with regard to each report:

- (a) Author;
- (b) Whether item is report or record;
- (c) Date;
- (d) Address;
- (e) Present location of reports or records.

ANSWER:

17. Identify all medical records in your possession or the possession of your attorney or representative by providing the name of the institution or medical practitioner or other person from which the records originated and the period of time covered by each set of records.

ANSWER:

18. Provide the following information with respect to the alleged injuries suffered by

Mark Manning:

- (a) Identify each and every injury, illness or disease (physical or mental) which you allege to have suffered as a result of the events set forth in the complaint;
- (b) State whether you ever previously sustained such injuries identified in the preceding sub-interrogatory.

ANSWER:

19. If your response to interrogatory 18 (b) was in the affirmative, provide the following information with respect to each such previous illness, injury or disease:

- (a) The part of the body involved;
- (b) The place and date of such prior injury, illness or disease;
- (c) The name and address of all physicians treating, examining or consulting with Mark Manning relative thereto;
- (d) The date of the last treatment for the injury, illness or disease;
- (e) The name and address of all hospitals or similar institutions in which Mark Manning was ever treated, examined or tested relative to each such injury or illness or disease.

ANSWER:

20. Provide the following information concerning any medical treatment not described in responding to the above interrogatories received by Mark Manning within the five-year period prior to the matter which is alleged in the complaint in this case:

- (a) The date and place of the treatment or care;
- (b) The reason for the treatment or care;
- (c) The name of the medical practitioner, chiropractor or medical facility who or which cared for or treated you;
- (d) Whether you, your attorney or representative have any records or reports pertaining to the treatment or condition and, if you do, the date and present location of each report and set of records.

ANSWER:

21. Identify the specific date(s) on which Mark Manning treated with or was examined by Dr. Shirish Shah, M.D. In addition, you are to provide the specific reasons for such treatments or examinations.

ANSWER:

22. State whether Mark Manning was confined to bed for any period of time as a result of the incident alleged in the complaint in this case and, if he was, state the beginning and ending dates of any and all such confinements.

ANSWER:

23. State whether Mark Manning was confined to his home for any period of time as a result of the incident alleged in your complaint and, if he was, state the beginning and ending dates of any such confinements.

ANSWER:

24. Did Mark Manning suffer any injuries which are not specified in response to the preceding interrogatories which you allege resulted from the incident which is described in the complaint in this case?

ANSWER:

25. If the answer to the preceding interrogatory is in the affirmative, please set forth very specifically the nature of any such injuries, identify specifically any problems, inconvenience or disabilities resulting therefrom, and set forth the beginning and ending dates of any such problems or other items which are described in responding to this question.

ANSWER:

26. Did Mark Manning at any time consult a psychiatrist, psychologist or a family or marriage counselor?

ANSWER:

27. If the answer to the preceding interrogatory is in the affirmative, supply the following information:

- (a) The date of any consultations;
- (b) The reason for any consultations.

ANSWER:

28. Identify by name and present address all persons who have facts or knowledge concerning the physical or mental condition of Mark Manning before the date of the incident described in the complaint in this case, and who potentially may be called to testify as witnesses on this subject at time of trial.

ANSWER:

29. Provide a summary of the information known by each person identified in answering the preceding interrogatory.

ANSWER:

30. In the complaint, plaintiff complains of alleged disclosures of his healthcare information made by Susan Manning. As to those alleged disclosures, you are to identify with specificity:

- (a) The exact date(s) and times(s) of such disclosures;
- (b) The exact location of any such disclosures;
- (c) The manner and circumstance of such disclosures;
- (d) To whom were such disclosures made;
- (e) The content of such disclosures;
- (f) Whether Mark Manning was present at the time such disclosures were made, and, if not, the manner and circumstances through which Mark Manning came to learn of such disclosures;
- (g) Identify by name and present address all persons who have facts or knowledge concerning the alleged disclosures of Mark Manning's healthcare information made by Susan Manning, and who potentially may be called to testify as witnesses at trial.

ANSWER:

31. Provide a summary of the information known by each person identified in answering the preceding sub-interrogatory 30(g).

ANSWER:

32. Specify by item and amount all special, monetary, actual or other damages incurred by Mark Manning as a result of the events alleged in the complaint in this case. Your response to this question should specify all items of damages which are expected to increase beyond the present amount incurred or otherwise increase. Your response should also identify any items of special damages, not yet incurred, which are expected to be incurred as a result of the events alleged in your complaint.

ANSWER:

33. List by health care provider, all amounts actually paid by Mark Manning, or on his behalf by any person or entity, including, but not limited to, any corporation, partnership, insurance company or government agency, as a result of any medical services provided as a result of the events alleged in the complaint in this case.

ANSWER:

34. Identify all places of employment where Mark Manning has worked in the last ten years. Each such place should be identified by name and address and the name of your immediate supervisor should be provided.

ANSWER:

35. With respect to each place of employment identified for Mark Manning in responding to the preceding interrogatory, supply the following information:

- (a) Specify the date when employment began;
- (b) Specify the date employment ended;
- (c) Specify the reason that the employment ended on the date specified above;
- (d) State the salary or hourly rate when employment began;
- (e) State the salary or hourly rate when employment ended;

- (f) Set forth each job title held with each employer, the dates each position was held, and provide a description of the duties in each job position;
- (g) State whether the employment was full-time or part-time and the average number of hours worked per week;
- (h) Set forth the number of days missed from work, broken down by years, because of sickness and the number of days missed because of injuries;
- (i) Provide a complete description of the injuries and the alleged cause of the injuries which caused Mark Manning to miss the days from work which are specified in the preceding sub-interrogatory.

ANSWER:

36. List by years the earned income by Mark Manning during the last seven years. Your answer should specify each source of income during each year and the amount of income received from each source each year.

ANSWER:

37. Has Mark Manning filed a federal income tax return in the last seven years.

ANSWER:

38. If the answer to the preceding interrogatory is in the affirmative, provide the following information with respect to each income tax return filed:

- (a) Name(s) of person(s) under which your return was filed each year;
- (b) Place where each return was filed.

ANSWER:

39. State whether you have retained copies of any state or federal income tax returns filed by you. If you have, identify the dates of all returns you have retained.

ANSWER:

40. State whether you made application for social security benefits during your life. If so, specify the date when application was made and any benefits which have been received to date or are currently being received. In the event that benefits were denied, specify the reason for the denial.

ANSWER:

41. State whether you have made application for welfare benefits since the date of the occurrence of the matter which forms the basis of the complaint in this case and, if you have, specify the date when the application was received; the amount of any benefits received; whether the benefits are continuing and if they are, the amount of current benefits; and, if the welfare benefits are not continuing, the date when they were stopped and the reason why they were stopped.

45. Identify any other payments ever made to Mark Manning as a result of disability or unemployment which have not been specified in response to the preceding interrogatories.

With respect to each such payment, identify:

- (a) The date when the payment was first received;
- (b) The amount of payments
- (c) The name and address of payor.

ANSWER:

46. Supply the following information regarding any affidavits in your possession or in the possession of your attorney, investigator or representative which relate to any matter pertinent to this lawsuit:

- (a) The date of the affidavit;
- (b) The name and address of the person making the affidavit.

ANSWER:

47. Supply the following information regarding any statements as described in rule 4003.4 of the Pennsylvania Rules of Civil Procedure in your possession or the possession of your attorney, investigator or representatives:

- (a) The date of the statement;
- (b) The name and address of the person taking the statement;

- (c) The name and address of the person who gave the statement;
- (d) State whether the statement was written;
- (e) State whether the statement was recorded;
- (f) If recorded, state whether a transcript of the recording has been prepared.

ANSWER:

48. Identify any photographs, drawings, sketches, movies, diagrams or similar items which are in your possession or the possession of your attorney, investigator or representative which depict any subject which is pertinent to this lawsuit by providing the following information as to each:

- (a) A description of each item;
- (b) A description of what each item depicts;
- (c) When the item was taken or made and by whom;
- (d) The present location of the item.

ANSWER:

49. Do you, your attorneys or representatives have any notes, diaries, records, pamphlets, brochures or other items made by you or given to you which pertain to the matters alleged in your complaint.

ANSWER:

50. If the answer to the preceding interrogatory is in the affirmative, supply the following information:

- (a) A description of each item;
- (b) The date when each item was made by you or, if the item was given to you, the date the item was given to you;
- (c) The present location of each such item.

ANSWER:

51. Identify by name and address any person, other than your attorneys, who has made any investigation of the circumstances or the happening of the matter which is the subject of this lawsuit.

ANSWER:

52. With respect to each person identified in responding to the preceding interrogatory, provide the following information:

- (a) The nature of the person's investigation;
- (b) A summary of the person's conclusion;
- (c) Whether any writing exists which discusses the investigator's investigation or findings;

- (d) The date of any writings and the addressee of any writings referred to in answering the preceding sub-interrogatory;
- (e) Whether the investigation is continuing by each individual named in responding to this interrogatory.

ANSWER:

53. Identify by name, present address and telephone number all persons interviewed, questioned or contacted by your investigators or representatives (other than your attorneys) with regard to the circumstances of the incident which forms the basis for the complaint in this case.

ANSWER:

54. With respect to each person identified in responding to the preceding interrogatory, provide the following information:

- (a) The date or dates upon which the person was contacted, questioned or interviewed;
- (b) The place where the interview took place;
- (c) The interviewer's name and present address;
- (d) Summarize the information given to the interviewer;
- (e) State whether the interviewer has notes from the interview;
- (f) State whether the interviewer made any report or issued any summary or letter concerning the interview, questioning or contact;
- (g) State why no statement was taken from the person being interviewed in the event that one was not taken.

ANSWER:

55. Identify by name and present address any witnesses, or any persons who possess facts or knowledge, or who are believed by you to have information relevant to the occurrence of the matter which forms the basis for the complaint in this case.

ANSWER:

56. Provide a summary of the information believed to be known by each person listed in the preceding interrogatory.

ANSWER:

57. State the name and present address of any person who you or your attorneys expect to call as an expert, opinion or custom witness at time of trial on any subject.

ANSWER:

58. For each person named in response to the preceding interrogatory, supply the following information:

- (a) State the subject matter on which the person is expected to testify;

- (b) State the substance of facts and opinions to which the person is expected to testify;
- (c) State a summary of the grounds for each opinion which the person is expected to express.

Note: Answers to this interrogatory should be signed by each named person or answered in a report signed by the named person in accordance with the Pennsylvania Rules of Civil Procedure.

ANSWER:

59. For each person identified in responding to the preceding two interrogatories, supply the following information:

- (a) Describe with particularity all information and documents submitted to the named person for the purpose of preparing that person to express opinions concerning the subject matter of this litigation;
- (b) Describe with particularity all information and documents relied upon by the named person in forming his opinion concerning the subject matter of this litigation which have not been identified in response to the preceding sub-interrogatory;
- (c) Furnish a curriculum vitae or equivalent statement of the educational background, professional activities and employment, if any, of each such person;
- (d) If the person is a medical practitioner, provide the following information:
 - 1. State the individual's medical specialty, if any;
 - 2. If the following information has not been provided in response to the preceding sub-interrogatories, state whether the individual has been certified for practice in any medical specialty and, if he has,

identify each board or other organization which has certified the individual;

3. If the following information has not been provided in response to the preceding sub-interrogatories, identify each hospital staff affiliation of the individual and describe the character of the affiliation (e.g., courtesy, active, emeritus, etc.). Also, supply the address of each hospital;

- (e) List all publications by the named person upon subjects pertinent to the subject matter of this litigation and his expected testimony.

ANSWER:

60. Identify by date and author any reports issued to you, your attorney or representatives by any person identified in response to the preceding three interrogatories.

ANSWER:

61. State whether you have been a party plaintiff or a party defendant to any lawsuits or to any arbitration proceedings or to any government agency actions, other than the instant case. If you have, supply the following information with respect to each such action:

- (a) The name and address of the original parties;
- (b) The name and address of any additional defendants, third parties or added defendants;
- (c) The date when the suit was brought;
- (d) The court in which the suit was brought;
- (e) The court's docket number;

- (f) A summary of the subject matter of the suit or proceedings;
- (g) A summary of the disposition of the suit or proceedings.

ANSWER:

62. State whether you have made any claim for unemployment compensation in the last 10 years, and if you have, supply the following information as to each claim:

- (a) Date claim made;
- (b) Where claim made;
- (c) Whether unemployment compensation was awarded;
- (d) Amount of unemployment compensation received, specifying dates of receipt and amount received each date;
- (e) Name and address of employer against whom claim was made;
- (f) Reason for unemployment;
- (g) If claim denied, specify why;
- (h) State whether any hearing occurred and if a transcript of the hearing was prepared;
- (i) Jurisdiction where claim was made; and
- (j) Claim number.

ANSWER:

63. Please provide the following information relating to any medical bills. Attach copies of the actual medical bills:

- (a) Name of health care provider;
- (b) Date(s) of service;
- (c) Summary of services rendered;
- (d) Amounts billed;
- (e) Amounts paid to each health care provider by third party payors, including plaintiff's medical insurance carrier(s);
- (f) Amounts paid out of plaintiff's pocket to each health care provider;
- (g) Amounts paid by Medicare, Medicaid, public welfare, public assistance, or any other public source.

ANSWER:

64. Please identify any department of public welfare medical assistance liens, Medicare/Medicaid liens, liens from any public source or any other applicable liens.

ANSWER:

65. Please identify the approximate date on which Mark Manning was diagnosed with the HIV virus, and please identify the manner or mode in which said virus was contracted.

ANSWER:

66. As referenced in paragraph 7 of the complaint, please identify each "family member and acquaintance" to whom Susan Manning is alleged to have disclosed Mark Manning's confidential health information. For each person so identified, you are to set forth

their name, address, relationship to Mark Manning, and the date on which the alleged disclosure was made to that person.

ANSWER:

67. Please identify (by name and address) those persons who comprise Mark Manning's "social circle" as referenced in paragraph 11 of the complaint.

- (a) Did those persons identified in response to interrogatory 67 have knowledge that Mark Manning had been convicted of criminal offenses involving child molestation?
- (b) You are to set forth with specificity the particular ways and manners in which those persons identified in response to interrogatory 67 have "ostracized" Mark Manning since the incident alleged in the complaint.

ANSWER:

68. As referenced in paragraph 11 of the complaint, please set forth with specificity the "family activities" in which Mark Manning has been unable to participate because of the events alleged in the complaint.

ANSWER:

69. As referenced in paragraph 11 of the complaint, please set forth the exact circumstances through which Mark Manning suffered "public humiliation" at the death-bed and funeral of his nephew.

- (a) Please identify any witnesses (including their name, address and relationship to Mark Manning) who have

knowledge of any of the matters set forth in response to paragraph 69.

ANSWER:

70. Did Mark Manning suffer or sustain any humiliation, anxiety, social ostracization or emotional distress following any of his criminal convictions?

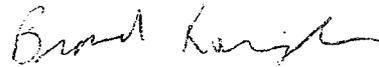
ANSWER:

71. Identify all persons who assisted in the preparation of answers to these interrogatories.

ANSWER:

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Shirish N. Shah, M.D. and
Susan Manning, 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 10th day of May, 2005:

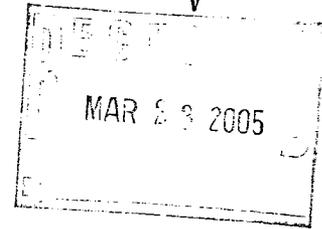
Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.

Brad Korinski
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Shirish N. Shah, M.D. and Susan Manning, the defendants.

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
vs. : Docket No. 04-1828-CD
SHIRISH N. SHAH, M.D. : CIVIL ACTION
and : LAW
SUSAN MANNING :
Defendants :



PLAINTIFF MARK MANNING'S ANSWERS TO
DEFENDANTS' INTERROGATORIES

Plaintiff Mark Manning answers the first set of interrogatories put forth by the defendants as follows:

Answer to Interrogatory No. 1: Plaintiff's date of birth is 4-23-63. He was born in Lewistown, PA. His social security number is 183-54-9332.

Answer to Interrogatory No. 2: Plaintiff received his high school diploma from Dubois Area High School, Dubois PA, 1981.

Answer to Interrogatory No. 3: Plaintiff's place of residence, to the best of his recollection, since 1992: a) with parents at RD4 Box 123B, Dubois PA (1992) b) Broad Street Rockway, PA with ex-wife Beverly Myrtle c) Second Avenue Rockway, PA with ex-wife Beverly Myrtle d) back to parents in 1997 with ex-wife e) RD2 Box 158A Reynoldsville, PA with ex-wife f) back to parents 2000-2001 g) 17 Shaffer Street Sykesville, PA 2002 until present. In 1995/96 Plaintiff spent 60 days in jail in Rockway, PA.

Answer to Interrogatory No. 4: Plaintiff's wife is Adriene Manning; married August 6, 2003 in Dubois PA.

Answer to Interrogatory No. 5: Yes.

Answer to Interrogatory No. 6: Plaintiff's ex-wife is Beverly Myrtle. They were married in August of 1992 in Dubois PA. They were divorced in 1999.

Answer to Interrogatory No. 7: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

Answer to Interrogatory No. 8: Yes



Answer to Interrogatory No. 9: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 10: (a and b) The Plaintiff was charged with Corruption of Minors in 1986 in Dubois and Indecent Assault in 1995 both in Rockway. (c) The district attorney in the respective counties. (d) The corruption of minors charge resulted in a conviction; the Indecent Assault charge was plead out. (e) Plaintiff received a sentence of 1.5-5 years for his corruption of minors charge (f) no (g) The plea bargain on indecent assault was 60 days to 23.5 months. All remaining information that was not answered is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the information to be provided is irrelevant to the case at hand.

Answer to Interrogatory No. 11: No

Answer to Interrogatory No. 12: Plaintiff is treated at the Dubois RMC Hospital in Dubois, PA.

Answer to Interrogatory No. 13: Plaintiff answers that, to the best of his recollection, most visits were out-patient. Plaintiff cannot recall all exact dates and reasons; therefore this part of the interrogatory is objected to on the basis that it is unduly burdensome. Plaintiff has not been to the hospital on more than 10 times in the last 10 years; this does not include blood work for which there were numerous visits to the hospital.

Answer to Interrogatory No. 14: Plaintiff's doctors, to the best of his recollection are (city is provided if Plaintiff could recall, not specific addresses; unduly burdensome): Dr. Roger Anderson; Dr. Coppes; Dr. Doughty; Dr. Rosco; Dr. Shaw; Dr. Moclock; Dr. Richard Johnson; Clearfield(current); Dr. Timothy Phillips; Clearfield (current); Dr. Malek; Dr. Carol Encarnacion; Dr. Schacter; Dr. Tuesday Stainbrook; Clearfield (current); Dr. Cherry; Dr. Orenkauski; Dr. Eric Lundgren; Dr. Iliuzzi; Dr. Palmer (ER); Dr. Barber; Dr. Turkin, and Dr. Shah **Names of doctors may not be correctly spelled since Plaintiff answered through his recollection of the last 10 years.

Answer to Interrogatory No. 15: Plaintiff's current doctors are: Dr. Stainbrook – treats for HIV; Dr. Johnson; plaintiff's family doctor; Dr. Phillips – treats plaintiff's colon. Plaintiff consulted Dr. Shah for his HIV. Plaintiff could not remember anything else and there are too many dates and times to remember. The remaining part of the interrogatory is objected to on the basis that it is overly broad and unduly burdensome.

Answer to Interrogatory No. 16: Plaintiff's attorney received the medical report of Defendant Dr. Shirish Shah dated November 7, 2000 assessing Plaintiff Mark Manning's evaluation for disability.

Answer to Interrogatory No. 17: All medical records in our possession are available to you for your inspection and copying.

Answer to Interrogatory No. 18: (a) Plaintiff had to explain to family members his illness, he is seeking treatment in another town, he is looking to relocate now because of this disclosure. Plaintiff has confined himself to his residence now more than ever and is afraid to be confronted by his neighbors. (b) No, plaintiff did not.

Answer to Interrogatory No. 19: answer was no to 18(b)

Answer to Interrogatory No. 20: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

**Answer to Interrogatory No. 21: The date that Mark Manning was treated by or examined by Dr. Shirish Shah, M.D. was October 2, 2000. The reason for the examination was a referral by the Bureau of Disability of Determination for Mark Manning to receive social security disability benefits.

Answer to Interrogatory No. 22: Plaintiff was not.

Answer to Interrogatory No. 23: Plaintiff has been confined to his home more than usual, but he is not confined there because of a physical ailment. He remains there because of emotional distress and embarrassment.

Answer to Interrogatory No. 24: No

Answer to Interrogatory No. 25: Answer was not in the affirmative.

Answer to Interrogatory No. 26: No

Answer to Interrogatory No. 27: Answer was not in the affirmative.

Answer to Interrogatory No. 28: Just plaintiff's current doctors and plaintiff's wife knew.

Answer to Interrogatory No. 29: All current doctors know because of Plaintiff's treatments and testing. Wife knows because she was given plaintiff's HIV results.

Answer to Interrogatory No. 30: Disclosures made by Susan Manning about Mark Manning's healthcare information is as follows:

- a. Susan Manning to her husband John Manning in the Spring of 2001. John Manning, 15 ½ East Second Avenue, DuBois, PA 15801; phone 814-375-0810. Approximately two weeks after Susan started working at Dr. Shah's office. The disclosure took place in Susan and John's home. Susan came home from work and told John he would never guess who was a patient at Dr. Shah's. John said he did not know. Susan said one of his brothers, Mark. John asked her what the big deal was. Approximately one week later, Susan again

said to John that he will never believe what his brother Mark is seeing Dr. Shah for. Susan asked John if he knew if anything was medically wrong with Mark. John said not other than his back. Susan replied that Mark was diagnosed with Hepatitis B. John told Susan it was none of her business and has no business spreading around the information. Susan replied that it was her business because it's her office. Mark Manning was not present during this disclosure.

- b. Memorial Day Weekend 2002 at the campground at Treasure Lake in Dubois, PA. John and Susan Manning were camping with their family and friends. John said they were sitting around the campfire when Susan started talking about Mark and blurted out that "Mark has AIDS". This was the first time John heard that Mark had AIDS from Susan and they got into an argument about the accusation. John told Susan to keep her mouth shut and that she has no proof. Susan replied that yes, she does have proof. Also present during these disclosures were Melanie Cole and Rita (Lockwood) Meglio (Adriene Manning's ex-husband's fiancée). See the disclosures made to Melanie Cole for details. Mark was not present at the time this disclosure was made.
- c. At the Dubois Regional Medical Center in October of 2002; disclosure made to John Manning and Rita Gutowski. Kyle Manning, John and Susan Manning's son, was in the hospital. Mark Manning, Adriene Manning, and Amber Manning went to the hospital to visit Kyle. When they arrived, John took them into a room next to Kyle's and told them to wait there. John left and went to Kyle's room. At this point the head nurse, Rita Gutowski was called into Kyle's room. A conversation then took place whereby Susan Manning told Rita Gutowski that when Mark, Adriene and Amber arrive, she (Rita) is to call security to have them removed and that they are not allowed in Kyle's room. Ms. Gutowski asked why and Susan replied because Mark cannot be around Kyle. He has AIDS. This was the second time that Susan had said Mark has AIDS in front of her husband John Manning. Also present during this disclosure were Melanie and Randy Cole. Mark Manning was not in the room but was in a room next door in the hospital.
- d. Disclosure made to Elizabeth Aravich (Mark and John Manning's sister) of 344 South Oakland Street, Mesa, Arizona 85206; phone 480-275-7545. Ms. Aravich is unsure of the date the disclosure took place but it was approximately one week after Kyle Manning's funeral. After Kyle's funeral she would go over to John and Susan Manning's house on a regular basis to see if they needed anything and to see how the other boys were doing. During one visit, Susan and Elizabeth were having a conversation and Susan said to Elizabeth, "The reason I did not allow Mark and Adriene into the funeral home is because Mark has AIDS and my kids were not going to be around him to catch it." "Do you know anything about Bev (Mark's ex-wife) and the sickness she has and the weight she has lost. She has AIDS and Mark got it off of her." Mark Manning was not present when this disclosure was made.
- e. Disclosure made to Diane Andres of 215 Treasure Lake, DuBois, PA 15801; phone 814-371-6515. A conversation with Diane and Susan Manning took place in the Spring of 2002 at Susan's house in the kitchen. Prior to Diane's

private conversation with Susan, Diane said there was a lot of negative conversation about Mark taking place. Susan told Diane during their conversation that she would allow Adriene around, but because she is with Mark she won't allow it anymore. Diane asked Susan what her problem was and Susan replied that she did not want Mark around Kyle because she (Susan) found out through his medical records at Dr. Shah's office that Mark has AIDS and that he is not a regular patient there. Diane was shocked by this information given to her by Susan Manning and all she could think of is if Adriene was sick too. Mark Manning was not present during this disclosure.

- f. Disclosure made to Melanie and Randy Cole of Treasure Lake Road, DuBois, PA 15801; phone 814-371-0165. Approximately October of 2002, Susan Manning called Melanie Cole at work from where Susan was working. Susan told Melanie that she looked in Mark's medical file and said it was bad and serious and it was not safe for the kids to be around Mark. Susan proceeded to tell Melanie that Mark and Adriene are not allowed to visit Kyle in the hospital and that Kyle cannot be exposed. Mark Manning was not present during this telephone conversation between Susan Manning and Melanie Cole. Melanie and Randy were also present during the disclosure to Rita Gutowski in Kyle's hospital room. Melanie recounts that she was in the room when Susan asked Rita Gutowski to call security to have Mark and his family removed. Melanie was also present for the campfire disclosure Memorial Day weekend of 2002 whereby Susan Manning was talking to Rita (Lockwood) Meglio (who is Adriene Manning's ex-husband's fiancée). Susan was telling Rita that she should be tested for AIDS before she and Adriene's ex-husband got married.

All of the preceding information can be found in the attached affidavit dated January 17, 2005.

Answer to Interrogatory No. 31: The answer to this question is fully described in interrogatory number 30. In short, all previously mentioned parties in interrogatory answer 30 were told Mark Manning has AIDS.

Answer to Interrogatory No. 32: In general, plaintiff has incurred expenses for traveling out of town to seek doctors, including dentists, he has confined himself to his home, has undergone emotional distress regarding his neighbors and their knowledge of his disease, plaintiff has been unable to spend much time in Dubois which is where family is, and attorney's fees.

Answer to Interrogatory No. 33: None

Answer to Interrogatory No. 34: Plaintiff is not currently employed. His last date of employment was in April 1999; he is self-employed as an independent contractor in

construction/salvaging/running equipment/welding/cutting/fabricating. Plaintiff has been self-employed since 1994 (until 1999).

Answer to Interrogatory No. 35: Plaintiff was self-employed. The rest of the interrogatory is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 36: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 37 thru 39: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 40: Yes, plaintiff has. The rest of the interrogatory is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

Answer to Interrogatory No. 41: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 42: No, he has not.

Answer to Interrogatory No. 43: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 44: Plaintiff has not received any military disability benefits.

Answer to Interrogatory No. 45: Plaintiff has been receiving disability payments from the United States Government since 2001. The rest of the interrogatory is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 46: Objection on the basis that the interrogatory is overly broad and not specific.

Answer to Interrogatory No. 47: See attached statement dated January 17, 2005. This statement was recorded by Mark Manning. All those who contributed to the statement are named with their address and phone numbers.

Answer to Interrogatory No. 48: None

Answer to Interrogatory No. 49: Plaintiff has a copy of Defendant's proof of employment paid by Dr. Shah. Document is by the doctors who work with Dr. Shah and Dr. Shah regarding a decision for a request of medical records with social security. Please see attached copy dated April 2002 – December 2002.

Answer to Interrogatory No. 50: See attached statement dated January 17, 2005

Answer to Interrogatory No. 51 and 52: None.

** Answer to Interrogatory No. 53: See attached statement dated January 17, 2005

** Answer to Interrogatory No. 54: See attached statement dated January 17, 2005

** Answer to Interrogatory No. 55: See attached statement dated January 17, 2005

Answer to Interrogatory No. 56: Each person in the statement was told by Susan Manning that Mark Manning has AIDS.

** Answer to Interrogatory No. 57: At this time, no one.

** Answer to Interrogatory No. 58: not applicable

** Answer to Interrogatory No. 59: not applicable

** Answer to Interrogatory No. 60: none

Answer to Interrogatory No. 61: No, Plaintiff has not.

Answer to Interrogatory No. 62: No, Plaintiff has not.

Answer to Interrogatory No. 63: Relating to medical bills: (a) Medicaid and Medicare (b-g) too numerous to list; Objection on the basis that this part of the interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

Answer to Interrogatory No. 64: None

Answer to Interrogatory No. 65: At the end of the summer in 1996 by Dr. Mulligan (ex-wife's doctor) at Hahne Cancer Center in Dubois. Actually, the test was done by Dr. Mulligan but plaintiff's wife told him the HIV results. Plaintiff's current doctors are aware and have been treating him for it.

Answer to Interrogatory No. 66: Already answered in interrogatory number 30 and see attached statement dated January 17, 2005.

Answer to Interrogatory No. 67: Objection on the basis that the interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 68: None

Answer to Interrogatory No. 69: In the presence of the entire funeral home and all those present, plaintiff was not aware of Susan's disclosures at this point. Susan Manning told plaintiff's sister he had AIDS (did not say HIV) and therefore was not allowed to go in and see his nephew that died. All family members and family friends were present and witnessed this occurrence. Also, Susan Manning told plaintiff's youngest daughter Amber, who at the time was 10 years old, she wasn't welcome at the funeral. Amber told the plaintiff this information. Therefore, this has also had an effect on plaintiff's immediate family members.

Answer to Interrogatory No. 70: Objection on the basis that the interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 71: Kelli J. Brownwell, Esquire; Derek J. Cordier, Esquire; Plaintiff Mark Manning.

The Law Offices of Derek J. Cordier
and Kelli J. Brownwell

By Kelli J. Brownwell, Esq.
Kelli J. Brownwell, Esquire
Attorney at Law

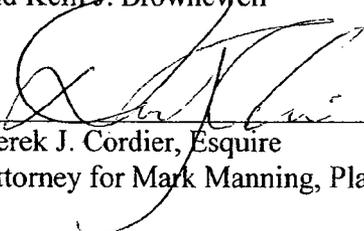
CERTIFICATION OF SERVICE

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 21st day of March, 2005:

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



The Law Offices of Derek J. Cordier
and Kelli J. Brownwell



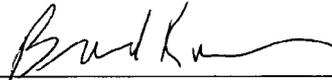
Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

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 15th day of April, 2005:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for the defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, on this _____ day of _____, 2005, it is hereby ORDERED, ADJUDGED and DECREED that defendants' motion to compel discovery of second set of interrogatories directed to plaintiff is GRANTED. Plaintiff shall file full and complete answers to the following discovery sought by defendants:

- (a) Interrogatory # 7
- (b) Interrogatory # 9
- (c) Interrogatories #14-15
- (d) Interrogatories #36 to #39
- (e) Interrogatory # 40
- (f) Interrogatory # 41
- (g) Interrogatory # 46
- (h) Interrogatory # 67
- (i) Interrogatory # 70
- (j) Request for Production of Documents # 7

BY THE COURT:

_____ J.

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING
Plaintiff

CIVIL DIVISION

No. 04-1828-CD

vs.

Issue No.

SHIRISH N. SHAH, M.D.
and
SUSAN MANNING
Defendants

PLAINTIFF'S ANSWERS TO
DEFENDANT'S PRELIMINARY
OBJECTIONS

Counsel of Record:

Filed on behalf of the Plaintiff

Brad R. Korinski, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

Counsel of Record for These Parties:

Derek J. Cordier, Esquire
PA I.D. # 83284
The Law Offices of Derek J. Cordier and
Kelli J. Brownwell
319 South Front Street
Harrisburg, PA 17104-1621

(717) 919-4002

FILED ^{NO} _{CC}
m/w: 5/25/05
APR 18 2005 @

William A. Shaw
Prothonotary/Clerk of Courts

NOW COMES the Plaintiff, Mark Manning, by and thru his attorney Derek J. Cordier, Esquire, and files the following answers to defendant's preliminary objections.

1. Admitted in part, Denied in part: This case has resulted from allegations made by Plaintiff that his sister-in-law, Susan Manning, disclosed plaintiff's HIV-positive status to various individuals. The complaint, however, does state when and how Susan Manning disclosed Plaintiff's HIV-positive status to these various individuals (see Complaint Paragraphs 6-9). Dates, times and places may be approximate, but complaints need only be concise and summary in nature. They do not need to be stated with particularity.

2. Admitted. Plaintiff contends that Defendant Susan Manning learned of his HIV-positive status during the course of her employment with Defendant Shirish N. Shah, M.D. (from now on Dr. Shah). Defendant Susan Manning herself admitted such during conversations with her husband John Manning and Diane Andres (see Complaint Paragraph 10). In addition, Plaintiff did receive a medical evaluation from Defendant Dr. Shah.

3. Denied. Plaintiff's complaint against Defendant Dr. Shah is based on vicarious liability; that he, as Defendant Susan Manning's employer, is responsible for her actions committed during the scope of her employment. It was during Defendant Susan Manning's employment with Defendant Dr. Shah that she learned of Plaintiff's HIV-positive status through confidential medical records held at Defendant Dr. Shah's medical office.

A. Answers to Motion to Strike/Motion for a More Specific Pleading

4. Denied. Paragraphs 6 through 10 of Plaintiff's complaint state in concise and summary form the abhorrent, outrageous, and highly offensive conduct of Defendant Susan Manning; that she, without Plaintiff's permission, disclosed to several family members, friends, and others that Plaintiff is HIV positive.

5. Denied. Again, a complaint need not be stated with particularity but only need be concise and in summary form. See Pennsylvania Rules of Civil Procedure 1019(a). Plaintiff can not make it any clearer to Defendants Susan Manning and Dr. Shah that Susan Manning, on several occasions, disclosed personal and confidential medical information regarding Plaintiff's HIV positive status to family members, friends, and others which Susan Manning received through the course of her employment at Dr. Shah's medical office.

6. Denied. The Pennsylvania Rules of Civil Procedure 1019(a) and Connor v. Allegheny General Hospital 461 A.2d 600 state that the complaint must be concise and in summary form; neither require the complaint to be stated with particularity. Regardless, Defendants have been provided with the names and dates/time periods of when the offensive disclosures of Defendant Susan Manning regarding Plaintiff's HIV positive status took place.

WHEREFORE, Plaintiff requests that this Honorable Court deny Defendants motion to strike Plaintiff's complaint for failure to comply with Pennsylvania Rules of Civil Procedure 1019(a).

B. Answer to Defendants Demurrer to Plaintiff's Claim of Invasion of Right of Privacy Against Susan Manning – Count III of Amended Complaint

7. Denied. The factual basis for Count 3 is found in paragraphs 6 through 10 of Plaintiff's Amended Complaint.

8. Admitted in part; Denied in part. An action for invasion of privacy is actually comprised of four distinct torts. Plaintiff does aver that Defendant Susan Manning gave publicity to his private life. In addition, Plaintiff avers that Defendant Susan Manning violated the tort of intrusion upon seclusion when she disclosed Plaintiff's HIV positive status to his family members and friends.

9. Admitted in part; Denied in part. Plaintiff agrees with the elements for publicity given to a private life. However, within Plaintiff's complaint and upon further discovery, numerous individuals are being identified as receiving the confidential HIV positive status of Plaintiff from the Defendant Susan Manning. As discovery continues, research into other individuals that Defendant Susan Manning disclosed Plaintiff's HIV positive status will be ongoing; for example, all those parties present at the campfire event of Memorial Day weekend 2002 and the parties present at the funeral home when Defendant Susan Manning's son passed away. Therefore, whether one, four or twenty individuals were told about Plaintiff's HIV positive status, there is no doubt that publicity was given to Plaintiff's private life and should be an issue for a jury to decide once all parties have been completely identified.

Plaintiff also relies upon the tort of intrusion upon seclusion in his claim for invasion of privacy. Intrusion upon seclusion requires "one who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another, or his private affairs or

concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable man.” Section 652B of the Restatement (Second) of Torts. In addition, an actor commits an intentional intrusion only if he believes, or is substantially certain, that he lacks the necessary legal or personal permission to commit the intrusive act. O’Donnell v. U.S. 891 F.2d 1079. In this case, Defendant Susan Manning intentionally intruded into Plaintiff’s private affairs, his confidential health records, without his permission, to see what he was being treated for by Dr. Shah, whom she was working for at the time. Opening up a personal and confidential medical file of an individual without their permission to see what they are being treated for could be no more intrusive. Then to disclose that confidential health information, a positive HIV status, to family members, friends, and others makes the intrusion highly offensive. Obviously, disclosing one’s HIV status without their permission is considered offensive to a reasonable man or the state of Pennsylvania would not have created The Confidentiality of HIV-Related Information Act.

10. Denied. See answer provided in paragraph 9.

11. Denied. See answer provided in paragraph 9.

12. Denied in part; Admitted in part. Defendants claim that Plaintiff’s complaint is non-descriptive is false. Plaintiff was a direct recipient of emotional distress and experienced that actual harm due to Defendant Susan Manning’s disclosure of Plaintiff’s HIV positive status. Plaintiff has suffered actual anxiety and serious emotional devastation as a result of Defendant’s disclosures.

13. Denied. See the answer provided in paragraph 12. Plaintiff has plead a direct impact in that he is suffering from anxiety and serious emotional devastation.

14. Denied. Defendant Susan Manning obtained Plaintiff's confidential HIV positive status within the scope of her employment while working for Defendant Dr. Shah.

15. Denied. See answer provided in paragraph 9 regarding elements of prima facie evidence for invasion of privacy; specifically for publicity given to private life and intrusion upon seclusion.

16. Denied. Defendants misstate the ruling provided by the Court in R.A. v. First Christ Church 748 A.2d 692. For an employer to be vicariously liable for the acts of its employees, the conduct of the employee is considered to be within the scope of employment if it is of a kind and nature that employee is employed to perform; it occurs substantially within the authorized time and space limits; it is actuated, at least in part, by purpose to serve employer. In R.A. v First Christ Church, the Church was not found to be vicariously liable because the minister who sexually abused the minor did so outside the scope of his employment, was not the child's spiritual advisor and none of the abuse occurred at the minister's place of employment. In addition, "only where employee commits an act encompassing the use of force which is excessive and so dangerous as to be totally without responsibility or reason, employer is not responsible." Id. Employer is, however, "vicariously liable for negligent acts of his employee which cause injuries to third party, provided that such acts were committed during course of and within scope of employment; in certain circumstances, liability of employer may also extend to intentional or criminal acts committed by employee." Id. In the case at hand, Defendant Susan Manning's actions, intruding into Plaintiff's confidential medical records and disclosing his HIV positive status, may have been intentional in that she wanted to know

what Plaintiff was being treated for by Dr. Shah. However, Defendant Susan Manning's conduct was within the scope of her employment, was of the kind and nature she was employed to perform, occurred during work hours and on the employer's premises, and having access to patients confidential medical records is of a purpose to serve her employer. Furthermore, this should be a question for the jury.

17. Denied. See answer provided in paragraph 16. In addition, Defendant Susan Manning was able to disclose Plaintiff's HIV positive status to others because she learned of this information through the course of her employment with Dr. Shah. Defendant Susan Manning has admitted to her husband, John Manning, and to Diane Andres that she learned of Plaintiff's HIV positive status while she was at work. The fact that she violated Plaintiff's privacy, invading his confidential medical records and disclosing his HIV positive status to others, to satisfy her own curiosity is "intentionally outrageous."

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Defendants request to sustain its preliminary objections and the request to dismiss Plaintiff's claim for invasion of privacy against Dr. Shah as set forth in Count I of the amended complaint.

E. Answer to Demurrer to Plaintiff's Claim of Violation of HIV-Related Information Act Against Dr. Shah – Count II

18. Admitted in part; Denied in part. Plaintiff does claim that Defendant Dr. Shah is vicariously liable for violating the Confidentiality of HIV-Related Information Act, 45 Pa. C.S. s. 7601 based on the actions of Defendant Susan Manning.

19. Admitted in part; Denied in part. Plaintiff agrees with Defendants statement of the law as it pertains to the Confidentiality of HIV-Related Information Act, however, disagrees that Dr. Shah can not be vicariously liable because the Act does not provide for such. The Act does not deny nor does it provide for vicarious liability claims, as most laws do not. As such, a claim for vicarious liability on the part of Defendant Dr. Shah, for the violations committed by Defendant Susan Manning, is appropriate.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Defendants preliminary objections and the request to dismiss Plaintiff's claim against Dr. Shah for violation of the Confidentiality of HIV-Related Information Act as set forth in Count II of the amended complaint.

F. Answer to Demurrer to Plaintiff's Punitive Damages Claim

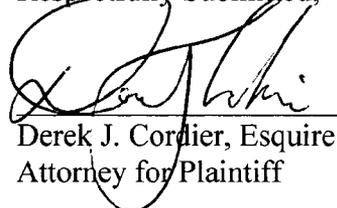
20. Admitted.

21. Admitted. Clearly, a person put in the position to safeguard Plaintiff's confidential health information and discloses said information is acting intentionally, willfully, and recklessly.

22. Denied. See answer provided in paragraph 21.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court deny Defendants preliminary objections and the request to dismiss Plaintiff's claim for punitive damages against Susan Manning as set forth in Count VI of the amended complaint.

Respectfully Submitted,


Derek J. Cordier, Esquire
Attorney for Plaintiff

4/15/05

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW on this 20th day of April, 2005, it is hereby ORDERED, ADJUGED and DECREED that oral argument on defendant's motion to compel is scheduled for the 29 day of April, 2005, at 2:00 ~~am~~/p.m. before Judge Ammerman in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:

Justice J. Ammerman, J.

FILED

APR 21 2005

William A. Shaw ^{GD}
 Prothonotary

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CA

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING	:
Plaintiff	:
	: Docket No. 04-1828-CD
vs.	:
	: CIVIL ACTION
SHIRISH N. SHAH, M.D.	: LAW
and	:
SUSAN MANNING	:
Defendants	:

MOTION FOR CONTINUANCE

1. There is Oral Argument on Defendant's Preliminary Objections scheduled for the 29th day of April 2005 at 2:00 p.m., in the above captioned matter.

2. Petitioner's attorney, Derek J. Cordier, Esquire has a conflict with the scheduled time that was scheduled prior the date of the Scheduling Order of March 30, 2005, in this matter.

3. Petitioner's attorney has contacted the attorney for the Defendant's, David R. Johnson, Esquire and he does not oppose a continuance.

WHEREFORE, Petitioner, Mark Manning, by and through his attorney, Derek J. Cordier, Esquire, respectfully requests that the Court continue the hearing in the above captioned matter.

Respectfully submitted by:



 DEREK J. CORDIER, ESQUIRE
 Attorney for Plaintiff
 319 South Front Street
 Harrisburg, PA 17104-1621
 (717) 919-4002

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 APR 20 2005
 Atty. ~~Shaw~~
 J. Cordier

William A. Shaw
Prothonotary/Clerk of Courts

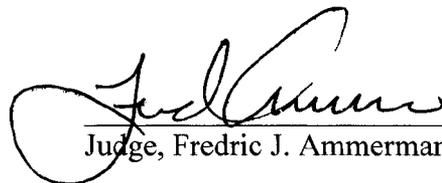
IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING	:
Plaintiff	:
	: Docket No. 04-1828-CD
vs.	:
	: CIVIL ACTION
SHIRISH N. SHAH, M.D.	: LAW
and	:
SUSAN MANNING	:
Defendants	:

ORDER

AND NOW, this 22 day of April 2005, it is hereby Ordered that the hearing in the above captioned matter currently scheduled for April 29, 2005, at 2:00 p.m. is continued until May 13, 2005 at 1:30 p.m. before Judge Ammerman in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT



Judge, Fredric J. Ammerman

^{GW}
FILED
04:20:30
APR 22 2005
Atty Cordier

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

Counsel of Record:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

CIVIL DIVISION

No. 04-1828-CD

Issue No.

AFFIDAVIT OF SERVICE

Code: 007

Filed on behalf 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 NO CC
APR 28 2005
William A. Shaw
Prothonotary/Clerk of Courts

AFFIDAVIT OF SERVICE

Before me, the undersigned authority, personally appeared Brad R. Korinski, Esquire, who, being duly sworn, deposes and says that a true and correct copy of the Judge Ammerman's April 20, 2005, Scheduling Order, along with a true and correct copy the Motion to Compel in the above-captioned case was served upon plaintiff's counsel, Derek Cordier, Esquire, 319 South Front Street, Harrisburg, Pennsylvania, 17104-1621, by United States, first class, postage pre-paid mail on April 25, 2005, as shown by the certificate of mailing attached hereto.

THOMSON, RHODES & COWIE, P.C.

Brad Korinski
Brad R. Korinski, Esquire

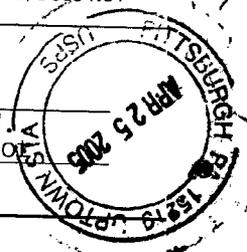
Sworn to and subscribed before me
this 26 day of April, 2005.

Kathleen A. Freiss
Notary Public
COMMONWEALTH OF PENNSYLVANIA

Notarial Seal
Kathleen A. Freiss, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Nov. 24, 2007

Member, Pennsylvania Association Of Notaries

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT PROVIDE FOR INSURANCE—POSTMASTER	
Received From:	
<u>Brad R. Korinski, Esquire</u>	
<u>Thomson, Rhodes & Cowie, P.C.</u>	
<u>Two Chatham Center, 10th Floor</u>	
<u>Pittsburgh, PA 15219</u>	
One piece of ordinary mail addressed to:	
<u>Derek Cordier, Esquire</u>	
<u>319 South Front Street</u>	
<u>Harrisburg, PA 17104-1621</u>	
BRK/DRJ - 14017	



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 26th day of April, 2005:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.

Brad Korinski

David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Shirish N. Shah, M.D., one of the
defendants.

CP

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

MARK MANNING :
 :
-VS- : No. 04-1828-CD
 :
SHIRISH N. SHAH, M.D., and :
SUSAN MANNING :

ORDER

NOW, this 13th day of May, 2005, following argument on the Defendants' Preliminary Objections to Plaintiff's Amended Complaint, with the Court noting that the Defendant has withdrawn the Preliminary Objection related to the Plaintiff filing a more specific pleading, it is the ORDER of this Court that counsel for the Plaintiff have no more than thirty (30) days from this date to file a brief with the Court relative the remaining issues as stated within the Preliminary Objections.

BY THE COURT,

Judith J. Armentrout

President Judge

FILED 200
19:46:24
MAY 17 2005
Atty: Cordier
D. Johnson
Prothonotary, Clerk of Courts

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
vs. : Docket No. 04-1828-CD
SHIRISH N. SHAH, M.D. : CIVIL ACTION
and : LAW
SUSAN MANNING :
Defendants :

FILED

MAY 31 2005

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William A. Shaw
Prothonotary
NO C/C

PLAINTIFF'S SUPPLEMENTAL ANSWERS TO
DEFENDANTS' INTERROGATORIES

Plaintiff Mark Manning answers the second set of interrogatories put forth by the defendants as follows:

Answered as agreed by the parties 5D:

Answer to Interrogatory No. 36:

1998 Mark Manning earned \$645.00.
1999 Mark Manning became disabled and did not file an income tax return.
2000 Mark Manning was disabled and did not file and income tax return.
2001 Mark Manning was disabled and filed a joint return with his wife.
2002 Mark Manning was disabled and filed a joint return with his wife.
2003 Mark Manning was disabled and filed a joint return with his wife.
2004 Mark Manning was disabled and filed a joint return with his wife.

Answer to Interrogatory No. 37:
Yes.

Answer to Interrogatory No. 38:
See attached copies of income tax returns that were filed for the years 1998 through 2004.

Answer to Interrogatory No. 39:
See attached copies of income tax returns that were filed for the years 1998 through 2004.

Answered as required by Court Order 5E:

Answer to Interrogatory No. 40:
Yes, plaintiff has filed for social security benefits. The plaintiff filed for social security benefits in 1999 and was turned down due to not being ill enough. In 2001 he was granted SSDI and SSI. Since that time the SSI was dropped due to his marriage. Currently the plaintiff receives \$567.00 per month in SSDI.

Answered as required by Court Order 5F:

Answer to Interrogatory No. 41:

Yes, the plaintiff received welfare benefits in April of 1999 to 2001 of approximately \$175.00 per month. The welfare benefits were paid back. The plaintiff stopped receiving the benefits due to receiving SSDI and SSI in 2001.

Answered as required by Court Order 5G:

Answer to Interrogatory No. 46:

Plaintiff is not in possession of any affidavits. Plaintiff reserves the right to provide such affidavits once produced.

Answered as required by Court Order 5H:

Answer to Interrogatory No. 67:

John Manning

15 1/2 East Second Street

DuBois, PA 15801

Elizabeth Aravich

344 South Oakland Street

Mesa, AZ 85206

Diane Andres

215 Treasure Lake

DuBois, PA 15801

Melanie and Randy Cole

Treasure Lake Rd.

DuBois, PA 15801

Olivio and Rita Meglio

131 Evergreen St.

DuBois, PA 15801

Deborah Kirk

William Penn Drive

DuBois, PA 15801

Rita Gutowski

217 North Third Street

DuBois, PA 15801

Jen Gutowski

552 Locust St.

DuBois, PA 15801

Answer to Interrogatory No. 67 (a):

Most if not all of the above named persons in the Plaintiff's social circle knew of his prior criminal record.

Answer to Interrogatory No. 67 (b):

Plaintiff had to explain to family members his illness and he is seeking treatment in another town. Plaintiff is looking to relocate now because of this disclosure. Plaintiff has confined himself to his residence now more than ever and is afraid to be confronted by his neighbors and acquaintances.

When Plaintiff's nephew was dying, Plaintiff was told to leave the hospital by nurse Rita Gutowski. At the funeral for his nephew and in the presence of all those present, Susan Manning would not allow Plaintiff to attend the funeral because he had AIDS. Susan Manning told plaintiff's sister he had AIDS (did not say HIV) and therefore was not allowed to go in and see his nephew that died. All family members and family friends were present and witnessed this occurrence. Also, Susan Manning told plaintiff's youngest daughter Amber, who at the time was 10 years old, she wasn't welcome at the funeral. Amber told the plaintiff this information. Therefore, this has also had an effect on plaintiff's immediate family members.

Further, see prior answers to Interrogatory No. 30: A-F.

Respectfully submitted by:



Attorney for Plaintiff
Derek Cordier, Esq. #83284
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002

For the year Jan 1-Dec 31, 1998, or other tax year beginning , 1998, ending , 19 OMB No. 1545-0074

Label (See instructions.)

Your First Name MI Last Name MARK A MANNING

Your Social Security Number 183-54-9332

Use the IRS label. Otherwise, please print or type.

If a Joint Return, Spouse's First Name MI Last Name

Spouse's Social Security Number

Home Address (number and street). If You Have a P.O. Box, See Instructions. RR 4 BOX 123 B

Apartment No.

Important! You must enter your social security number(s) above.

City, Town or Post Office. If You Have a Foreign Address, See Instructions. DUBOIS State ZIP Code PA 15801

Yes No X Note: Checking 'Yes' will not change your tax or reduce your refund

Presidential Election Campaign (See instructions.)

Do you want \$3 to go to this fund? If a joint return, does your spouse want \$3 to go to this fund?

Filing Status

- 1 Single
2 Married filing joint return (even if only one had income)
3 X Married filing separate return. Enter spouse's SSN above & full name here MANNING
4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here
5 Qualifying widow(er) with dependent child (year spouse died 19). (See instructions.)

Check only one box.

Exemptions

Table with columns for exemption types (6a, b, c), dependent details (1, 2, 3, 4), and counts (No. of boxes checked, No. of children, Dependents entered).

If more than six dependents, see instructions.

Income

Table listing income sources (7-22) and their taxable amounts, including wages, interest, dividends, and total income of 694.

Attach Copy B of your Forms W-2, W-2G, and 1099-R here.

If you did not get a W-2, see instructions.

Enclose, but do not staple, any payment. Also, please use Form 1040-V.

Adjusted Gross Income

Table listing adjustments (23-33) to income, including IRA deduction, medical savings account, and self-employment tax, resulting in an adjusted gross income of 645.

If line 33 is under \$30,095 (under \$10,030 if a child did not live with you), see EIC in the instructions.

COPY

Tax and Credits	34 Amount from line 33 (adjusted gross income)	34	645.
	35a Check if: <input type="checkbox"/> You were 65/older, <input type="checkbox"/> Blind; <input type="checkbox"/> Spouse was 65/older, <input type="checkbox"/> Blind. Add the number of boxes checked above and enter the total here	35a	
	b If you are married filing separately and your spouse itemizes deductions or you were a dual-status alien, see instructions and check here	35b	
	36 Enter the larger of your itemized deductions from Schedule A, line 28, Or standard deduction shown on the left. But see instructions to find your standard deduction if you checked any box on line 35a or 35b or if someone can claim you as a dependent	36	3,550.
	37 Subtract line 36 from line 34	37	-2,905.
	38 If line 34 is \$93,400 or less, multiply \$2,700 by the total number of exemptions claimed on line 6d. If line 34 is over \$93,400, see the worksheet in the instructions for the amount to enter	38	2,700.
	39 Taxable income. Subtract line 38 from line 37. If line 38 is more than line 37, enter -0-	39	0.
	40 Tax. See instructions. Check if any tax from a <input type="checkbox"/> Form(s) 8814 b <input type="checkbox"/> Form 4972	40	0.
	41 Credit for child and dependent care expenses. Attach Form 2441	41	
	42 Credit for the elderly or the disabled. Attach Schedule R	42	
	43 Child tax credit (see instructions)	43	
	44 Education credits. Attach Form 8863	44	
	45 Adoption credit. Attach Form 8839	45	
	46 Foreign tax credit. Attach Form 1116 if required	46	
	47 Other. Check if from a <input type="checkbox"/> Form 3800 b <input type="checkbox"/> Form 8396 c <input type="checkbox"/> Form 8801 d <input type="checkbox"/> Form (specify)	47	
	48 Add lines 41 through 47. These are your total credits	48	
	49 Subtract line 48 from line 40. If line 48 is more than line 40, enter -0-	49	0.
Other Taxes	50 Self-employment tax. Attach Schedule SE	50	98.
	51 Alternative minimum tax. Attach Form 6251	51	
	52 Social security and Medicare tax on tip income not reported to employer. Attach Form 4137	52	
	53 Tax on IRAs, other retirement plans, and MSAs. Attach Form 5329 if required	53	
	54 Advance earned income credit payments from Form(s) W-2	54	
	55 Household employment taxes. Attach Schedule H	55	
	56 Add lines 49-55. This is your total tax	56	98.
Payments	57 Federal income tax withheld from Forms W-2 and 1099	57	
	58 1998 estimated tax payments and amount applied from 1997 return	58	
	59a Earned income credit. Attach Schedule EIC if you have a qualifying child. b Nontaxable earned income: amount	59a	
	60 Additional child tax credit. Attach Form 8812	60	
	61 Amount paid with Form 4868 (request for extension)	61	
	62 Excess social security and RRTA tax withheld (see instrs)	62	
	63 Other payments. Check if from a <input type="checkbox"/> Form 2439 b <input type="checkbox"/> Form 4136	63	
	64 Add lines 57, 58, 59a, and 60 through 63. These are your total payments	64	
Refund	65 If line 64 is more than line 56, subtract line 56 from line 64. This is the amount you Overpaid	65	
	66a Amount of line 65 you want Refunded to You	66a	
	b Routing number		
	c Type: <input type="checkbox"/> Checking <input type="checkbox"/> Savings		
	d Account number		
	67 Amount of line 65 you want Applied to Your 1999 Estimated Tax	67	
Amount You Owe	68 If line 56 is more than line 64, subtract line 64 from line 56. This is the Amount You Owe. For details on how to pay, see instructions	68	98.
	69 Estimated tax penalty. Also include on line 68	69	

Standard Deduction for Most People

Single: \$4,250

Head of household: \$6,250

Married filing jointly or Qualifying widow(er): \$7,100

Married filing separately: \$3,550

Attach Forms W-2 and W-2G to page 1. Also attach Form 1099-R if tax was withheld.

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your Signature	Date	Your Occupation	Daytime Telephone Number (optional)
<i>Robert L. Salizzoni</i>		DISABLED	
Spouse's Signature. If a Joint Return, Both Must Sign.	Date	Spouse's Occupation	

Paid Preparer's Use Only

Preparer's Signature	Date	Check if self-employed	Preparer's Social Security No.
<i>Robert L. Salizzoni</i>	04/03/99	<input checked="" type="checkbox"/>	205-34-6804
Firm's Name (or yours if self-employed) and Address	EIN	PA	ZIP Code
ROBERT L. SALIZZONI R.D. # 3 BOX 671 BROCKWAY	25-1516492		15824

COPY

Label (See instructions.)	For the year Jan 1 - Dec 31, 2002, or other tax year beginning _____, 2002, ending _____, 20		CMB No. 1545-0074	
	Your first name MARK	MI A	Last name MANNING	Your social security number 183-54-9332
	If a joint return, spouse's first name ADRIENE	MI L	Last name MANNING	Spouse's social security number 187-56-1381
	Home address (number and street). If you have a P.O. box, see instructions. 17 SHAFFER ST		Apartment no.	▲ Important! ▲ You must enter your social security number(s) above.
City, town or post office. If you have a foreign address, see instructions. SYKESVILLE		State ZIP code PA 15865		

Presidential Election Campaign (See instructions.)

Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund? ...

You: Yes No
Spouse: Yes No

Filing Status

Check only one box.

1 Single
2 Married filing jointly (even if only one had income)
3 Married filing separately. Enter spouse's SSN above & full name here ...
4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here ...
5 Qualifying widow(er) with dependent child (year spouse died ...). (See instructions.)

Exemptions

6a Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a

6b Spouse

c Dependents:		(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see instrs)	No. of boxes checked on 6a and 6b
(1) First name	Last name				
				<input type="checkbox"/>	No. of children on 6c who: • lived with you • did not live with you due to divorce or separation (see instrs) Dependents on 6c not entered above Add numbers on lines above
				<input type="checkbox"/>	
				<input type="checkbox"/>	
				<input type="checkbox"/>	
				<input type="checkbox"/>	
d Total number of exemptions claimed					2

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7	Wages, salaries, tips, etc. Attach Form(s) W-2	7	25,789.
8a	Taxable interest. Attach Schedule B if required	8a	
8b	Tax-exempt interest. Do not include on line 8a	8b	
9	Ordinary dividends. Attach Schedule B if required	9	
10	Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	0.
11	Alimony received	11	
12	Business income or (loss). Attach Schedule C or C-EZ	12	
13	Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here	13	
14	Other gains or (losses). Attach Form 4797	14	
15a	IRA distributions	15a	
15b	Taxable amount (see instrs)	15b	
16a	Pensions and annuities	16a	
16b	Taxable amount (see instrs)	16b	
17	Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	
18	Farm income or (loss). Attach Schedule F	18	
19	Unemployment compensation	19	
20a	Social security benefits	20a	
20b	Taxable amount (see instrs)	20b	
21	Other income	21	
22	Add the amounts in the far right column for lines 7 through 21. This is your total income	22	25,789.

Adjusted Gross Income

23	Educator expenses (see instructions)	23	
24	IRA deduction (see instructions)	24	78.
25	Student loan interest deduction (see instructions)	25	
26	Tuition and fees deduction (see instructions)	26	
27	Archer MSA deduction. Attach Form 8853	27	
28	Moving expenses. Attach Form 3903	28	
29	One-half of self-employment tax. Attach Schedule SE	29	
30	Self-employed health insurance deduction (see instructions)	30	
31	Self-employed SEP, SIMPLE, and qualified plans	31	
32	Penalty on early withdrawal of savings	32	
33a	Alimony paid b Recipient's SSN	33a	
34	Add lines 23 through 33a	34	78.
35	Subtract line 34 from line 22. This is your adjusted gross income	35	25,711.



Tax and Credits

Standard Deduction for -

• People who checked any box on line 37a or 37b or who can be claimed as a dependent, see instructions.

• All others: Single, \$4,700

Head of household, \$6,900

Married filing jointly or Qualifying widow(er), \$7,850

Married filing separately, \$3,925

Table with 3 columns: Line number, Description, Amount. Includes lines 36-55 with various tax calculations and credits.

Other Taxes

Table with 3 columns: Line number, Description, Amount. Includes lines 56-61 for other taxes.

Payments

If you have a qualifying child, attach Schedule EIC.

Table with 3 columns: Line number, Description, Amount. Includes lines 62-69 for tax payments.

Refund

Direct deposit? See instructions and fill in 71b, 71c, and 71d.

Table with 3 columns: Line number, Description, Amount. Includes lines 70-72 for refund information.

Amount You Owe

Table with 3 columns: Line number, Description, Amount. Includes line 73 for amount owed.

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] Yes. Complete the following. [] No

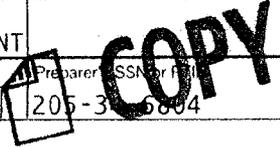
Sign Here

Joint return? See instructions. Keep a copy for your records.

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Paid Preparer's Use Only

Preparer's signature: Robert L Salizoni, Date: 02/03/2003, Firm's name: Salizoni & Associates, Address: Rd #3, Box 671, Brockway PA 15824



Label (See instructions.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign (See instructions.)

For the year Jan 1 - Dec 31, 2003, or other tax year beginning, 2003, ending, 20. OMB No. 1545-0074. Your first name MI Last name MARK A MANNING. Your social security number 183-54-9332. If a joint return, spouse's first name MI Last name ADRIENE L MANNING. Spouse's social security number 187-56-1381. Home address (number and street). If you have a P.O. box, see instructions. Apartment no. 17 SHAFFER ST. City, town or post office. If you have a foreign address, see instructions. State ZIP code SYKESVILLE PA 15865.

Filing Status

Check only one box.

Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund? [] Yes [X] No [] Yes [X] No. 1 [] Single. 2 [X] Married filing jointly (even if only one had income). 3 [] Married filing separately. Enter spouse's SSN above & full name here. 4 [] Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here. 5 [] Qualifying widow(er) with dependent child. (See instructions.)

Exemptions

If more than five dependents, see instructions.

6a [X] Yourself. If your parent (or someone else) can claim you as a dependent on his or her tax return, do not check box 6a. No. of boxes checked on 6a and 6b 2. b [X] Spouse. No. of children on 6c who: • lived with you. • did not live with you due to divorce or separation (see instrs). c Dependents: (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) [X] if qualifying child for child tax credit (see instrs). d Total number of exemptions claimed 2.

Income

Attach Forms W-2 and W-2G here. Also attach Form(s) 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

ROLLOVER ROLLOVER

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7 Wages, salaries, tips, etc. Attach Form(s) W-2 7 28,477. 8a Taxable interest. Attach Schedule B if required 8a. b Tax-exempt interest. Do not include on line 8a 8b. 9a Ordinary dividends. Attach Schedule B if required 9a. b Qualified divs (see instrs) 9b. 10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions) 10. 11 Alimony received 11. 12 Business income or (loss). Attach Schedule C or C-EZ 12. 13a Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here 13a. b If box on 13a is checked, enter post-May 5 capital gain distributions 13b. 14 Other gains or (losses). Attach Form 4797 14. 15a IRA distributions 15a 12,961. b Taxable amount (see instrs) 15b 0. 16a Pensions and annuities 16a 12,961. b Taxable amount (see instrs) 16b 0. 17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E 17. 18 Farm income or (loss). Attach Schedule F 18. 19 Unemployment compensation 19. 20a Social security benefits 20a. b Taxable amount (see instrs) 20b. 21 Other income 21. 22 Add the amounts in the far right column for lines 7 through 21. This is your total income. 22 28,477.

Adjusted Gross Income

23 Educator expenses (see instructions) 23. 24 IRA deduction (see instructions) 24 1,136. 25 Student loan interest deduction (see instructions) 25. 26 Tuition and fees deduction (see instructions) 26. 27 Moving expenses. Attach Form 3903 27. 28 One-half of self-employment tax. Attach Schedule SE 28. 29 Self-employed health insurance deduction (see instrs) 29. 30 Self-employed SEP, SIMPLE, and qualified plans 30. 31 Penalty on early withdrawal of savings 31. 32a Alimony paid b Recipient's SSN 32a. 33 Add lines 23 through 32a 33 1,136. 34 Subtract line 33 from line 22. This is your adjusted gross income 34 27,341.



Tax and Credits

Standard Deduction for -

• People who checked any box on line 36a or 36b or who can be claimed as a dependent, see instructions.

• All others: Single or Married filing separately, \$4,750

Married filing jointly or Qualifying widow(er), \$9,500

Head of household, \$7,000

Table with 3 columns: Line number, Description, and Amount. Rows include: 35 Amount from line 34 (adjusted gross income) 27,341; 36a Check if: You were born before January 2, 1939, Spouse was born before January 2, 1939; 37 Itemized deductions (from Schedule A) or your standard deduction (see left margin) 9,500; 38 Subtract line 37 from line 35 17,841; 39 If line 35 is \$104,625 or less, multiply \$3,050 by the total number of exemptions claimed on line 6d. If line 35 is over \$104,625, see the worksheet in the instructions 6,100; 40 Taxable income. Subtract line 39 from line 38. If line 39 is more than line 38, enter -0- 11,741; 41 Tax (see instrs). Check if any tax is from a Form(s) 8814 b Form 4972 1,173; 42 Alternative minimum tax (see instructions). Attach Form 6251; 43 Add lines 41 and 42 1,173; 44 Foreign tax credit. Attach Form 1116 if required; 45 Credit for child and dependent care expenses. Attach Form 2441; 46 Credit for the elderly or the disabled. Attach Schedule R; 47 Education credits. Attach Form 8863; 48 Retirement savings contributions credit. Attach Form 8880 568; 49 Child tax credit (see instructions); 50 Adoption credit. Attach Form 8839; 51 Credits from: a Form 8396 b Form 8859; 52 Other credits. Check applicable box(es): a Form 3800 b Form 8801 c Specify; 53 Add lines 44 through 52. These are your total credits 568; 54 Subtract line 53 from line 43. If line 53 is more than line 43, enter -0- 605; 55 Self-employment tax. Attach Schedule SE; 56 Social security and Medicare tax on tip income not reported to employer. Attach Form 4137; 57 Tax on qualified plans, including IRAs, and other tax-favored accounts. Attach Form 5329 if required; 58 Advance earned income credit payments from Form(s) W-2; 59 Household employment taxes. Attach Schedule H; 60 Add lines 54-59. This is your total tax 605; 61 Federal income tax withheld from Forms W-2 and 1099 3,696; 62 2003 estimated tax payments and amount applied from 2002 return; 63 Earned income credit (EIC); 64 Excess social security and tier 1 RRTA tax withheld (see instructions); 65 Additional child tax credit. Attach Form 8812; 66 Amount paid with request for extension to file (see instructions); 67 Other pmts from: a Form 2439 b Form 4136 c Form 8885; 68 Add lines 61 through 67. These are your total payments 3,696; 69 If line 68 is more than line 60, subtract line 60 from line 68. This is the amount you overpaid 3,091; 70a Amount of line 69 you want refunded to you 3,091; 70b Routing number 043306855; 70c Type: X Checking Savings; 70d Account number 3000412886; 71 Amount of line 69 you want applied to your 2004 estimated tax; 72 Amount you owe. Subtract line 68 from line 60. For details on how to pay, see instructions; 73 Estimated tax penalty (see instructions).

Other Taxes

Payments

If you have a qualifying child, attach Schedule EIC.

Refund

Direct deposit? See instructions and fill in 70b, 70c, and 70d.

Amount You Owe

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] Yes. Complete the following. [] No
Designee's name: Preparer
Phone no.
Personal identification number (PIN)

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature: Mark A. Manning Date: 2-10-04 Your occupation: DISABLED Daytime phone number:
Spouse's signature: Adriene L. Manning Date: 2-10-04 Spouse's occupation: ORTHODONTIC ASSITANT
Preparer's signature: Robert Salizzoni Date: 02/10/2004 Check if self-employed [X] Preparer's SSN or PTIN: P00399062

Paid Preparer's Use Only

Firm's name (or yours if self-employed) address, and ZIP code: SALIZZONI & ASSOCIATES RR 3 BOX 671 BROCKWAY PA 15824-9307
EIN: 25-1516492
Phone no.: (814) 265-0895

1040

Department of the Treasury — Internal Revenue Service

U.S. Individual Income Tax Return 2004

(99) IRS Use Only — Do not write or staple in this space.

Label (See instructions.)

Use the IRS label. Otherwise, please print or type.

Presidential Election Campaign (See instructions.)

For the year Jan 1 - Dec 31, 2004, or other tax year beginning 2004, ending 2004, ending 2004. Your first name MI Last name MARK A MANNING. Your social security number 183-54-9332. Spouse's social security number 187-56-1381. Home address (number and street). If you have a P.O. box, see instructions. Apartment no. 17 SHAFFER ST. City, town or post office. If you have a foreign address, see instructions. State ZIP code PA 15865. SYKESVILLE. Important! You must enter your social security number(s) above.

Note: Checking 'Yes' will not change your tax or reduce your refund. Do you, or your spouse if filing a joint return, want \$3 to go to this fund? You Yes No Spouse Yes No

Filing Status

- 1 Single
2 Married filing jointly (even if only one had income)
3 Married filing separately. Enter spouse's SSN above & full name here
4 Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here
5 Qualifying widow(er) with dependent child (see instructions)

Check only one box.

Exemptions

6a Yourself. If someone can claim you as a dependent, do not check box 6a
6b Spouse
c Dependents: (1) First name Last name (2) Dependent's social security number (3) Dependent's relationship to you (4) if qualifying child for child tax credit (see instr)
d Total number of exemptions claimed 2

If more than four dependents, see instructions.

Income

Attach Form(s) W-2 here. Also attach Forms W-2G and 1099-R if tax was withheld.

If you did not get a W-2, see instructions.

Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7 Wages, salaries, tips, etc. Attach Form(s) W-2 28,702.
8a Taxable interest. Attach Schedule B if required
8b Tax-exempt interest. Do not include on line 8a
9a Ordinary dividends. Attach Schedule B if required
9b Qualified divs (see instrs)
10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions)
11 Alimony received
12 Business income or (loss). Attach Schedule C or C-EZ
13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here
14 Other gains or (losses). Attach Form 4797
15a IRA distributions 15b Taxable amount (see instrs)
16a Pensions and annuities 16b Taxable amount (see instrs)
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E
18 Farm income or (loss). Attach Schedule F
19 Unemployment compensation
20a Social security benefits 20b Taxable amount (see instrs)
21 Other income
22 Add the amounts in the far right column for lines 7 through 21. This is your total income 28,702.

Adjusted Gross Income

23 Educator expenses (see instructions)
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ
25 IRA deduction (see instructions) 532
26 Student loan interest deduction (see instructions)
27 Tuition and fees deduction (see instructions)
28 Health savings account deduction. Attach Form 8889
29 Moving expenses. Attach Form 3903
30 One-half of self-employment tax. Attach Schedule SE
31 Self-employed health insurance deduction (see instrs)
32 Self-employed SEP, SIMPLE, and qualified plans
33 Penalty on early withdrawal of savings
34a Alimony paid b Recipient's SSN
35 Add lines 23 through 34a 532
36 Subtract line 35 from line 22. This is your adjusted gross income 28,170.

COPY

Tax and Credits

Standard Deduction for -

People who checked any box on line 38a or 38b or who can be claimed as a dependent, see instructions.

All others:

Single or Married filing separately, \$4,850

Married filing jointly or Qualifying widow(er), \$9,700

Head of household, \$7,150

Table with 3 columns: Line number, Description, and Amount. Includes lines 37-75 covering income, deductions, credits, taxes, and payments.

Other Taxes

Payments

If you have a qualifying child, attach Schedule EIC.

Refund

Direct deposit? See instructions and fill in 72b, 72c, and 72d.

Amount You Owe

Third Party Designee

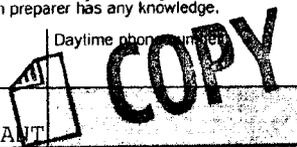
Do you want to allow another person to discuss this return with the IRS (see instructions)? [X] Yes. Complete the following. [] No

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.

Paid Preparer's Use Only

Preparer's signature: Robert Salizzoni, Date: 02/15/2005, Firm's name: Salizzoni & Associates, EIN: 25-1516492



CA

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

MARK MANNING,
Plaintiff

vs.

NO. 04-1828-CD

SHIRISH N. SHAH, M.D., and
SUSAN MANNING,
Defendants

0/3/05/01
JUN 20 2005
ICC Atty:
D. Cordier
D. Johnson
D. M. Kesell
W. A. Shaw
Prothonotary Clerk of Courts

OPINION

Mark Manning (Plaintiff) filed an action against the Defendants Shirish N. Shah (Dr. Shah) and Susan Manning (Ms. Manning) alleging that Ms. Manning disclosed Plaintiff's HIV positive status to individuals as named in the Plaintiff's Amended Complaint. Ms. Manning, who had been the Plaintiff's sister-in-law, allegedly learned about the Plaintiff's health information during her employment with Dr. Shah, who had previously examined Plaintiff in connection with a Social Security disability claim. Both Defendants filed Preliminary Objections to Plaintiff's Amended Complaint, with argument on the same being held on May 13, 2005. At the argument, the Defendants withdrew Preliminary Objection A which was seeking a more specific pleading.

The second Preliminary Objection is Ms. Manning's Demurrer to Plaintiff's claim of invasion of right of privacy. The Demurrer is based upon Ms. Manning's belief that Count III of the Plaintiff's Amended Complaint does not set forth enough individuals to meet the publicity requirement of the cause of action of invasion of privacy. See Harris by Harris v. Easton Pub. Co., 483 A.2d 1377 (Pa. Super. 1984) and Nagey v. Bell Tel. Co. of Pa., 436 A.2d 701 (Pa. Super. 1981). In this instance, the Court is not willing to grant the Demurrer and dismiss this provision of Plaintiff's Amended Complaint against Ms. Manning. The Court

instead will permit the parties to engage in the discovery process in order to determine if additional individuals are located to whom the Plaintiff's condition was made public by Ms. Manning. In the event the defense would deem the same to be appropriate, the Court would be willing to consider this issue on a subsequent motion for summary judgement following the completion of discovery.

Preliminary Objection C by Ms. Manning is to Count V of the Amended Complaint wherein Plaintiff makes a claim of negligent infliction of emotional distress. In regard to a cause of action for negligent infliction of emotional distress, the cases can be divided into three categories:

1. Where the plaintiff is the direct recipient of the defendant's actions;
2. Where the plaintiff is a bystander or observer of defendant's behavior upon someone else; and
3. Where the plaintiff has been placed in the zone of danger because of the actions of the defendant.

Brown v. Philadelphia College, 674 A.2d 1130 (Pa. Super. 1996).

Plaintiff's Amended Complaint bases the negligent infliction of emotional distress claim upon the Defendant publicizing his HIV status. There are no allegations which invoke any of the three criteria as listed above. Case law in the Commonwealth is clear that one of the three criteria must be met. See also Stoddard v. Davidson, 513 A.2d 419 (Pa. Super. 1986). Plaintiff cannot meet the requirements under the factual averments and the Court does not believe that the Plaintiff will be able to file a further amended complaint which will set forth any facts which would meet with the requirements. Therefore, the Court will dismiss the Plaintiff's claim against Ms. Manning for negligent infliction of emotional distress.

Defendant Dr. Shah demurrers to the Plaintiff's claim of invasion of privacy in Preliminary Objection D. Plaintiff's claim of invasion of privacy against Dr. Shah is not based upon any conduct of Dr. Shah, but instead on the premise that Dr. Shah was the employer of Ms. Manning during the time that she allegedly published the Plaintiff's condition. Plaintiff's Amended Complaint, paragraph 26, avers that Ms. Manning engaged in "intentionally outrageous conduct" by her actions. Plaintiff makes no allegation that Dr. Shah aided, abetted or facilitated his employee's conduct nor is there any allegation that Ms. Manning's conduct occurred during the course and scope of her employment duties with Dr. Shah. The Pennsylvania Superior Court, in R.A. v. First Church of Christ analyzed Pennsylvania law with respect to vicarious liability. The court stated as follows:

Pennsylvania law concerning the extent to which an employer is vicariously liable for the actions of its employee is well-established and crystal clear. It is well settled that an employer is held vicariously liable for the negligent acts of his employee which cause injuries to a third party, provided that such acts were committed during the course of and within the scope of employment. In certain circumstances, liability of the employer may also extend to intentional or criminal acts committed by the employee. The conduct of the employees considered "within the scope of the employment" for purposes of vicarious liability if: (1) it is of a kind and nature that the employee is empowered to perform; (2) it occurs substantially within the authorized time and space limits; (3) it is actuated, at least in part, by a purpose to serve the employer; and (4) if force is intentionally used by the employee against another, the use of force is not unexpected by the employer . . .

R.A. v. First Church of Christ, 748 A.2d at 699 - 700.

It is obvious that in the event that Ms. Manning did inappropriately publicize the Plaintiff's medical status that it would not have been performed within the course and scope of her employment with Dr. Shah. Additionally, no claim has been made by the Plaintiff that Dr. Shah failed to appropriately supervise Ms. Manning. Therefore, the Demurrer as to the

Plaintiff's claim against Dr. Shah for invasion of privacy based upon vicarious liability must be granted and Count I of the Amended Complaint dismissed.

In Preliminary Objection E, Dr. Shah demurs to Plaintiff's claim that he violated the HIV-Related Information Act, 45 Pa. C.S. §7601, *et seq.* The Act, under certain circumstances provides for the imposition of civil liability upon those persons found to have disclosed confidential HIV-related information. Plaintiff's difficulty is that he pleads no facts concerning how Dr. Shah directly violated the statute. Section 7610 of the statute provides as follows:

Any person aggrieved by a violation of this Act shall have a cause of action against the person who committed the violation and may recover compensatory damages.

By plain reading of this section, the Act only creates a civil cause of action against the person who committed the violation. Plaintiff is clearly alleging in his Amended Complaint that it is Ms. Manning who committed the violation. The Court has already determined that Dr. Shah cannot be held responsible on the theory of vicarious liability. Plaintiff's only argument in regard to the applicability of the Act against Dr. Shah is that the Act does not say that an action cannot be brought against an employer. This argument must fail. As Dr. Shah cannot be said to be "the person who committed the violation" the Court will grant this Demurrer and dismiss this claim against Dr. Shah.

The Defendants' final Preliminary Objection is to the Plaintiff's claim for punitive damages. Pennsylvania law provides that punitive damages may be awarded only where "a person's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct and are awarded to punish that person for such conduct." SHV Coal, Inc. v. Continental Grain Co., 587 A.2d 702 (Pa. 1991). In this instance, the Court believes that in

regard to the claim made against Ms. Manning it is a jury question whether punitive damages should be awarded. Therefore, the Court will dismiss Defendants' Preliminary Objection F.

ORDER

NOW, this 20th day of June, 2005, consistent with the foregoing Opinion, it is the ORDER of this Court as follows in regard to the Defendants' Preliminary Objections to Plaintiff's Amended Complaint filed on March 1, 2005:

1. Defendants' Preliminary Objection B is hereby dismissed;
2. Preliminary Objection C, being a Demurrer to Plaintiff's claim of negligent infliction of emotional distress verses Susan Manning is hereby granted.
Count V of the Plaintiff's Complaint is hereby dismissed;
3. Defendant Dr. Shah's Demurrer to Plaintiff's claim of invasion of privacy set forth in Preliminary Objection D is hereby granted. Count I of the Amended Complaint is hereby dismissed;
4. The Demurrer by Dr. Shah to the Plaintiff's claim that he violated the HIV-Related Information Act is hereby granted. Count II of the Complaint is hereby dismissed; and
5. The Defendants' Preliminary Objection F challenging Count VI of the Amended Complaint is hereby dismissed.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING
Plaintiff

CIVIL DIVISION

No. 04-1828-CD

vs.

Issue No.

SHIRISH N. SHAH, M.D.
and
SUSAN MANNING
Defendants

INTERROGATORIES DIRECTED
TO DEFENDANT

Counsel of Record:

Filed on behalf of the Plaintiff

Brad R. Korinski, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

Counsel of Record for These Parties:

Derek J. Cordier, Esquire
PA I.D. # 83284
The Law Offices of Derek J. Cordier and
Kelli J. Brownwell
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002

FILED NO
mjl:275k cc
JUN 23 2005 @
William A. Shaw
Prothonotary/Clerk of Courts

INTERROGATORIES DIRECTED TO DEFENDANT

NOW COMES the Plaintiff, Mark Manning, by his attorney, Derek J. Cordier, and directs the following interrogatories to defendant in accordance with the Pennsylvania Rules of Civil Procedure. Answers are demanded within 30 days of receipt of these interrogatories in accordance with the Pennsylvania Rules of Civil Procedure. Also, these interrogatories are continuing until time of trial. Within 30 days of receiving supplemental information or information which is contrary to the responses given below, and before trial, you should file supplemental interrogatory answers.

When the word “representative” is used in the interrogatories, it is intended to include any investigator, attorney or representative retained by the party responding to the interrogatories or that party’s insurer.

When the word “you” or “your” is used in the interrogatories, it refers to the party or all parties to whom or to which these interrogatories are directed.

1. Set forth the date and place of birth and social security number for Susan Manning and Shirish N. Shah, M.D.

ANSWER:

2. Summarize Susan Manning and Shirish N. Shah, M.D.'s educational background, including all schools attended, the date of graduation from any school, and any degrees which have been received.

ANSWER:

3. As referenced in the amended complaint, please identify each "family member and acquaintance" to whom Susan Manning disclosed Mark Manning's confidential health information. For each person so identified, you are to set forth the individual's name, address, relationship to Susan Manning and Mark Manning, and the date on which the disclosure was made to that person.

ANSWER:

4. For all of those persons identified in the preceding interrogatory, please state the manner and circumstances through which Susan Manning made the disclosures to each person listed above.

ANSWER:

5. Identify all places of employment where Susan Manning has worked in the last ten years. Each such place should be identified by name and address and the name of your immediate supervisor should be provided.

ANSWER:

6. With respect to each place of employment identified for Susan Manning in responding to the preceding interrogatory, supply the following information:

- (a) Specify the date when employment began.
- (b) Specify the date employment ended.
- (c) Specify the reason that the employment ended on the date specified above.
- (d) State the salary or hourly rate when employment began.
- (e) State the salary or hourly rate when employment ended.
- (f) Set forth each job title held with each employer, the dates each position was held, and provide a description of the duties in each job position.
- (g) State whether the employment was full-time or part-time and the average number of hours worked per week.
- (h) Set forth the number of days missed from work, broken down by years, because of sickness and the number of days missed because of injuries.
- (i) Provide a complete description of the injuries and the alleged cause of the injuries which caused Susan Manning to miss the days from work which are specified in the proceeding sub-interrogatory.

ANSWER:

7. Identify by name and address any person, other than your attorneys, who has made any investigation of the circumstances or the happening of the matter which is the subject of this lawsuit.

ANSWER:

8. With respect to each person identified in responding to the preceding interrogatory, provide the following information:

- (a) the nature of the person's investigation.
- (b) A summary of the person's conclusion.
- (c) Whether any writing exists which discusses the investigator's investigation or findings.
- (d) The date of any writings and the addressee of any writings referred to in answering the preceding sub-interrogatory.
- (e) Whether the investigation is continuing by each individual named in responding to this interrogatory.

ANSWER:

9. Identify by name, present address and telephone number all persons interviewed, questioned or contacted by your investigators or representatives (other than

your attorneys) with regard to the circumstances of the incident which forms the basis for the complaint in this case.

ANSWER:

10. With respect to each person identified in responding to the preceding interrogatory, provide the following information:

- (a) The date or dates upon which the person was contacted, questioned or interviewed.
- (b) The place where the interview took place.
- (c) The interviewer's name and present address.
- (d) Summarize the information given to the interviewer.
- (e) State whether the interviewer has notes from the interview.
- (f) State whether the interviewer made any report or issued any summary or letter concerning the interview, questioning or contact.
- (g) State why no statement was taken from the person being interviewed in the event that one was not taken.

ANSWER:

11. Identify by name and present address any witnesses, or any persons who possess facts or knowledge, or who are believed by you to have information relevant to the occurrence of the matter which forms the basis for the complaint in this case.

ANSWER:

12. State the name and present address of any person who you or your attorneys expect to call as an expert, opinion or custom witness at time of trial on any subject.

ANSWER:

13. For each person named in response to the preceding interrogatory, supply the following information:

- (a) State the subject matter on which the person is expected to testify.
- (b) State the substance of facts and opinions to which the person is expected to testify.
- (c) State a summary of the grounds for each opinion which the person is expected to express.

Note: Answers to this interrogatory should be signed by each named person or answered in a report signed by the named person in accordance with the Pennsylvania Rules of Civil Procedure.

ANSWER:

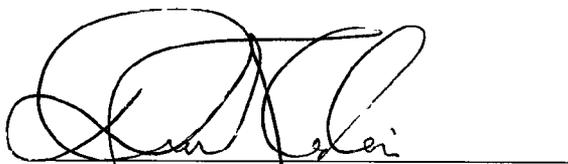
14. Identify all insurance carriers, including company name, address, and telephone number, for which Susan Manning and Shirish N. Shah, M.D. are covered in regards to employment, place of business, and professional liability.

ANSWER:

15. Identify all persons who assisted in the preparation of the answers provided to these interrogatories.

ANSWER:

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Derek J. Cordier", is written over a horizontal line.

Derek J. Cordier, Esquire
Attorney for Plaintiff, Mark Manning

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

PRAECIPE TO ENTER JUDGMENT

Code: 007

Filed on behalf of Shirish N. Shah, one of the
defendants.

Counsel of Record for This Party:

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

Brad R. Korinski, Esquire
PA I.D. #86831

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

(412) 232-3400

FILED

m 11:31
JUL 05 2005

Notice to pliff.'s
~~Atty~~ - Cordier

Shaw

William A. Shaw
Prothonotary/Clerk of Courts

Atty Johnson pd. 20.00

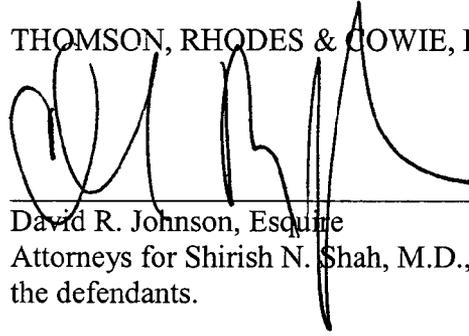
PRAECIPE TO ENTER JUDGMENT

TO: PROTHONOTARY

Kindly enter judgment for Shirish N. Shah, M.D. and against plaintiff pursuant to the opinion and order of court dated June 20, 2005, attached hereto as Exhibit A.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

A handwritten signature in black ink, appearing to read 'DR Johnson', is written over a horizontal line. The signature is fluid and cursive.

David R. Johnson, Esquire
Attorneys for Shirish N. Shah, M.D., one of
the defendants.

instead will permit the parties to engage in the discovery process in order to determine if additional individuals are located to whom the Plaintiff's condition was made public by Ms. Manning. In the event the defense would deem the same to be appropriate, the Court would be willing to consider this issue on a subsequent motion for summary judgement following the completion of discovery.

Preliminary Objection C by Ms. Manning is to Count V of the Amended Complaint wherein Plaintiff makes a claim of negligent infliction of emotional distress. In regard to a cause of action for negligent infliction of emotional distress, the cases can be divided into three categories:

1. Where the plaintiff is the direct recipient of the defendant's actions;
2. Where the plaintiff is a bystander or observer of defendant's behavior upon someone else; and
3. Where the plaintiff has been placed in the zone of danger because of the actions of the defendant.

Brown v. Philadelphia College, 674 A.2d 1130 (Pa. Super. 1996).

Plaintiff's Amended Complaint bases the negligent infliction of emotional distress claim upon the Defendant publicizing his HIV status. There are no allegations which invoke any of the three criteria as listed above. Case law in the Commonwealth is clear that one of the three criteria must be met. See also Stoddard v. Davidson, 513 A.2d 419 (Pa. Super. 1986). Plaintiff cannot meet the requirements under the factual averments and the Court does not believe that the Plaintiff will be able to file a further amended complaint which will set forth any facts which would meet with the requirements. Therefore, the Court will dismiss the Plaintiff's claim against Ms. Manning for negligent infliction of emotional distress.

Defendant Dr. Shah demurs to the Plaintiff's claim of invasion of privacy in Preliminary Objection D. Plaintiff's claim of invasion of privacy against Dr. Shah is not based upon any conduct of Dr. Shah, but instead on the premise that Dr. Shah was the employer of Ms. Manning during the time that she allegedly published the Plaintiff's condition. Plaintiff's Amended Complaint, paragraph 26, avers that Ms. Manning engaged in "intentionally outrageous conduct" by her actions. Plaintiff makes no allegation that Dr. Shah aided, abetted or facilitated his employee's conduct nor is there any allegation that Ms. Manning's conduct occurred during the course and scope of her employment duties with Dr. Shah. The Pennsylvania Superior Court, in R.A. v. First Church of Christ analyzed Pennsylvania law with respect to vicarious liability. The court stated as follows:

Pennsylvania law concerning the extent to which an employer is vicariously liable for the actions of its employee is well-established and crystal clear. It is well settled that an employer is held vicariously liable for the negligent acts of his employee which cause injuries to a third party, provided that such acts were committed during the course of and within the scope of employment. In certain circumstances, liability of the employer may also extend to intentional or criminal acts committed by the employee. The conduct of the employees considered "within the scope of the employment" for purposes of vicarious liability if: (1) it is of a kind and nature that the employee is empowered to perform; (2) it occurs substantially within the authorized time and space limits; (3) it is actuated, at least in part, by a purpose to serve the employer; and (4) if force is intentionally used by the employee against another, the use of force is not unexpected by the employer . . .

R.A. v. First Church of Christ, 748 A.2d at 699 - 700.

It is obvious that in the event that Ms. Manning did inappropriately publicize the Plaintiff's medical status that it would not have been performed within the course and scope of her employment with Dr. Shah. Additionally, no claim has been made by the Plaintiff that Dr. Shah failed to appropriately supervise Ms. Manning. Therefore, the Demurrer as to the

Plaintiff's claim against Dr. Shah for invasion of privacy based upon vicarious liability must be granted and Count I of the Amended Complaint dismissed.

In Preliminary Objection E, Dr. Shah demurs to Plaintiff's claim that he violated the HIV-Related Information Act, 45 Pa. C.S. §7601, *et seq.* The Act, under certain circumstances provides for the imposition of civil liability upon those persons found to have disclosed confidential HIV-related information. Plaintiff's difficulty is that he pleads no facts concerning how Dr. Shah directly violated the statute. Section 7610 of the statute provides as follows:

Any person aggrieved by a violation of this Act shall have a cause of action against the person who committed the violation and may recover compensatory damages.

By plain reading of this section, the Act only creates a civil cause of action against the person who committed the violation. Plaintiff is clearly alleging in his Amended Complaint that it is Ms. Manning who committed the violation. The Court has already determined that Dr. Shah cannot be held responsible on the theory of vicarious liability. Plaintiff's only argument in regard to the applicability of the Act against Dr. Shah is that the Act does not say that an action cannot be brought against an employer. This argument must fail. As Dr. Shah cannot be said to be "the person who committed the violation" the Court will grant this Demurrer and dismiss this claim against Dr. Shah.

The Defendants' final Preliminary Objection is to the Plaintiff's claim for punitive damages. Pennsylvania law provides that punitive damages may be awarded only where "a person's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct and are awarded to punish that person for such conduct." SHV Coal, Inc. v. Continental Grain Co., 587 A.2d 702 (Pa. 1991). In this instance, the Court believes that in

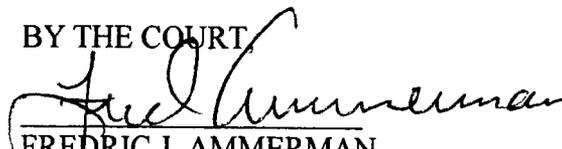
regard to the claim made against Ms. Manning it is a jury question whether punitive damages should be awarded. Therefore, the Court will dismiss Defendants' Preliminary Objection F.

ORDER

NOW, this 20th day of June, 2005, consistent with the foregoing Opinion, it is the ORDER of this Court as follows in regard to the Defendants' Preliminary Objections to Plaintiff's Amended Complaint filed on March 1, 2005:

1. Defendants' Preliminary Objection B is hereby dismissed;
2. Preliminary Objection C, being a Demurrer to Plaintiff's claim of negligent infliction of emotional distress verses Susan Manning is hereby granted. Count V of the Plaintiff's Complaint is hereby dismissed;
3. Defendant Dr. Shah's Demurrer to Plaintiff's claim of invasion of privacy set forth in Preliminary Objection D is hereby granted. Count I of the Amended Complaint is hereby dismissed;
4. The Demurrer by Dr. Shah to the Plaintiff's claim that he violated the HIV-Related Information Act is hereby granted. Count II of the Complaint is hereby dismissed; and
5. The Defendants' Preliminary Objection F challenging Count VI of the Amended Complaint is hereby dismissed.

BY THE COURT

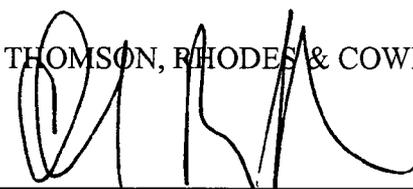

FREDRIC J. AMMERMAN
President Judge

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE TO ENTER JUDGMENT has been served upon the following counsel of record and same placed in the U.S. Mails on this 30th day of June, 2005:

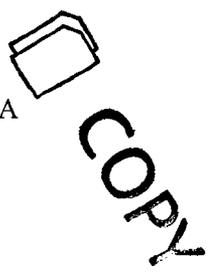
Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for Shirish N. Shah, M.D., one of
the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

 COPY

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.)	
)	
SHIRISH N. SHAH, M.D. and SUSAN)	
MANNING,)	
)	
Defendants.)	

NOTICE OF ORDER, DECREE OR JUDGMENT

TO: Plaintiff Defendant Garnishee Additional Defendant

You are hereby notified that the following Order, Decree, or Judgment has been entered against you on ~~June 20, 2005~~ July 5, 2005.

Decree Nisi in Equity.

Final Decree in Equity.

<input checked="" type="checkbox"/> Judgment of	<input type="checkbox"/> Confession	<input type="checkbox"/> Verdict	<input checked="" type="checkbox"/> Dismissal of
	<input type="checkbox"/> Default	<input type="checkbox"/> Non-Suit	Shirish Shah, MD
	<input type="checkbox"/> Non-Pros	<input type="checkbox"/> Arbitration Award	

Judgment is in the amount of \$163,593.19 PLUS COSTS.

District Justice Transcript of Judgment in (Assumpsit/Trespass) in the amount of \$ _____ PLUS COSTS.

If not satisfied within sixty (60) days, your motor vehicle operator's license will be suspended by the Pennsylvania Department of Transportation.

PROTHONOTARY

By _____
Deputy

If you have any questions concerning the above, please contact:

David R. Johnson, Esquire	PHONE: (412) 232-3400
Thomson, Rhodes & Cowie, P.C.	
1010 Two Chatham Center	
Pittsburgh, PA 15219	

CA

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING	:
Plaintiff	:
	:
	: Docket No. 04-1828-CD
vs.	:
	:
	: CIVIL ACTION
SHIRISH N. SHAH, M.D.	: LAW
and	:
	:
SUSAN MANNING	:
Defendants	:

FILED *see*
m/11:50/ Atty
 JUL 19 2005 *Cordier*
 William A. Shaw
 Prothonotary/Clerk of Courts

MOTION TO AMEND THE PLAINTIFF'S AMENDED COMPLAINT

NOW COMES the Plaintiff, Mark Manning, by his attorney, Derek J. Cordier, and files the following Motion to Amend the Plaintiff's Amended Complaint by adding three counts.

1. Plaintiff has filed a Complaint and an Amended Complaint in this action, and a Notice of Appeal to the Opinion and Order of June 20th, 2005, has been filed requesting the Superior Court to decide the matter of vicarious liability on the part of Dr. Shah.
2. The Plaintiff avers that three further counts are necessary for the interest of justice to be served.
3. The established rule is that where it appears a possibility of recovery under a better statement of the facts an opportunity to file an amended statement of claim must be granted.
4. The Amended Complaint is incorporated in its entirety.

COUNT VII
 Mark Manning vs. Susan Manning

NEGLIGENCE PER SE

5. Paragraphs 1 through 4 hereof are hereby incorporated herein as if fully set forth.
6. The Defendant, Susan Manning violated the Pennsylvania Confidentiality of HIV-Related Information Act by disclosing the Plaintiff's confidential HIV information to the unauthorized third persons for which her employer Dr. Shah is vicariously liable.
7. The purpose of the Pennsylvania Confidentiality of HIV- Related Information Act is to protect confidential HIV information from disclosure to unauthorized third persons, the Statute clearly applies to the Defendant, Susan Manning and she clearly violated

the Statute and the violation of the Statute was the proximate cause of Plaintiff's harm.

8. Due to the intentionally outrageous and malicious conduct on the part of the Defendant, Susan Manning as a person put in the position to safeguard the Plaintiff's confidential health related information and who then discloses said information, the Plaintiff is seeking punitive damages.

WHEREFORE, the Plaintiff requests the court to grant the Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

COUNT VIII

Mark Manning vs. Dr. Shah

NEGLIGENCE PER SE

9. Paragraphs 1 through 8 hereof are hereby incorporated herein as if fully set forth.
10. The Defendant, Susan Manning violated the Pennsylvania Confidentiality of HIV-Related Information Act by disclosing the Plaintiff's confidential HIV information to the unauthorized third persons for which her employer Dr. Shah is vicariously liable.
11. The purpose of the Pennsylvania Confidentiality of HIV- Related Information Act is to protect confidential HIV information from disclosure to unauthorized third persons, the Statute clearly applies to the Defendant, Dr. Shah, the Defendant, Lorraine Dove clearly violated the Statute and the violation of the Statute was the proximate cause of Plaintiff's harm.
12. Due to the recklessness on the part of Dr. Shah persons put in the position to safeguard the Plaintiff's confidential health related information and who then discloses said information, the Plaintiff is seeking punitive damages.

WHEREFORE, the Plaintiff requests the court to grant the Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

COUNT IX.

Mark Manning vs. Dr. Shah

NEGLIGENT HIRING

13. Paragraphs 1 through 12 hereof are hereby incorporated herein as if fully set forth.
14. As the employer of Susan Manning, Dr. Shah was clearly negligent in the hiring,

supervision and training of Susan Manning, by allowing her access to confidential HIV related health care records of the Plaintiff and not securing said two year old records of the Plaintiff, at the time Dr. Shah hired Susan Manning.

15. Due to the intentionally outrageous and malicious conduct on the part of the Defendants, Susan Manning and Dr. Shah, as persons put in the position to safeguard the Plaintiff's confidential health related information and who then discloses or allows the disclosure of said information, the Plaintiff is seeking punitive damages.

WHEREFORE, the Plaintiff requests the court to grant the Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

WHEREFORE, the Plaintiff respectfully requests that the Amended Complaint be Amended to include Counts VII, VIII, and IX, in the interest of substantial fairness and justice.

Respectfully submitted by:



Attorney for Plaintiff
Derek Cordier, Esq. #83284
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING	:
Plaintiff	:
	: Docket No. 04-1828-CD
vs.	:
	: CIVIL ACTION
SHIRISH N. SHAH, M.D.	: LAW
and	:
SUSAN MANNING	:
Defendants	:

ORDER

AND NOW this ____ day of July 2005, it is hereby ordered that the Amended Complaint is hereby Amended to include Counts VII, VIII, and IX.

By the Court:

Judge

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING	:
Plaintiff	:
	: Docket No. 04-1828-CD
vs.	:
	: CIVIL ACTION
SHIRISH N. SHAH, M.D.	: LAW
and	:
SUSAN MANNING	:
Defendants	:

RULE TO SHOW CAUSE

AND NOW this ____ day of July 2005, it is hereby ordered that the Defendants have ____ days from the date of this Order to show cause why the Plaintiffs Amended Complaint should not be Amended to include Counts VII, VIII, and IX.

By the Court:

Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	:
Plaintiff,	:
	: No. 04-1828-CD
vs.	:
	: CIVIL ACTION
SHIRISH N. SHAH, M.D. and	: LAW
SUSAN MANNING,	:
Defendants.	:

NOTICE OF APPEAL

Notice is hereby given that MARK MANNING, plaintiff above named, by and through his attorney, Derek J. Cordier, hereby appeals to the Superior Court of Pennsylvania from the judgment of dismissal of Shirish N. Shah, M.D. entered in this matter on the 20th day of June, 2005. This order has been entered in the docket as evidenced by the attached copy of the docket entry.



 Derek J. Cordier
 Counsel for Plaintiff/Appellant
 319 South Front Street
 Harrisburg, PA 17104

(717) 919-4002

PA I.D. #83284

FILED ICC w/ck for
 60.00 to Superior Ct.
 m/11:15
 JUL 19 2005 Atty pd. 45.00
 William A. Shaw
 Prothonotary/Clerk of Courts
 ICC Atty

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within NOTICE OF APPEAL has been served upon the following counsel of record and same placed in the U.S. Mails on this 18th day of July, 2005:

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

A handwritten signature in black ink, appearing to read "Derek J. Cordier", is written over a horizontal line.

Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

Civil Other

Date		Judge
11/17/2004	Filing: Civil Complaint Paid by: Derek J. Cordier, Esq. Receipt number: 1890559 Dated: 11/17/2004 Amount: \$85.00 (Check) 1 CC to Atty. 3 CC to Shff.	No Judge
12/03/2004	Praeipe For Appearance, on behalf of Susan Manning, filed by s/ David R. Johnson, Esquire. No CC	No Judge
12/08/2004	Preliminary Objections filed by Atty. Johnson 1 CC to Atty.	No Judge
12/09/2004	Sheriff Return, NOW, Nov. 30, 2004, served the within on Shirish N. Shah, MD, Defendant Now Nov. 19, 2004 served the within on Susan Manning, Defendant. So answers Chester A. Hawkins, Sheriff, by s/Marilyn Hamm	No Judge
12/21/2004	Praeipe For Entry of Appearance, filed on behalf of Shirish N. Shah, M.D., by s/ David R. Johnson, Esquire. No CC	No Judge
12/29/2004	Preliminary Objections, filed on behalf of Shirish N. Shah, M.D. by s/Brad R. Korinski, Esq. One CC Attorney Korinski	No Judge
01/20/2005	Order, AND NOW, this 19th day of Jan., 2005, it is the Order of the Court that argument on Defendant Shah's Preliminary Objections filed in the above-captioned matter has been scheduled for the 22nd day of Feb., 2005 at 1:30 p.m. in Courtroom No. 1, Clfd. Co Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC & Memo to Atty Karinski	Fredric Joseph Ammerman
	Order, AND NOW, this 19th day of Jan., 2005, it is the Order of the Court that argument on Defendant Manning's Preliminary Objections filed in the above-captioned matter has been scheduled for the 22nd day of Feb., 2005 at 1:30 p.m. in Courtroom No. 1, Clfd. Co Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC & Memo to Atty Johnson	Fredric Joseph Ammerman
01/28/2005	Affidavit of Service filed. Copy of Jan. 19, 2005 Order served upon plaintiff's counsel on Jan. 21, 2005. Filed by s/ Brad R. Korinski, Esquire. No CC	Fredric Joseph Ammerman
02/10/2005	Amended Civil Complaint, filed by Atty. Cordier 3 Cert. to Att.	Fredric Joseph Ammerman
02/22/2005	Motion To Compel Responses to the Second Set of Interrogatories and Second Set of Requests For Production of Documents Served Upon Plaintiff, filed by s/ Brad R. Korinski, Esquire. No CC	Fredric Joseph Ammerman
03/01/2005	Preliminary Objections to Plaintiff's Amended complaint filed by Atty. Johnson. 1 CC to Atty.	Fredric Joseph Ammerman
	ORDER, filed. 2 Cert. to Atty. AND NOW, this 1st day of March, 2005, ORDERED that Plaintiff shall file full and complete answers to defendant's 2nd set of interrogatories and second set of request for production of documents within 30 days.	Fredric Joseph Ammerman
03/23/2005	Plaintiff Mark Manning's Answer To Defendants' Interrogatories, filed by s/ Kelli J. Brownwell, Esquire. No CC	Fredric Joseph Ammerman
03/30/2005	Order, AND NOW, this 28th day of March, 2005, it is Ordered that oral argument on defendants' preliminary objections to plaintiff's amended complaint is scheduled for the 29th of April, 2005 at 2:00 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Atty Korinski w/memo Re: service	Fredric Joseph Ammerman
04/05/2005	Affidavit of Service filed. A true and correct of March 28, 2005 Scheduling Order & a true and correct copy of the Preliminary Objections to Plaintiff's Amended Complaint served upon plaintiff's counsel on March 31, 2005. Filed by s/Brad R. Korinski, Esquire. No. CC	Fredric Joseph Ammerman
04/18/2005	Motion To Compel answers to the Second Set of Interrogatories and Second Set of Requests For Production of Documents Served upon Plaintiff, filed by s/ Brad R. Korinski, Esquire. 1CC Atty Korinski	Fredric Joseph Ammerman
	Plaintiff's Answers to Defendant's Preliminary Objections, filed by s/ Derek J. Cordier, Esquire. No CC	Fredric Joseph Ammerman

Civil Other

Date		Judge
04/20/2005	Motion For Continuance, filed by s/ Derek J. Cordier, Esquire. 1CC Atty Cordier	Fredric Joseph Ammerman
04/21/2005	Order Of Court, AND NOW, on this 20th day of April , 2005, it is ORDERED that oral argument on defendant's motion to compel is scheduled for the 29th day of April, 2005, at 2:00 p.m. before Judge Ammerman in Courtroom no. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC to Atty	Fredric Joseph Ammerman
04/22/2005	Order, AND NOW, this 22nd day of April 2005, it is hereby Ordered that the hearing in the above captioned matter is continued until May 13, 2005 at 1:30 p.m. in Courtroom No. 1. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 1CC Atty Cordier	Fredric Joseph Ammerman
04/28/2005	Affidavit of Service, Copy of Judge Ammerman's April 20, 2005 Scheduling Order along with a copy of the Motion to Compel served on Derek Cordier, Esquire. Filed By Brad R. Korinski, Esquire. No CC.	Fredric Joseph Ammerman
05/17/2005	Order, NOW, this 13th day of May, 2005, following argument on the Motion to Compel Answers to Second Set of Interrogatories and Second Set of Request for Production of Documents served upon the Plaintiff, it is the ORDER of this Court as follows: (see original). BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Attys: Cordier, D. Johnson	Fredric Joseph Ammerman
	Order, NOW, this 13th day of May, 2005, following argument on the Defendants' Preliminary Objections to Plaintiff's Amended Complaint, it is the ORDER of this Court that counsel for the Plaintiff have no more than 30 days from this date to file a brief with the Court relative the remaining issues as stated within the Preliminary Objections. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2cc Attys: Cordier, D. Johnson	Fredric Joseph Ammerman
05/31/2005	Plaintiff's Supplemental Answers to Defendants' Interrogatories, filed by s/ Derek Cordier, Esquire. No CC	Fredric Joseph Ammerman
06/20/2005	Opinion And Order, NOW, this 20th day of June, 2005, consistent with the foregoing Opinion, it is the Order of this Court as follows in regard to the Defendants' Preliminary Objections to Plaintiff's Amended Complaint filed on March 1, 2005: (see original). BY THE COURT: /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: D. Codier, D. Johnson, D. Mikesell	Fredric Joseph Ammerman
06/23/2005	Interrogatories Directed to Defendant, filed by s/ Derek J. Cordier, Esquire. No CC	Fredric Joseph Ammerman
07/05/2005	Filing: Praeipce to Enter Judgment Paid by: Johnson, David R. (attorney for Shah, Shirish N. MD) Receipt number: 1904165 Dated: 07/05/2005 Amount: \$20.00 (Check) Kindly enter judgment for Shirish N. Shah, M.D. and against Plaintiff pursuant to the opinion and order of court dated June 20, 2005, attached hereto as Exhibit A. Re: Dismissal of Shirish N. Shah, M.D. Filed by s/David R. Johnson, Esq. Notice to Plaintiff's Attorney Cordier	Fredric Joseph Ammerman

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

JUL 19 2005

Attest.

William J. Shan
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

ANSWER AND NEW MATTER

Code: 007

Filed on behalf of Susan Manning, one of the
defendants.

Counsel of Record for This Party:

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

Brad R. Korinski, Esquire
PA I.D. #86831

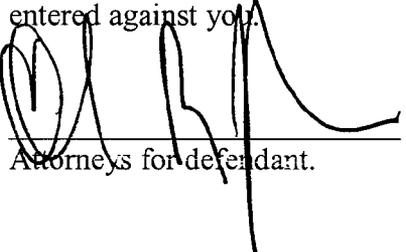
THOMSON, RHODES & COWIE, P.C.
Firm #720
1010 Two Chatham Center
Pittsburgh, PA 15219

(412) 232-3400

NOTICE TO PLEAD:

To: Plaintiff

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 ^{cc}
m/14561
JUL 25 2005

William A. Shaw
Prothonotary-Clerk of Courts

ANSWER AND NEW MATTER

NOW COMES, Susan Manning, one of the defendants, by her attorneys, Thomson, Rhodes & Cowie, P.C., and files the following answer and new matter in response to plaintiff's complaint.

ANSWER

1. Defendant is advised and therefore believes and avers that the Pennsylvania Rules of Civil Procedure do not require her to set forth her 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 paragraph 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: 1.

5. Paragraph 2 of the complaint is denied because Dr. Shah has been dismissed as a defendant by the order of court dated June 20, 2005.

6. The following paragraphs of the complaint are admitted: 3, 4.

7. Paragraphs 5, 6, 7, 8, 9, 10 and 21 of the complaint are denied. All of these paragraphs and the allegations therein are denied because they have no basis in fact. Susan Manning did not engage in any of the acts alleged and did not make any of the disclosures alleged.

8. Paragraphs 11 through 16 and 22 through 24 of the complaint have been dismissed by order of court dated June 20, 2005 and, therefore, require no response.

9. Paragraphs 17, 19 and 25 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 plaintiff.

10. Paragraphs 18, 20 and 26 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.

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

NEW MATTER

11. There is no basis under law by which plaintiff could be entitled to any punitive damages.

12. The imposition of punitive damages against the defendant would violate defendant's Constitutional rights under the due process clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, the excessive fines clause in the Eighth Amendment to the Constitution of the United States, the double jeopardy clause in the Fifth Amendment of the constitution of the United States, similar provisions in the applicable Pennsylvania Constitution, and/or the common law and public policies of Pennsylvania, and/or applicable statutes and court rules, given the circumstances of this litigation, if any of the following events occurred:

- (a) Imposition of punitive damages by a jury which (1) is not provided standards of sufficient clarity for determining the appropriateness and the appropriate size of such punitive damages award, (2) is not adequately and clearly instructed on the limits of punitive damages imposed by the principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award thereof, in whole or in part, on the basis of invidiously discriminatory characteristics, including the corporate status, wealth, or state of residence of defendants, (4) is permitted to award punitive damages under a standard for determining liability for such damages which is vague and arbitrary and does not define with sufficient clarity the conduct or mental state which makes punitive damages permissible, and (5) is not subject to trial

court and appellate judicial review for reasonableness and the furtherance of legitimate purposes on the basis of objection standards;

- (b) Imposition of punitive damages, and determination of the amount of an award thereof, where applicable state law is impermissibly vague, imprecise or inconsistent;
- (c) Imposition of punitive damages, and determination of the amount of an award thereof, employing a burden of proof less than clear and convincing evidence;
- (d) Imposition of punitive damages, and determination of the amount of an award thereof, without bifurcating the trial and trying all punitive damages issues only if and after the liability of defendants has been found on the merits;
- (e) Imposition of punitive damages, and determination of the amount of an award thereof, under any state's law subject to no pre-determined limit, such as the maximum multiple of compensatory damages or maximum amount; and/or
- (f) Imposition of punitive damages, and determination of the amount of an award thereof, based on anything other than defendants' conduct in connection with the specific averments alleged in the complaint and directly pertaining to this case, or in any other way subjecting defendants to impermissible multiple punishment for the same alleged wrong.

13. Plaintiff's complaint fails to state any cause of action for breach of privacy.

14. Plaintiff cannot state a claim for breach of privacy because of the absence of publication by the defendant.

15. Defendant did not publicize plaintiff's HIV status.

16. Plaintiff's complaint fails to state any cause of action for violation of the Pennsylvania Confidentiality of HIV-Related Information Act.

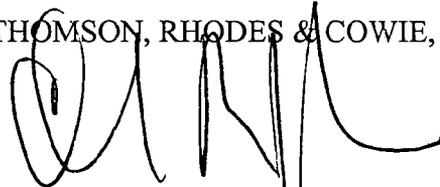
17. Defendant did not improperly disclose plaintiff's HIV status.

WHEREFORE, plaintiff's 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 'D. Johnson', written over a horizontal line.

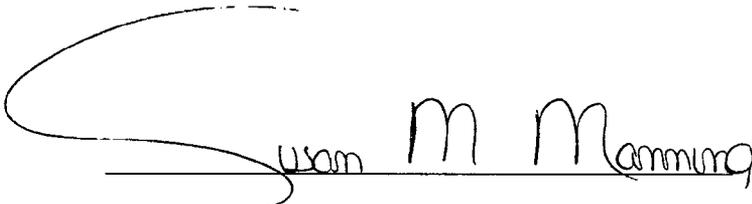
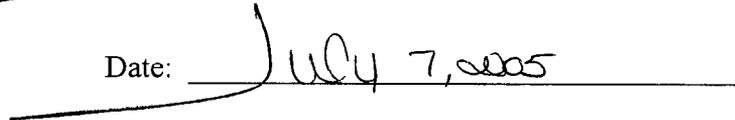
David R. Johnson, Esquire
Attorneys for Susan Manning, one of the
defendants.

VERIFICATION

I, Susan Manning, 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.


Date: 

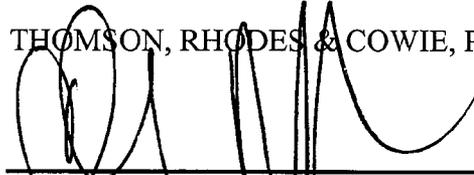
CERTIFICATION OF SERVICE

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 21st day of July, 2005:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for Susan Manning, one of the
defendants.

CA

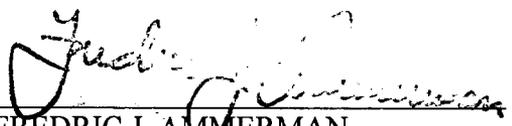
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MARK MANNING :
 :
 vs. : No. 04-1828-CD
 :
 SHIRISH N. SHAH, M.D. and :
 SUSAN MANNING :

ORDER

AND NOW, this 26 day of July, 2005, it is the Order of the Court that argument on Plaintiff's Motion to Amend the Plaintiff's Amended Complaint filed in the above-captioned matter has been scheduled for the 7th day of September, 2005, at 1:30 P.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
President Judge

FILED ^{GW} 200
01/10:04/01
JUL 26 2005
Atty Cordier
w/ memo Re: Service

W. A. Shaw
Prothonotary Clerk of Courts



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

CA

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING	:	
Plaintiff	:	
	:	Docket No. 04-1828-CD
vs.	:	
	:	CIVIL ACTION
SHIRISH N. SHAH, MD	:	LAW
and	:	
SUSAN MANNING	:	
Defendants	:	

*No Action
Withdrawing the
Appeal*

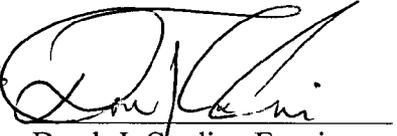
MOTION FOR TRANSCRIPTION
OF PROCEEDINGS

AND NOW, this 27th day of July, 2005, comes the above-named petitioner, by and through his attorney, Derek J. Cordier, and respectfully files this request for Transcription of Proceedings and in support thereof, avers the following:

1. On May 13th 2005, this Honorable Court heard oral argument in the above captioned matter and on June 20th, 2005, an Order was issued by this Honorable Court.
2. An Appeal to the Superior Court was filed to the Order of June 20th, 2005, on July 19, 2005.
3. A transcription of the hearing held on May 13th, 2005, is required for the completion of the Record.

THEREFORE, petitioner respectfully requests this Honorable Court to grant this Motion for a Transcription of Proceedings and order that the proceedings from May 13th, 2005, be transcribed, and copies of such provided to undersigned counsel.

Respectfully submitted by:



Derek J. Cordier, Esquire
Attorney for Petitioner
319 South Front Street
Harrisburg, PA 17104
Phone 717-919-4002

FILED *no cc*
m 11:04 AM
JUL 29 2005
 Prothonotary Clerk of Courts

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING	:
Plaintiff	:
	: Docket No. 04-1828-CD
vs.	:
	: CIVIL ACTION
SHIRISH N. SHAH, MD	: LAW
and	:
SUSAN MANNING	:
Defendants	:

ORDER OF COURT

AND NOW, this ____ day of _____ 2005, IT IS HEREBY
ORDERED AND DECREED THAT the Notes of Testimony from the hearing held on
May 13, 2005, be transcribed and forwarded to the Prothonotary and Derek J. Cordier,
Esquire.

BY THE COURT:

Fredric J. Ammerman, President Judge

Distribution:

Prothonotary (original)
Derek J. Cordier, Attorney for Petitioner
David R. Johnson, Attorney for Defendants

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING :
Plaintiff :
 : Docket No. 04-1828-CD
vs. :
 : CIVIL ACTION
SHIRISH N. SHAH, MD : LAW
and :
SUSAN MANNING :
Defendants :

APPEARANCES:

Derek J. Cordier, Esquire
For the Plaintiff

David R. Johnson, Esquire
For the Defendants

AMENDED PROOF OF SERVICE

I hereby certify that I am on this day serving the foregoing documents upon the persons and in the manner indicated below which service satisfies the requirements of Pa. R.A.P. 121:

Service by USPS First Class Mail as follows:

Honorable President Judge, Fredric J. Ammerman
Court of Common Pleas Clearfield County Pennsylvania
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

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

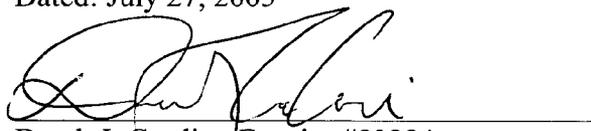
Clearfield County District Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

FILED ^{CC} ICC
m/11:03 AM Superior Ct.
JUL 29 2005

William A. Shaw
Prothonotary Clerk of Courts

Cathy Warwick-Provost and Tom Snyder
Official Court Reporters
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Dated: July 27, 2005

A handwritten signature in black ink, appearing to read "Derek J. Cordier", is written over a horizontal line.

Derek J. Cordier, Esquire #83284
319 South Front Street
Harrisburg, PA 17104
(717) 919-4002

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING, :
Plaintiff, :
 : No. 04-1828-CD
vs. :
 : CIVIL ACTION
SHIRISH N. SHAH, M.D. and : LAW
SUSAN MANNING, :
Defendants. :

PRAECIPE TO WITHDRAW APPEAL

Notice is hereby given that MARK MANNING, plaintiff above named, by and through his attorney, Derek J. Cordier, hereby withdraws the appeal filed with the Superior Court of Pennsylvania regarding the judgment of dismissal of Shirish N. Shah, M.D. entered in this matter on the 20th day of June, 2005.


Derek J. Cordier
Counsel for Plaintiff/Appellant
319 South Front Street
Harrisburg, PA 17104

(717) 919-4002

PA I.D. #83284

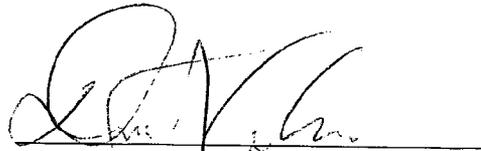
FILED

AUG 01 2005
m/12:20/c
William A. Shaw
Prothonotary/Clerk of Courts
no c/c

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE TO WITHDRAW APPEAL has been served upon the following counsel of record and same placed in the U.S. Mails on this 28th day of July, 2005:

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

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

Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

10:16 A.M.

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1330 WDA 2005

Page 1 of 3

August 2, 2005

04-1828 CD



Mark Manning, Appellant

V.

Shirish N. Shah, M.D. and

Susan Manning

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: August 2, 2005

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType:

Assumpsit and Trespass

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Receive Docketing Statement

Next Event Due Date: August 16, 2005

Next Event Type: Original Record Received

Next Event Due Date: September 12, 2005

FILED
m/12/12/01
AUG 04 2005

W. J. A. Staw
Prothonotary Clerk of Courts

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1330 WDA 2005

Page 2 of 3

August 2, 2005



COUNSEL INFORMATION

Appellant Manning, Mark
 Pro Se: Appoint Counsel Status:
 IFP Status: No

Appellant Attorney Information:

Attorney: Cordier, Derek J.
 Bar No.: 83284 Law Firm: Cordier & Brownell Law Offices
 Address: 319 S Front Street
 Harrisburg, PA 17104
 Phone No.: (717)919-4002 Fax No.: (717)213-4984
 Receive Mail: Yes
 E-Mail Address: derek@derekjcordier.com
 Receive E-Mail: No

Appellee Shah, M.D., Shirish N.
 Pro Se: Appoint Counsel Status:
 IFP Status:

Appellee Attorney Information:

Attorney: Johnson, David R.
 Bar No.: 26409 Law Firm: Thomson, Rhodes & Cowie, P.C.
 Address: Two Chatham Ctr Ste 1010
 Pittsburgh, PA 15219
 Phone No.: (412)232-3400 Fax No.: (412)232-3498
 Receive Mail: Yes
 E-Mail Address:
 Receive E-Mail: No

Appellee Manning, Susan
 Pro Se: Appoint Counsel Status:
 IFP Status:

Appellee Attorney Information:

Attorney: Johnson, David R.
 Bar No.: 26409 Law Firm: Thomson, Rhodes & Cowie, P.C.
 Address: Two Chatham Ctr Ste 1010
 Pittsburgh, PA 15219
 Phone No.: (412)232-3400 Fax No.: (412)232-3498
 Receive Mail: No
 E-Mail Address:
 Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
8/1/05	Notice of Appeal	60.00	60.00	2005SPRWD000952

Appeal Docket Sheet

Superior Court of Pennsylvania

Docket Number: 1330 WDA 2005**Page 3 of 3****August 2, 2005****TRIAL COURT/AGENCY INFORMATION**

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Division: Civil

Date of Order Appealed From: June 20, 2005

Judicial District: 46

Date Documents Received: August 1, 2005

Date Notice of Appeal Filed: July 19, 2005

Order Type: Judgment Entered

OTN:

Judge: Ammerman, Fredric J.
President Judge

Lower Court Docket No.: No. 04-1828-CD

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

BRIEFS**DOCKET ENTRIES**

Filed Date	Docket Entry/Document Name	Party Type	Filed By
August 2, 2005	Notice of Appeal Filed	Appellant	Manning, Mark
August 2, 2005	Docketing Statement Exited (Civil)		Western District Filing Office

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

**RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION TO AMEND THE
PLAINTIFF'S AMENDED COMPLAINT**

Code: 007

Filed on behalf the defendants.

Counsel of Record for This Party:

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

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Firm #720
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Counsel of Record:

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319 South Front Street
Harrisburg, PA 17104-1621

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m/11/16/05
AUG 09 2005
cc

PA State
County Clerk of Courts

RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION TO AMEND THE PLAINTIFF'S AMENDED COMPLAINT

NOW COME the defendants, Shirish N. Shah, M.D. and Susan Manning, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the response in opposition to plaintiff's motion to amend the plaintiff's amended complaint, for the reasons below stated.

I. FACTUAL BACKGROUND

This case concerns unsubstantiated allegations that Susan Manning, plaintiff's sister-in-law (who is currently in the process of securing a divorce from plaintiff's brother), disclosed plaintiff's HIV positive status to a small number of persons in the local area.

Plaintiff contends that Susan Manning learned about his health information during her employment with co-defendant Dr. Shah, who had examined plaintiff in 2000 for purposes of a social security disability claim.

II. PROCEDURAL HISTORY

Plaintiff initiated this litigation through the filing of a poorly worded and factually sparse civil complaint on November 17, 2004. That complaint sought recovery on the following grounds: violation of the Pennsylvania Confidentiality of HIV - Related Information Act; invasion of privacy; violation of HIPPA; and negligent and intentional infliction of emotional distress. These defendants filed preliminary objections to that complaint. Plaintiff then voluntarily withdrew that complaint.

Plaintiff then filed an amended complaint on February 10, 2005 in which he plead five counts against the defendants: (count I - Invasion of Right to Privacy (against Dr. Shah); count II - Pennsylvania HIV-Related Information Act (against Dr. Shah); count III - Invasion of Right to Privacy (Susan Manning); count IV - Pennsylvania HIV-Related Information Act (Susan

Manning); count V - Negligent Infliction of Emotional Distress (Susan Manning); and count VI - Punitive Damages (Susan Manning).

Defendants again filed preliminary objections, which were argued before this Honorable Court on May 13, 2005. On June 20, 2005, this Honorable Court entered an order which dismissed all claims against Dr. Shah (counts I and II of the amended complaint), as well as count V as to Susan Manning.

There is little question that plaintiff's counsel disagrees with Your Honor's decision to dismiss Dr. Shah, as evidenced by plaintiff's wholly improper filing of a Notice of Appeal of this Court's order on July 20, 2005 and his contemporaneous -- and equally improper -- filing of a motion to amend the amended complaint. This motion to amend is a poorly veiled attempt to have this Court revisit the issues which led to Dr. Shah's dismissal in the first instance and it also seeks to include a new action against Dr. Shah well beyond the expiry of the statute of limitations.

III. ARGUMENT

By this motion plaintiff seeks to add three counts to the amended complaint, which, in a hackneyed vernacular, he asserts are necessary to advance "the interests of justice." Plaintiff's choice of phrase is rather ironic, since, were the interests of justice to be truly served in this case, plaintiff's counsel would be sanctioned by this Honorable Court for filing a patently frivolous motion and the defendants would receive reimbursement for their costs and expenses incurred in responding to it.

Each of the proposed counts sought to be "amended" into the amended complaint will be addressed in the order of their appearance in plaintiff's motion. None of them are legally permissible. Plaintiff's motion to amend should be denied.

A. Plaintiff's Proposed Count VII - Negligence Per Se - Is Not A Legally Recognizable Cause of Action

Plaintiff seeks to alter the amended complaint to include a "negligence per se" cause of action against Susan Manning based upon her alleged violation of the Pennsylvania Confidentiality of HIV-Related Information Act, 45 Pa. C.S. § 7601, et seq. (the "HIV Disclosure Act"). He also seeks to hold Dr. Shaw vicariously liable for this alleged violation by Susan Manning, and additionally requests punitive damages against Susan Manning. (See Paragraphs 5-8 of plaintiff's motion). This, even though the plain language of the Act does not allow for vicarious liability.

First, "negligence per se" is not a cause of action under Pennsylvania Law. It is, instead, a manner of proof that applies when a tortfeasor, in the course of the alleged negligence, violates a statute or ordinance designed to prevent the conduct at issue. The amended complaint already contains a claim under the HIV Disclosure Act against Susan Manning. Thus, at best, the proposed count VII is completely unnecessary. Additionally, a claim of negligence per se is misplaced in this case, since plaintiff has consistently alleged that Susan Manning intentionally disclosed his medical information.

Second, Paragraph 6 of plaintiff's proposed count VII seeks to impose vicarious liability on the part of Dr. Shah for the alleged actions of Susan Manning. By its order of June 20, 2005, this Court has determined that Dr. Shah cannot be vicariously liable under the HIV Disclosure Act. Plaintiff clearly is trying to circumvent this Court's order by impermissibly tweaking the language of the amended complaint. Thus, since the proposed addendum to the amended complaint seeks to include causes of action contrary to the order of this Court, plaintiff's motion should be denied.

Third, Paragraph 8 of plaintiff's proposed count VII seeks to recover punitive damages for Susan Manning's alleged violation of the HIV Disclosure Act. Such damages are clearly not permitted under the Act. As this Court will recall, the civil liability provision of the Act provides as follows.

"Any person aggrieved by a violation of this act shall have a cause of action against the person who committed such violation and may recovery compensatory damages. In the event of a violation of section 6 [§7606] by a source patient's physician or an employee thereof, an aggrieved person may recover reasonable attorney fees and costs."

45 Pa. C.S. §7610 (emphasis added).

Therefore, plaintiff's motion should be denied since it attempts to include in the pleadings damages not recoverable under Pennsylvania law.

B. Plaintiff's Proposed Count VIII - Negligence Per Se - Is Also Not A Legally Recognizable Cause of Action and Seeks to Plead a Cause of Action Against Dr. Shah After He Has Been Dismissed from This Case

Plaintiff further seeks to add a "negligence per se" clam against Dr. Shah based upon the alleged conduct of Susan Manning for violating the HIV Disclosure Act and, in part, for Dr. Shah's own "reckless" conduct. The impropriety of this count is obvious and defendants oppose its inclusion for all the reasons stated above in response to the similar count against Susan Manning.

Moreover, and of binding effect on plaintiff's motion, by order of June 20, 2005, this Honorable Court dismissed all of the liability claims plead against Dr. Shah. To wit, Dr. Shah has not been a party to this lawsuit since June 20, 2005. There is no legal basis for plaintiff to seek to re-name him as a defendant by erroneously amending the pleadings.

Also, by its order of June 20, 2005, this Court has determined that Dr. Shah cannot be liable to plaintiff under the HIV Disclosure Act. Yet, erroneously, plaintiff persists in the mistaken belief that the HIV Disclosure Act affords him a remedy against Dr. Shah. The proper venue for this misguided argument is with the Appellate Courts at the conclusion of this litigation. Accordingly, plaintiff's motion to amend should be denied.

C. Plaintiff's Proposed Count IX -- Negligent Hiring -- Improperly Seeks to Add a Claim Against Dr. Shah After the Expiration of the Statute of Limitations and After the Claims Against Dr. Shah Have Been Dismissed

As has been noted, the claims against Dr. Shah have been dismissed by this Court on June 20, 2005. Plaintiff cannot now seek to revive a cause of action by merely amending his pleadings. Dr. Shah is no longer part of this litigation. Should plaintiff wish this to be otherwise, the motion to amend the amended complaint is the improper vehicle to achieve this goal.

The allegations which plaintiff cites in his motion are vague, non-specific and tautological. They are also internally inconsistent, e.g., Dr. Shah is accused of "intentionally outrageous conduct" in the body of a negligent hiring cause of action. Were plaintiff to plead these same allegations in the complaint, they would be stricken for lack of specificity under Pa. R.C.P. 1019(b). There are no facts plead to suggest that plaintiff has a reasonable basis for cause of action against Dr. Shah, and, on this basis alone, plaintiff's motion to amend should be denied.

Moreover, the claim proposed to be plead by plaintiff constitutes a new negligence claim against Dr. Shah which is filed well beyond the closing of the statute of limitations. In his responses to defendants' interrogatories (particularly in response to No. 30), plaintiff relates that Susan Manning disclosed his medical information in October of 2002. (Those answers are attached hereto as Exhibit "A"). Accordingly, plaintiff would have two-years from that date to

file suit against Dr. Shah. Considering that it is now August of 2005, plaintiff's claim is untimely under even the most generous of calculations.

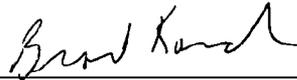
For all of the above reasons, there is simply no legal basis to permit plaintiff to amend his complaint to advance a non-factual cause of action beyond the statute of limitations against a defendant who has already been dismissed from this lawsuit.

III. CONCLUSION

For the reasons set forth above, the plaintiff's motion to amend the amended complaint should be dismissed.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING	:
Plaintiff	:
	: Docket No. 04-1828-CD
vs.	:
	: CIVIL ACTION
SHIRISH N. SHAH, M.D.	: LAW
and	:
SUSAN MANNING	:
Defendants	:

PLAINTIFF MARK MANNING'S ANSWERS TO DEFENDANTS' INTERROGATORIES

Plaintiff Mark Manning answers the first set of interrogatories put forth by the defendants as follows:

Answer to Interrogatory No. 1: Plaintiff's date of birth is 4-23-63. He was born in Lewistown, PA. His social security number is 183-54-9332.

Answer to Interrogatory No. 2: Plaintiff received his high school diploma from Dubois Area High School, Dubois PA, 1981.

Answer to Interrogatory No. 3: Plaintiff's place of residence, to the best of his recollection, since 1992: a) with parents at RD4 Box 123B, Dubois PA (1992) b) Broad Street Rockway, PA with ex-wife Beverly Myrtle c) Second Avenue Rockway, PA with ex-wife Beverly Myrtle d) back to parents in 1997 with ex-wife e) RD2 Box 158A Reynoldsville, PA with ex-wife f) back to parents 2000-2001 g) 17 Shaffer Street Sykesville, PA 2002 until present. In 1995/96 Plaintiff spent 60 days in jail in Rockway, PA.

Answer to Interrogatory No. 4: Plaintiff's wife is Adriene Manning; married August 6, 2003 in Dubois PA.

Answer to Interrogatory No. 5: Yes.

Answer to Interrogatory No. 6: Plaintiff's ex-wife is Beverly Myrtle. They were married in August of 1992 in Dubois PA. They were divorced in 1999.

Answer to Interrogatory No. 7: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

Answer to Interrogatory No. 8: Yes



Answer to Interrogatory No. 9: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 10: (a and b) The Plaintiff was charged with Corruption of Minors in 1986 in Dubois and Indecent Assault in 1995 both in Rockway. (c) The district attorney in the respective counties. (d) The corruption of minors charge resulted in a conviction; the Indecent Assault charge was plead out. (e) Plaintiff received a sentence of 1.5-5 years for his corruption of minors charge (f) no (g) The plea bargain on indecent assault was 60 days to 23.5 months. All remaining information that was not answered is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the information to be provided is irrelevant to the case at hand.

Answer to Interrogatory No. 11: No

Answer to Interrogatory No. 12: Plaintiff is treated at the Dubois RMC Hospital in Dubois, PA.

Answer to Interrogatory No. 13: Plaintiff answers that, to the best of his recollection, most visits were out-patient. Plaintiff cannot recall all exact dates and reasons; therefore this part of the interrogatory is objected to on the basis that it is unduly burdensome. Plaintiff has not been to the hospital on more than 10 times in the last 10 years; this does not include blood work for which there were numerous visits to the hospital.

Answer to Interrogatory No. 14: Plaintiff's doctors, to the best of his recollection are (city is provided if Plaintiff could recall, not specific addresses; unduly burdensome): Dr. Roger Anderson; Dr. Coppes; Dr. Doughty; Dr. Rosco; Dr. Shaw; Dr. Moclock; Dr. Richard Johnson; Clearfield(current); Dr. Timothy Phillips; Clearfield (current); Dr. Malek; Dr. Carol Encarnacion; Dr. Schacter; Dr. Tuesday Stainbrook; Clearfield (current); Dr. Cherry; Dr. Orenkauski; Dr. Eric Lundgren; Dr. Iliuzzi; Dr. Palmer (ER); Dr. Barber; Dr. Turkin, and Dr. Shah **Names of doctors may not be correctly spelled since Plaintiff answered through his recollection of the last 10 years.

Answer to Interrogatory No. 15: Plaintiff's current doctors are: Dr. Stainbrook – treats for HIV; Dr. Johnson; plaintiff's family doctor; Dr. Phillips – treats plaintiff's colon. Plaintiff consulted Dr. Shah for his HIV. Plaintiff could not remember anything else and there are too many dates and times to remember. The remaining part of the interrogatory is objected to on the basis that it is overly broad and unduly burdensome.

Answer to Interrogatory No. 16: Plaintiff's attorney received the medical report of Defendant Dr. Shirish Shah dated November 7, 2000 assessing Plaintiff Mark Manning's evaluation for disability.

Answer to Interrogatory No. 17: All medical records in our possession are available to you for your inspection and copying.

Answer to Interrogatory No. 18: (a) Plaintiff had to explain to family members his illness, he is seeking treatment in another town, he is looking to relocate now because of this disclosure. Plaintiff has confined himself to his residence now more than ever and is afraid to be confronted by his neighbors. (b) No, plaintiff did not.

Answer to Interrogatory No. 19: answer was no to 18(b)

Answer to Interrogatory No. 20: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

** Answer to Interrogatory No. 21: The date that Mark Manning was treated by or examined by Dr. Shirish Shah, M.D. was October 2, 2000. The reason for the examination was a referral by the Bureau of Disability of Determination for Mark Manning to receive social security disability benefits.

Answer to Interrogatory No. 22: Plaintiff was not.

Answer to Interrogatory No. 23: Plaintiff has been confined to his home more than usual, but he is not confined there because of a physical ailment. He remains there because of emotional distress and embarrassment.

Answer to Interrogatory No. 24: No

Answer to Interrogatory No. 25: Answer was not in the affirmative.

Answer to Interrogatory No. 26: No

Answer to Interrogatory No. 27: Answer was not in the affirmative.

Answer to Interrogatory No. 28: Just plaintiff's current doctors and plaintiff's wife knew.

Answer to Interrogatory No. 29: All current doctors know because of Plaintiff's treatments and testing. Wife knows because she was given plaintiff's HIV results.

Answer to Interrogatory No. 30: Disclosures made by Susan Manning about Mark Manning's healthcare information is as follows:

- a. Susan Manning to her husband John Manning in the Spring of 2001. John Manning, 15 ½ East Second Avenue, DuBois, PA 15801; phone 814-375-0810. Approximately two weeks after Susan started working at Dr. Shah's office. The disclosure took place in Susan and John's home. Susan came home from work and told John he would never guess who was a patient at Dr. Shah's. John said he did not know. Susan said one of his brothers, Mark. John asked her what the big deal was. Approximately one week later, Susan again

said to John that he will never believe what his brother Mark is seeing Dr. Shah for. Susan asked John if he knew if anything was medically wrong with Mark. John said not other than his back. Susan replied that Mark was diagnosed with Hepatitis B. John told Susan it was none of her business and has no business spreading around the information. Susan replied that it was her business because it's her office. Mark Manning was not present during this disclosure.

- b. Memorial Day Weekend 2002 at the campground at Treasure Lake in Dubois, PA. John and Susan Manning were camping with their family and friends. John said they were sitting around the campfire when Susan started talking about Mark and blurted out that "Mark has AIDS". This was the first time John heard that Mark had AIDS from Susan and they got into an argument about the accusation. John told Susan to keep her mouth shut and that she has no proof. Susan replied that yes, she does have proof. Also present during these disclosures were Melanie Cole and Rita (Lockwood) Meglio (Adriene Manning's ex-husband's fiancée). See the disclosures made to Melanie Cole for details. Mark was not present at the time this disclosure was made.
- c. At the Dubois Regional Medical Center in October of 2002; disclosure made to John Manning and Rita Gutowski. Kyle Manning, John and Susan Manning's son, was in the hospital. Mark Manning, Adriene Manning, and Amber Manning went to the hospital to visit Kyle. When they arrived, John took them into a room next to Kyle's and told them to wait there. John left and went to Kyle's room. At this point the head nurse, Rita Gutowski was called into Kyle's room. A conversation then took place whereby Susan Manning told Rita Gutowski that when Mark, Adriene and Amber arrive, she (Rita) is to call security to have them removed and that they are not allowed in Kyle's room. Ms. Gutowski asked why and Susan replied because Mark cannot be around Kyle. He has AIDS. This was the second time that Susan had said Mark has AIDS in front of her husband John Manning. Also present during this disclosure were Melanie and Randy Cole. Mark Manning was not in the room but was in a room next door in the hospital.
- d. Disclosure made to Elizabeth Aravich (Mark and John Manning's sister) of 344 South Oakland Street, Mesa, Arizona 85206; phone 480-275-7545. Ms. Aravich is unsure of the date the disclosure took place but it was approximately one week after Kyle Manning's funeral. After Kyle's funeral she would go over to John and Susan Manning's house on a regular basis to see if they needed anything and to see how the other boys were doing. During one visit, Susan and Elizabeth were having a conversation and Susan said to Elizabeth, "The reason I did not allow Mark and Adriene into the funeral home is because Mark has AIDS and my kids were not going to be around him to catch it." "Do you know anything about Bev (Mark's ex-wife) and the sickness she has and the weight she has lost. She has AIDS and Mark got it off of her." Mark Manning was not present when this disclosure was made.
- e. Disclosure made to Diane Andres of 215 Treasure Lake, DuBois, PA 15801; phone 814-371-6515. A conversation with Diane and Susan Manning took place in the Spring of 2002 at Susan's house in the kitchen. Prior to Diane's

- private conversation with Susan, Diane said there was a lot of negative conversation about Mark taking place. Susan told Diane during their conversation that she would allow Adriene around, but because she is with Mark she won't allow it anymore. Diane asked Susan what her problem was and Susan replied that she did not want Mark around Kyle because she (Susan) found out through his medical records at Dr. Shah's office that Mark has AIDS and that he is not a regular patient there. Diane was shocked by this information given to her by Susan Manning and all she could think of is if Adriene was sick too. Mark Manning was not present during this disclosure.
- f. Disclosure made to Melanie and Randy Cole of Treasure Lake Road, DuBois, PA 15801; phone 814-371-0165. Approximately October of 2002, Susan Manning called Melanie Cole at work from where Susan was working. Susan told Melanie that she looked in Mark's medical file and said it was bad and serious and it was not safe for the kids to be around Mark. Susan proceeded to tell Melanie that Mark and Adriene are not allowed to visit Kyle in the hospital and that Kyle cannot be exposed. Mark Manning was not present during this telephone conversation between Susan Manning and Melanie Cole. Melanie and Randy were also present during the disclosure to Rita Gutowski in Kyle's hospital room. Melanie recounts that she was in the room when Susan asked Rita Gutowski to call security to have Mark and his family removed. Melanie was also present for the campfire disclosure Memorial Day weekend of 2002 whereby Susan Manning was talking to Rita (Lockwood) Meglio (who is Adriene Manning's ex-husband's fiancée). Susan was telling Rita that she should be tested for AIDS before she and Adriene's ex-husband got married.

All of the preceding information can be found in the attached affidavit dated January 17, 2005.

Answer to Interrogatory No. 31: The answer to this question is fully described in interrogatory number 30. In short, all previously mentioned parties in interrogatory answer 30 were told Mark Manning has AIDS.

Answer to Interrogatory No. 32: In general, plaintiff has incurred expenses for traveling out of town to seek doctors, including dentists, he has confined himself to his home, has undergone emotional distress regarding his neighbors and their knowledge of his disease, plaintiff has been unable to spend much time in Dubois which is where family is, and attorney's fees.

Answer to Interrogatory No. 33: None

Answer to Interrogatory No. 34: Plaintiff is not currently employed. His last date of employment was in April 1999; he is self-employed as an independent contractor in

construction/salvaging/running equipment/welding/cutting/fabricating. Plaintiff has been self-employed since 1994 (until 1999).

Answer to Interrogatory No. 35: Plaintiff was self-employed. The rest of the interrogatory is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 36: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 37 thru 39: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 40: Yes, plaintiff has. The rest of the interrogatory is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

Answer to Interrogatory No. 41: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 42: No, he has not.

Answer to Interrogatory No. 43: Objection on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome. In addition, the question is irrelevant to the case at hand.

Answer to Interrogatory No. 44: Plaintiff has not received any military disability benefits.

Answer to Interrogatory No. 45: Plaintiff has been receiving disability payments from the United States Government since 2001. The rest of the interrogatory is objected to on the basis that interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 46: Objection on the basis that the interrogatory is overly broad and not specific.

Answer to Interrogatory No. 47: See attached statement dated January 17, 2005. This statement was recorded by Mark Manning. All those who contributed to the statement are named with their address and phone numbers.

Answer to Interrogatory No. 48: None

Answer to Interrogatory No. 49: Plaintiff has a copy of Defendant's proof of employment paid by Dr. Shah. Document is by the doctors who work with Dr. Shah and Dr. Shah regarding a decision for a request of medical records with social security. Please see attached copy dated April 2002 – December 2002.

Answer to Interrogatory No. 50: See attached statement dated January 17, 2005

Answer to Interrogatory No. 51 and 52: None.

**Answer to Interrogatory No. 53: See attached statement dated January 17, 2005

**Answer to Interrogatory No. 54: See attached statement dated January 17, 2005

**Answer to Interrogatory No. 55: See attached statement dated January 17, 2005

Answer to Interrogatory No. 56: Each person in the statement was told by Susan Manning that Mark Manning has AIDS.

**Answer to Interrogatory No. 57: At this time, no one.

**Answer to Interrogatory No. 58: not applicable

**Answer to Interrogatory No. 59: not applicable

**Answer to Interrogatory No. 60: none

Answer to Interrogatory No. 61: No, Plaintiff has not.

Answer to Interrogatory No. 62: No, Plaintiff has not.

Answer to Interrogatory No. 63: Relating to medical bills: (a) Medicaid and Medicare (b-g) too numerous to list; Objection on the basis that this part of the interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome.

Answer to Interrogatory No. 64: None

Answer to Interrogatory No. 65: At the end of the summer in 1996 by Dr. Mulligan (ex-wife's doctor) at Hahne Cancer Center in Dubois. Actually, the test was done by Dr. Mulligan but plaintiff's wife told him the HIV results. Plaintiff's current doctors are aware and have been treating him for it.

Answer to Interrogatory No. 66: Already answered in interrogatory number 30 and see attached statement dated January 17, 2005.

Answer to Interrogatory No. 67: Objection on the basis that the interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 68: None

Answer to Interrogatory No. 69: In the presence of the entire funeral home and all those present, plaintiff was not aware of Susan's disclosures at this point. Susan Manning told plaintiff's sister he had AIDS (did not say HIV) and therefore was not allowed to go in and see his nephew that died. All family members and family friends were present and witnessed this occurrence. Also, Susan Manning told plaintiff's youngest daughter Amber, who at the time was 10 years old, she wasn't welcome at the funeral. Amber told the plaintiff this information. Therefore, this has also had an effect on plaintiff's immediate family members.

Answer to Interrogatory No. 70: Objection on the basis that the interrogatory is annoying, embarrassing, oppressive, or overly broad and unduly burdensome and is irrelevant to the case at hand.

Answer to Interrogatory No. 71: Kelli J. Brownwell, Esquire; Derek J. Cordier, Esquire; Plaintiff Mark Manning.

The Law Offices of Derek J. Cordier
and Kelli J. Brownwell

By Kelli J. Brownwell, Esq.
Kelli J. Brownwell, Esquire
Attorney at Law

CERTIFICATION OF SERVICE

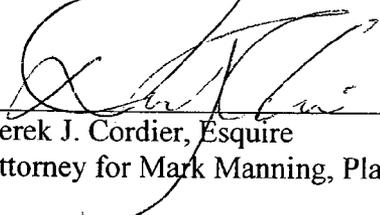
I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this

21st day of March, 2005:

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



The Law Offices of Derek J. Cordier
and Kelli J. Browneyell



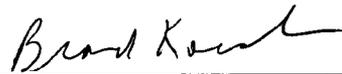
Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

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 5th day of August, 2005:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for the defendants.

In the Superior Court of
Pennsylvania
Sitting at Pittsburgh

No. 1330 WDA 2005

MARK MANNING-APPELLANT : APPEAL FROM THE JUDGMENT ENTERED
VS : 6-20-2005-BY THE HONORABLE
SGURUSG N, SHAH, M.D., AND : FREDERIC J. AMMERMAN
SUSAN MANNING : COURT OF COMMON PLEAS
: CIVIL DIVISION-CLEARFIELD COUNTY
: 04-1828 CD

Certified from the Record

AUGUST 25, 2005 PRAECIPE TO WITHDRAW APPEAL FILED:
(APPEAL DISCONTINUED)

FILED
7/11/3257 CW
AUG 29 2005

William A. Shaw
Prothonotary/Clerk of Courts

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at
Pittsburgh,

Pa. this 26TH Day of August 2005

Eleanor R. Valecko

Deputy Prothonotary



Superior Court of Pennsylvania

Western District

August 26, 2005

David A. Szewczak, Esq.
Prothonotary

Eleanor R. Valecko
Deputy Prothonotary

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592
www.superior.court.state.pa.us

Mr. William A. Shaw
Prothonotary
Clearfield County
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

RE: Manning, M. v. Shah, S., M.D.
No. 1330 WDA 2005

_____, received from the Superior Court of Pennsylvania, Western District Office, the certificate of discontinuance of the court, in the above entitled case.

Contents of Original Record:

Original Record Item

Description

Return to:

Superior Court of Pennsylvania
Office of the Prothonotary
310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592

Trial Court Docket Number(s)
No. 04-1828-CD

COMMONWEALTH OF PENNSYLVANIA



Superior Court of Pennsylvania

Western District

August 26, 2005

David A. Szewczak, Esq.
Prothonotary

Eleanor R. Valecko
Deputy Prothonotary

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
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Mr. William A. Shaw
Prothonotary
Clearfield County
Clearfield County Courthouse
230 East Market Street
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Trial Court Docket Number(s)
No. 04-1828-CD



Superior Court of Pennsylvania

Western District

August 26, 2005

David A. Szewczak, Esq.
Prothonotary

Eleanor R. Valecko
Deputy Prothonotary

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592
www.superior.court.state.pa.us

Notice of Discontinuance of Action

RE: Manning, M. v. Shah, S., M.D.
Appeal of: Mark Manning
Type of Action: Notice of Appeal
No. 1330 WDA 2005
Clearfield County Court of Common Pleas
Agency Docket Number: No. 04-1828-CD

The above-captioned matter has been marked "Discontinued" with this court.
Certification is being sent to the lower court.

Attorney Name	Party Name	Party Type
Derek J. Cordier, Esq.	Mark Manning	Appellant
David R. Johnson, Esq.	Susan Manning	Appellee
David R. Johnson, Esq.	Shirish N. Shah, M.D.	Appellee

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

MARK MANNING

-VS-

SHIRISH N. SHAH, M.D., and
SUSAN MANNING

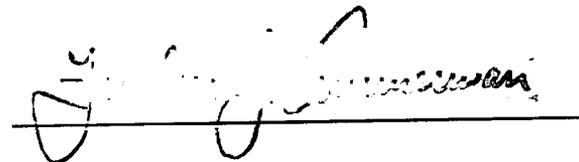
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No. 04-1828-CD

O R D E R

NOW, this 7th day of September, 2005, following argument on the Plaintiff's Motion to Amend the Plaintiff's Amended Complaint, with the Court believing that the issues had been previously considered and determined in the Court's opinion of June 20, 2005, it is the ORDER of this Court that the said Motion be and is hereby dismissed.

BY THE COURT,



President Judge

FILED *acc*
of 3:2801 *Attys:*
SEP 08 2005 *Cordier*
William J. Chav
Prothonotary, Clerk of Courts *Johnson*
@

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

**AFFIDAVIT OF SERVICE OF ORDER
DATED SEPTEMBER 7, 2005**

Code: 007

Filed on behalf 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
m11:34/61
SEP 15 2005
NO CC
JS

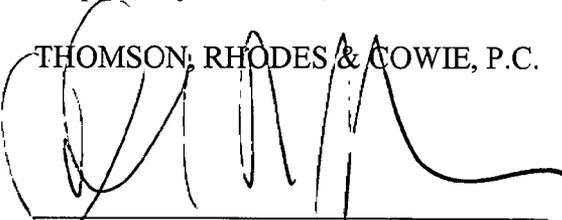
Shaw
Clerk of Courts

AFFIDAVIT OF SERVICE

Notice has been made by U.S. Mail to Derek Cordier, Esquire, 319 South Front Street, Harrisburg, PA 17104-1621, plaintiff's counsel, of the order of court dated September 7, 2005 dismissing plaintiff's motion to amend the plaintiff's amended complaint.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



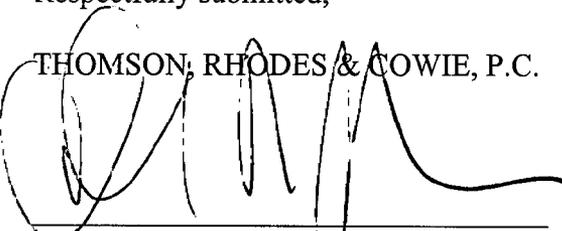
David R. Johnson, Esquire
Attorneys for defendants.

AFFIDAVIT OF SERVICE

Notice has been made by U.S. Mail to Derek Cordier, Esquire, 319 South Front Street, Harrisburg, PA 17104-1621, plaintiff's counsel, of the order of court dated September 7, 2005 dismissing plaintiff's motion to amend the plaintiff's amended complaint.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING
Plaintiff

vs.

SHIRISH N. SHAH, M.D.
and
SUSAN MANNING
Defendants

Counsel of Record:

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

CIVIL DIVISION

No. 04-1828-CD

Issue No.

ANSWER TO DEFENDANTS NEW
MATTER

Filed on behalf of the Plaintiff

Counsel of Record for These Parties:

Derek J. Cordier, Esquire
PA I.D. # 83284
The Law Offices of Derek J. Cordier and
Kelli J. Brownwell
319 South Front Street
Harrisburg, PA 17104-1621

(717) 919-4002

FILED

SEP 26 2005
m/3270h
William A. S. [Signature]
Prothonotary Clerk of Court (CJ)
1 CENT TO ATTORNEY

ANSWER TO DEFENDANTS NEW MATTER

NOW COMES Mark Manning, Plaintiff, by and through his attorney, Derek J. Cordier, Esquire, and files the following Answer to Defendants New Matter.

11 and 12. Plaintiff's only response to paragraphs 11 and 12 is that this matter was already decided by The Honorable Fredric J. Ammerman, President Judge, in his Opinion dated the 20th day of June 2005. In his Opinion, Judge Ammerman dismissed Defendants' Preliminary Objection to punitive damages and ruled that the claim against Ms. Manning is a jury question as to whether punitive damages should be awarded.

13. Denied. Plaintiff has stated a cause of action for breach of privacy.

14. Denied. Plaintiff believes Defendant Ms. Manning did publicize Plaintiff's confidential HIV status to third persons, other than Plaintiff, after discovering Plaintiff's HIV status while employed at Dr. Shah's medical office. In addition, this matter was already decided by Judge Ammerman in his Opinion dated the 20th day of June 2005 in which he stated "The Court instead will permit the parties to engage in the discovery process in order to determine if additional individuals are located to whom the Plaintiff's condition was made public by Ms. Manning."

15. Denied. Plaintiff believes Defendant Susan Manning did publicize his confidential HIV status to third persons other than Plaintiff by disclosing such to friends and family members that Plaintiff had not disclosed such information to.

16. Denied. Plaintiff does state a cause of action for violation of the Pennsylvania Confidentiality of HIV-Related Information Act in Plaintiff's Complaint.

17. Denied. Plaintiff believes Defendant Susan Manning did improperly disclose Plaintiff's confidential HIV status to persons other than Plaintiff because such third persons have acknowledged such. In addition, Defendant Susan Manning obtained Plaintiff's HIV status through Plaintiff's confidential medical records while being employed at Dr. Shah's medical office. After she obtained such information she disclosed Plaintiff's HIV status to friends and family members that Plaintiff had not disclosed such information to.

WHEREFORE, Defendant's request to dismiss Plaintiff's complaint and to enter judgment in favor of Defendant should be denied. A jury trial is demanded.

Respectfully Submitted,



Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

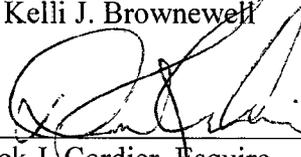
CERTIFICATION OF SERVICE

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

15th day of September, 2005:

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

The Law Offices of Derek J. Cordier
and Kelli J. Brownewell



Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

CIVIL DIVISION

Plaintiff,

No. 04-1828-CD

vs.

Issue No.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

**MOTION FOR LEAVE TO FILE
AMENDED ANSWER AND NEW
MATTER**

Defendants.

Counsel of Record:

Code: 007

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

Filed on behalf of Susan Manning, one of the
defendants.

Counsel of Record for This Party:

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

Brad R. Korinski, Esquire
Pa I.D. # 86831

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

(412) 232-3400

FILED 2cc
mjt: 23/01 Atty Korinski
JUN 28 2006
CCK

William A. Shaw
Prothonotary/Clerk of Courts

MOTION FOR LEAVE TO FILE AMENDED ANSWER AND NEW MATTER

NOW COMES one of the defendants, Susan Manning, by her attorneys, Thomson, Rhodes & Cowie, P.C., and files the following motion to amend her answer and new matter, averring as follows.

1. The claims lodged against Susan Manning sound in common-law invasion of privacy and an alleged statutory violation of the Pennsylvania HIV/AIDS Confidentiality Law, 42 Pa. C.S. 7610. Plaintiff alleges that Susan Manning improperly disclosed his confidential medical information which she came to learn about in the course of her employment.

2. Plaintiff instituted this lawsuit on November 17, 2004.

3. Neither plaintiff's complaint nor his initial responses to discovery (issued in March, 2005) set forth the date - either specifically or approximately - when he became aware of this defendant's purportedly improper disclosures.

4. Defendant filed her answer and new matter on July 21, 2005, prior to plaintiff having been deposed in this case. Since then, defendant learned of information which permits her to assert the defense of the statute of limitations to the claims made against her.

5. In response to questions at his deposition of March 30, 2006, plaintiff testified that he learned of this defendant's alleged disclosures in "September or October of 2003" during a telephone conversation with his brother, the ex-husband of this defendant. (Pertinent portions of plaintiff's deposition transcript, pp. 13-16, are attached hereto as Exhibit "A").

6. Rule 1033 of the Pennsylvania Rules of Civil Procedure provides:

"Rule 1033. Amendment

A party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleadings. The amended pleading may aver transactions or occurrences which have happened before or after

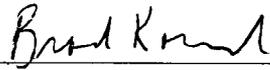
the filing of the original pleading even though they give rise to a new cause of action or defense. An amendment may be made to conform the pleading to the evidence offered or admitted."

7. Defendant wishes to amend her answer and new matter to plead the defense of the statute of limitations on the basis that, pursuant to plaintiff's deposition testimony, there is the potentiality that plaintiff's claims have been untimely filed. A copy of this defendant's amended answer and new matter is attached hereto as Exhibit "B."

WHEREFORE, Susan Manning, one of the defendants, respectfully requests that this Honorable Court enter the attached Order permitting the defendant to file the attached and new matter.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



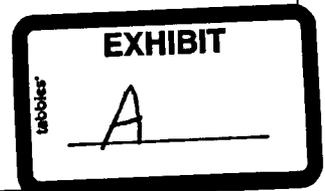
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

MARK MANNING,	) CIVIL DIVISION
)
Plaintiff,	) No. 04-1828-CD
)
vs.	) DEPOSITION OF:
	) Mark A. Manning
)
SHIRISH N. SHAH, M.D. and	) DATE:
SUSAN MANNING,	) March 30, 2006
)
Defendants.	) REPORTED BY:
	) Lisa A. Rashid

MARK A. MANNING, the Plaintiff herein,
called upon for examination, taken pursuant to the
Rules of Civil Procedure, by and before Lisa A. Rashid,
a Court Reporter and Notary Public in and for the
Commonwealth of Pennsylvania, at DuBois Regional
Medical Center, DuBois, Pennsylvania on March 30, 2006
commencing at 10:00 a.m.

COPY



Page 13

1 Alliance always kept my family physicians aware of
 2 my counts and stuff like that and my medicines and
 3 what they would, you know, treat me.
 4 Q Why did you switch from this physician whose name
 5 you can't remember to Dr. Johnson?
 6 A I switched because my brother called me and told me
 7 that a certain person spread my health records
 8 around here in DuBois to certain people. And I
 9 called Northwest AIDS Alliance to provide me with a
 10 physician.
 11 Q How do you allege that those events are connected,
 12 the telephone call from your brother and calling
 13 with respect to the doctor?
 14 A From what he told me.
 15 Q I don't understand. What do you mean?
 16 A My brother?
 17 Q Let me ask a different question. You said your
 18 brother called you and told you something on the
 19 phone.
 20 A Yes.
 21 Q And then you said you switched from some doctor
 22 whose name you can't recall to Dr. Johnson?
 23 A Yes.
 24 Q My question is, what's the alleged connection
 25 between telephone call and switching doctors?

Page 14

1 A I felt very upset with what he told me. I didn't
 2 trust, in my opinion in what I'm telling you now,
 3 back then, I didn't trust anybody in the medical
 4 facility here in DuBois. So I go to Clearfield and
 5 I stay with Northwest Alliance in Clarion.
 6 Q Did you ever discuss this with the doctor whose
 7 name you can't recall who was in Reynoldsville?
 8 A No.
 9 Q Why not?
 10 A There was no need to. And, anyway, he -- I believe
 11 he even moved or went to another place also. So
 12 there was no need for me to follow up with whoever
 13 the doctor was in Reynoldsville taking over his
 14 cases or patients or whatever you want to call
 15 them.
 16 Q So, even had you wanted to continue with the doctor
 17 in Reynoldsville, he was no longer located where
 18 you had seen him before?
 19 A I'm pretty sure that's what I was told.
 20 Q So, in any event, you either would have had to find
 21 out where he moved to or get yourself a different
 22 doctor?
 23 A He was out of the area, I believe I was told. He
 24 was moving too. And I could have stayed there with
 25 whatever doctor they filled his position with.

Page 15

1 Plus, there was two or three more doctors at that
 2 facility, DRMC facility, in Reynoldsville. I chose
 3 to go to Clearfield where I could, you know, feel
 4 comfortable with being treated.
 5 Q Sure. That's fine. And have you received adequate
 6 care of Dr. Johnson in Clearfield?
 7 A Wonderful care. Excellent care. More than I could
 8 ever describe. And the hospital facilities there
 9 are wonderful.
 10 Q Would it be accurate that you have no plans to
 11 change your care with Dr. Johnson because you're
 12 entirely satisfied with the care he's providing
 13 you?
 14 A I'm very satisfied with my doctors.
 15 Q You don't feel that you're being deprived of
 16 healthcare in anyway way, do you?
 17 A No.
 18 Q Have you been hospitalized Clearfield?
 19 A No.
 20 Q The telephone call from your brother that you
 21 mentioned, when was that?
 22 A I believe that was around September, October of
 23 2003.
 24 Q By the way, what did you do to prepare for today's
 25 deposition?

Page 16

1 A Nothing.
 2 Q Did you look at any documents to prepare?
 3 A No.
 4 Q Did you read anything at all?
 5 A Nothing.
 6 Q Did you meet with your lawyer?
 7 A No, I didn't.
 8 Q Did you have any discussion with your lawyer?
 9 A Yes.
 10 Q How long did that discussion last?
 11 A Not too long. It was over the phone. He just told
 12 me where to be --
 13 Q I don't want to know what he told you. That's
 14 privileged.
 15 A That I was to be here at this time.
 16 MR. CORDIER: Actually, you can tell
 17 him what I told you.
 18 BY MR. JOHNSON:
 19 Q Okay. If your attorney says you can tell me, go
 20 ahead and tell me what you and your attorney talked
 21 about.
 22 A He said that the meeting was here at the Medical
 23 Arts Building here in DuBois across from the
 24 hospital. What room, he wasn't sure. Neither was
 25 I. And he said, basically, he wasn't going to be

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

AMENDED ANSWER AND NEW MATTER

Code: 007

Filed on behalf of Susan Manning, one of the
defendants.

NOTICE TO PLEAD:

To: Plaintiff

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.

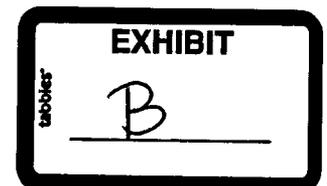
Counsel of Record for This Party:

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

Brad R. Korinski, Esquire
PA I.D. #86831

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

(412) 232-3400



ANSWER AND NEW MATTER

NOW COMES, Susan Manning, one of the defendants, by her attorneys, Thomson, Rhodes & Cowie, P.C., and files the following amended answer and new matter in response to plaintiff's complaint.

1. Defendant incorporates in its entirety the original answer and new matter.

SUPPLEMENTAL NEW MATTER

2. Defendant supplements her affirmative defenses as follows.
3. To the extent that plaintiff premises his claim in whole or in part on any act or event occurring more than two years or one year prior to the filing of the lawsuit, the claims are barred by the applicable statute of limitations, which is plead herein as an affirmative defense.
4. Defendant pleads all applicable statutes of limitations as affirmative defenses.
5. If and to the extent that plaintiff's claims were not filed within the time limitations imposed by law, said lawsuit is barred by the applicable statute of limitations.

WHEREFORE, plaintiff's complaint should be dismissed and judgment should be entered in favor of the defendants.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



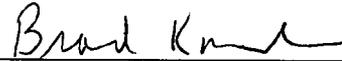
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants.

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this _____ day of June, 2006:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



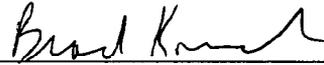
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within document has been served upon the following counsel of record and same placed in the U.S. Mails on this 26th day of June, 2006:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 15th day of August, 2006, the motion to file an amended answer and new matter on behalf of Susan Manning, one of the defendants, is granted.

BY THE COURT:



CA

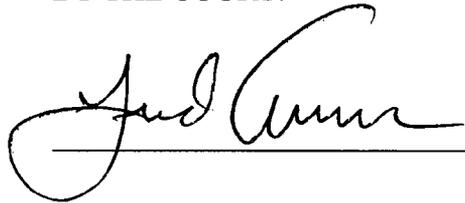
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW on this 29 day of June, 2006, it is hereby ORDERED, ADJUGED and DECREED that oral argument on defendant's motion for leave to file amended answer and new matter is scheduled for the 15th day of August, 2006, at 1:30 a.m. (p.m) before Judge Ammerman in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:

 J.

FILED

JUN 29 2006
 0/3:50/w
 William A. Shaw
 Prothonotary/Clerk of Courts

2 CENS TO ATTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

Counsel of Record:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

CIVIL DIVISION

No. 04-1828-CD

Issue No.

AFFIDAVIT OF SERVICE

Code: 007

Filed on behalf of Susan Manning, one 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

JUL 10 2006

M 12:00 (W)

William A. Shaw
Prothonotary/Clerk of Courts

W A Shaw

AFFIDAVIT OF SERVICE

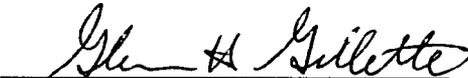
Before me, the undersigned authority, personally appeared Brad R. Korinski, Esquire, who, being duly sworn, deposes and says that a true and correct copy of the Judge Ammerman's June 29, 2006, Scheduling Order, along with a true and correct copy the Motion for Leave to File Amended Answer and New Matter in the above-captioned case was served upon plaintiff's counsel, Derek Cordier, Esquire, 319 South Front Street, Harrisburg, Pennsylvania, 17104-1621, by United States, first class, postage pre-paid mail on July 6, 2006.

THOMSON, RHODES & COWIE, P.C.



Brad R. Korinski, Esquire

Sworn to and subscribed before me
this 6th day of July, 2006.



Notary Public

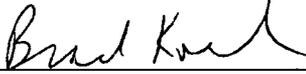
COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Glenn H. Gillette, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Sept. 22, 2009
Member, Pennsylvania Association of Notaries

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 July, 2006:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING
Plaintiff

CIVIL DIVISION

No. 04-1828-CD

vs.

SHIRISH N. SHAH, M.D.
and
SUSAN MANNING
Defendants

ANSWER TO DEFENDANTS MOTION
FOR LEAVE TO FILE AMENDED
ANSWER AND NEW MATTER

Counsel of Record for Plaintiff:
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

Filed on behalf of the Defendant:
Counsel of Record for These Parties:

Derek J. Cordier, Esquire
PA I.D. # 83284
Cordier & Brownell, Law Offices
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002

FILED ^{acc}
m110.5364 Amy
JUL 13 2006 Cordier
William A. Shaw
Prothonotary/Clerk of Courts

ANSWER TO DEFENDANTS MOTION FOR LEAVE TO FILE AMENDED
ANSWER AND NEW MATTER

NOW COMES Mark Manning, Plaintiff, by and through his attorney, Derek J. Cordier, Esquire, and files the following Answer to Defendants Motion for Leave to File Amended Answer and New Matter.

1. Admitted.

2. Admitted.

3. Denied. Paragraph number eight of Plaintiff's Complaint clearly states the following "8. The Plaintiff, learned of the Defendant, Susan Manning's disclosures through Susan Manning's Husband, John Manning, who is also Plaintiff's brother, in September of 2003." Clearly any such motion as to the Statute of Limitations should have been filed at that time and this motion is clearly frivolous.

4. Admitted in part and denied in part. Defendant did file her answer and new matter on July 21, 2005, prior to Plaintiff being deposed in this case. However, information learned as a result of Plaintiff's deposition does not permit Defendant to assert the defense of the statute of limitations to the claims made against her.

5. Admitted.

6. Admitted.

7. Denied. Plaintiff's claims have not been untimely filed. Plaintiff's injury, due to Susan Manning's negligence and invasion of Plaintiff's privacy, was discovered in September or October of 2003. Plaintiff filed suit on November 17, 2004, which is an approximately one year from the time Plaintiff discovered his injury. According to 42 Pa.C.S. section 5524, an action to recover "damages for injury to person or property

which is founded on negligent, intentional or otherwise tortious conduct” must be commenced within two years. Plaintiff is well within the two year statute of limitations.

ANSWER TO DEFENDANT’S AMENDED ANSWER AND NEW MATTER

NOW COMES Mark Manning, Plaintiff, by and through his attorney, Derek J. Cordier, Esquire, and files the following Answer to Defendants Amended Answer and New Matter.

1. Admitted.

ANSWER TO DEFENANT'S SUPPLEMENTAL NEW MATTER

2. Admitted.
3. Denied. The claims are not barred by the statute of limitations.

According to 42 Pa.C.S. section 5524, an action to recover “damages for injury to person or property which is founded on negligent, intentional or otherwise tortious conduct” must be commenced within two years. Plaintiff claims he discovered his injury, due to Defendants conduct, in September or October of 2003. Plaintiff filed suit against Defendants on November 17, 2004.

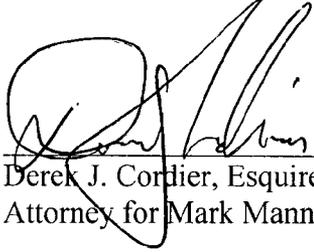
4. Denied. The two year statute of limitations has been complied with by the Plaintiff and therefore such cannot be an affirmative defense and attorney fees for the defense of this Motion is hereby requested.

5. Denied. Plaintiff’s claims were filed within the time limitations. "When the discovery rule applies, the statute of limitations does not commence to run at the instant that the right to institute arises, i.e., when the injury occurs. Rather, the statute is tolled, and does not begin to run until the injured party discovers or reasonably should

have discovered and that the injury has been caused by another party's conduct. Whether the statute of limitations has run on a claim is a question of law for the trial court to determine; but the question of when a party's injury and its cause were discovered or discoverable is for the jury." *Fine v. Checcio*, 582 Pa. 253, at 266, 870 A.2d 850 at 858 (2005), *Hayward v Medical Center of Beaver County*, 530 Pa. 320, 608 A.2d 1040 at 1043 (1992), *Ayers v. Morgan*. 397 Pa. 282, 154 A.2d 788 at 791(Pa. 1959).

WHEREFORE, Plaintiff request that Defendant's Motion for Leave to File an Amended Answer and New Matter be denied as frivolous and hereby request attorney fees and costs be placed on the Defendant for defending this motion in the amount of eight hundred (\$800.00) dollars.

Respectfully submitted by,



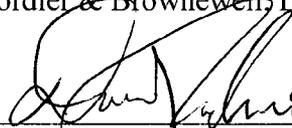
Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

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 11th day of July, 2006:

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

~~Cordier & Brownwell~~, Law Offices



Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

AMENDED ANSWER AND NEW MATTER

Code: 007

Filed on behalf of Susan Manning, one of the
defendants.

NOTICE TO PLEAD:

To: Plaintiff

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

Brad Korinski

Attorneys for defendant.

Counsel of Record for This Party:

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

Brad R. Korinski, Esquire
PA I.D. #86831

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

(412) 232-3400

FILED
SEP 11 2006
11:30 AM
William A. Shaw
Prothonotary/Clerk of Courts
No. 04

ANSWER AND NEW MATTER

NOW COMES, Susan Manning, one of the defendants, by her attorneys, Thomson, Rhodes & Cowie, P.C., and files the following amended answer and new matter in response to plaintiff's complaint.

1. Defendant incorporates in its entirety the original answer and new matter.

SUPPLEMENTAL NEW MATTER

2. Defendant supplements her affirmative defenses as follows.
3. To the extent that plaintiff premises his claim in whole or in part on any act or event occurring more than two years or more than one year prior to the filing of the lawsuit, the claims are barred by the applicable statute of limitations, which is plead herein as an affirmative defense.
4. The defense of the statute of limitations bars plaintiff's invasion of privacy claim.
5. The defense of the statute of limitations bars plaintiff's claim under the Pennsylvania HIV/AIDS Confidentiality Law (35 Pa. C.S. 7601) as stated in the amended complaint.
6. If and to the extent that plaintiff's claims were not filed within the time limitations imposed by law, said lawsuit is barred by the applicable statute of limitations.

WHEREFORE, plaintiff's complaint should be dismissed and judgment should be entered in favor of the defendants.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



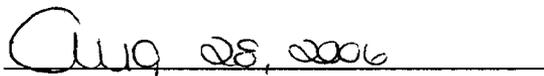
David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants.

VERIFICATION

I, Susan Manning, have read the foregoing AMENDED ANSWER AND NEW MATTER. The statements therein are correct to the best of my personal knowledge or information and belief.

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

A handwritten signature in cursive script that reads "Susan M Manning". The signature is written over a horizontal line.

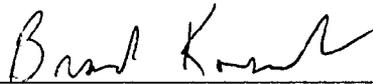
Date: A handwritten date "Aug 28, 2006" written in cursive script over a horizontal line.

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 14th day of ~~August~~^{Sept.}, 2006:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Susan Manning,
one of the defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING
Plaintiff

CIVIL DIVISION

vs.

No. 04-1828-CD

SHIRISH N. SHAH, M.D.
and
SUSAN MANNING

Issue No.

Defendants

ANSWER TO DEFENDANTS
AMENDED ANSWER AND NEW
MATTER

Counsel of Record:

Filed on behalf of the Plaintiff

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

Counsel of Record for These Parties:

Derek J. Cordier, Esquire
PA I.D. # 83284
The Law Offices of Derek J. Cordier and
Kelli J. Brownwell
319 South Front Street
Harrisburg, PA 17104-1621

(717) 919-4002

FILED ^{NO} ^{CC}
m1:216
OCT 02 2006 (S)

William A. Shaw
Prothonotary/Clerk of Courts

ANSWER TO DEFENDANTS AMENDED ANSWER AND NEW MATTER

NOW COMES Mark Manning, Plaintiff, by and through his attorney, Derek J. Cordier, Esquire, and files the following Answer to Defendants Amended Answer and New Matter.

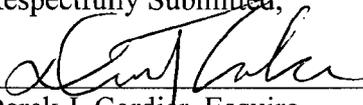
1. Neither admitted nor denied.

DEFENDANT'S SUPPLEMENTAL NEW MATTER

2. Neither admitted nor denied.
3. Denied. Plaintiff filed suit within the two year statute of limitations and as such a claim under the Pennsylvania Confidentiality of HIV-Related Information Act does not have an established statute of limitations.
4. Admitted. Plaintiff has already stipulated that his invasion of privacy claim is barred by the statute of limitations.
5. Denied. The Pennsylvania Confidentiality of HIV-Related Information Act does not mandate a statute of limitations for violating this statute and strict proof thereof is requested. Defendant's actions not only violated Plaintiff's privacy rights, but also caused a direct injury to Plaintiff through Defendant's willful misconduct in violation of the statute per se.
6. Denied.

WHEREFORE, Defendant's request to dismiss Plaintiff's complaint and to enter judgment in favor of Defendant should be denied. A jury trial is demanded.

Respectfully Submitted,



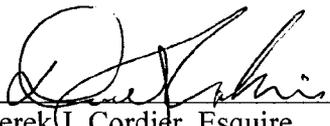
Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

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 25 day of September, 2006:

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

The Law Offices of Derek J. Cordier
and Kelli J. Brownell



Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,

CIVIL DIVISION

Plaintiff,

No. 04-1828-CD

vs.

Issue No.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

MOTION FOR SUMMARY JUDGMENT

Defendants.

Code: 007

Filed on behalf 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
M/12:00 am
NOV 13 2006
acc AKK
Korinski
William A. Shaw
Prothonotary/Clerk of Courts

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Susan Manning, the defendant, by her attorneys, Thomson, Rhodes & Cowie, P.C., and files the following motion for summary judgment, in support of which the following is a statement.

1. This lawsuit arises from allegations made by plaintiff against Susan Manning, his former sister-in-law, that she purposely and maliciously disclosed his HIV-positive medical status to various individuals, including other family members.

2. When these alleged disclosures were made, plaintiff contends that Susan Manning held employment as a nurse with Dr. Sirish Shah, M.D. Accordingly, plaintiff initially named Dr. Shah as a defendant in this lawsuit. However, by the June 20, 2005 order of this Honorable Court, all claims against Dr. Shah were dismissed and he is no longer a party to this action.

3. Pursuant to the above referenced Court Order of June 20, 2005 (a copy of which is attached hereto as Exhibit "A," the only claims now pending are against Susan Manning. These claims are: (a) invasion of privacy; (b) purported violation of the Pennsylvania HIV/AIDS Confidentiality Act, 35 Pa. C.S. 7601; and (c) a derivative assertion of entitlement to punitive damages.

4. In his amended complaint (attached hereto as Exhibit "B"), plaintiff pleads with a certainty as to when he became aware of the alleged disclosures of confidential information committed by Susan Manning.

"The plaintiff's brother, John Manning, learned of the plaintiff's HIV status from Susan Manning during the Memorial Day weekend of 2002."

"The plaintiff, learned of the Defendant, Susan Manning's disclosures through Susan Manning's husband, John Manning, in September of 2003."

See, Amended Complaint, ¶¶ 7-8.

5. Moreover, plaintiff testified at his deposition, at p.15, that he first learned of Susan Manning's alleged statements about his health information during a telephone conversation with his brother, John Manning, in either "September or October of 2003." (See, Mark Manning Deposition, attached hereto as Exhibit "C").

6. Despite unequivocally receiving notice of the tortuous communications of Susan Manning by, at the latest, October of 2003, plaintiff did not institute legal proceedings until the filing of his initial complaint on November 17, 2004 - more than 1-year after he admittedly learned of Susan Manning's conversations with his brother.

7. In her amended answer and new matter, which she filed with leave of Court and the consent of the plaintiff, Susan Manning asserted the affirmative defense of the statute of limitations as an absolute bar to all of plaintiff's claims.

8. Under Pennsylvania law, there is a one year statute of limitations applicable to actions for libel, slander or invasion of privacy. 42 Pa. C.S. § 5523.

9. The Pennsylvania Confidentiality of HIV-Related Information Act (hereinafter referred to as the "Act") does not have an enumerated statute of limitations. However, conceptually, the gravamen of the cause of action permitted by the Act sounds in invasion of privacy, since the Act endeavors to construct a zone of privacy around a patient's medical records. Thus, the civil cause of action created by the Act should be subject to the 1-year statute of limitations identical to the invasion of privacy claim also brought by plaintiff.

10. The Act only provides for "compensatory damages" and, in limited circumstances, the recovery of attorney fees. No statutory provision or allowance is made for the assessment of punitive damages. See, 35 Pa. C.S. § 7610 (providing for a civil cause of action in

the event of a breach of confidentiality). Thus, according to established rules of statutory interpretation, plaintiff cannot recover punitive damages for any alleged violation of the Act.

11. Punitive damages are an element of damages, not an independent cause of action and, as such, cannot stand alone. If the cause of action for compensatory damages to which they are linked is dismissed, punitive damages must be dismissed as well. Costa v. Roxborough Memorial Hospital, 708 A.2d 490 (Pa. Super. 1998).

12. Therefore, if plaintiff's cause of action for punitive damages is dismissed for being filed after the expiration of the statute of limitations, plaintiff's claim for punitive damages must also be dismissed.

13. Not only should plaintiff's cause of action under the Act be dismissed for running afoul of the 1-year statute of limitations, it should also be dismissed for plaintiff's failure to come forward with any facts to support his contention that Susan Manning disclosed his confidential medical information learned in the course of, and as a consequence of, Mark Manning's medical treatment with Dr. Shirish Shah or any other health care provider.

(a) Plaintiff has premised this cause of action upon Susan Manning's disclosure of "confidential HIV information that she discovered while employed by Dr. Shah." See, Amended Complaint, § 7.

(b) Yet, in his deposition, plaintiff testified that his brother, John Manning, told him that Susan Manning was publicizing the fact that plaintiff had "AIDS" and "Hepatitis C." Plaintiff admits that he has neither "AIDS" nor "Hepatitis C," but rather simply is HIV Positive. See, Mark Manning Deposition, pp. 33-37, pp. 46-48, pp. 64-65.

(c) Thus, by virtue of plaintiff's own testimony, Susan Manning did not communicate those facts which were contained within his medical records, nor has plaintiff come forward with any other facts that tend to show that Susan Manning disclosed information to others from his confidential medical records.

14. Since information contained within a patient's medical records is the only type of information protected by the Act, plaintiff cannot maintain a cause of action under its statutory authority without coming forward with some evidence from which the finder of fact could conclude that Susan Manning misappropriated information actually found in those confidential records.

15. Accordingly, based upon the undisputed facts of record, defendant Susan Manning requests dismissal of plaintiff's claims for the following reasons.

(a) Plaintiff's invasion of privacy claims have been filed beyond the 1-year statute of limitations;

(b) Plaintiff's cause of action under the Act has also been filed after a 1-year statute of limitations;

(c) Plaintiff can only maintain a punitive damages claim through the invasion of privacy cause of action - with the dismissal of the invasion of privacy claim, any entitlement to punitive damages must also be rejected; and

(d) Plaintiff, despite having had the opportunity to conduct discovery in this case, has come forward with no facts upon which a jury could conclude that Susan Manning committed a violation of the Act by disclosing information contained within plaintiff's medical records.

WHEREFORE, Susan Manning, the defendant, respectfully requests that this Honorable Court issue an Order granting summary judgment in her favor and directing that the lawsuit instituted against her by plaintiff be dismissed as a matter of law, and with prejudice.

Respectfully Submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendant

Received DRJ

JUN 20 2005

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

Place () Date on ()
Copy to () Copy Key Doc. ()
B147

MARK MANNING,
Plaintiff

vs.

NO. 04-1828-CD

SHIRISH N. SHAH, M.D., and
SUSAN MANNING,
Defendants

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

JUN 20 2005

OPINION

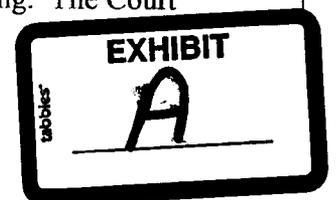
Attest.

William B. Shaw
Prothonotary
Clerk of Courts

Mark Manning (Plaintiff) filed an action against the Defendants Shirish N. Shah

(Dr. Shah) and Susan Manning (Ms. Manning) alleging that Ms. Manning disclosed Plaintiff's HIV positive status to individuals as named in the Plaintiff's Amended Complaint. Ms. Manning, who had been the Plaintiff's sister-in-law, allegedly learned about the Plaintiff's health information during her employment with Dr. Shah, who had previously examined Plaintiff in connection with a Social Security disability claim. Both Defendants filed Preliminary Objections to Plaintiff's Amended Complaint, with argument on the same being held on May 13, 2005. At the argument, the Defendants withdrew Preliminary Objection A which was seeking a more specific pleading.

The second Preliminary Objection is Ms. Manning's Demurrer to Plaintiff's claim of invasion of right of privacy. The Demurrer is based upon Ms. Manning's belief that Count III of the Plaintiff's Amended Complaint does not set forth enough individuals to meet the publicity requirement of the cause of action of invasion of privacy. See Harris by Harris v. Easton Pub. Co., 483 A.2d 1377 (Pa. Super. 1984) and Nagey v. Bell Tel. Co. of Pa., 436 A.2d 701 (Pa. Super. 1981). In this instance, the Court is not willing to grant the Demurrer and dismiss this provision of Plaintiff's Amended Complaint against Ms. Manning. The Court



instead will permit the parties to engage in the discovery process in order to determine if additional individuals are located to whom the Plaintiff's condition was made public by Ms. Manning. In the event the defense would deem the same to be appropriate, the Court would be willing to consider this issue on a subsequent motion for summary judgement following the completion of discovery.

Preliminary Objection C by Ms. Manning is to Count V of the Amended Complaint wherein Plaintiff makes a claim of negligent infliction of emotional distress. In regard to a cause of action for negligent infliction of emotional distress, the cases can be divided into three categories:

1. Where the plaintiff is the direct recipient of the defendant's actions;
2. Where the plaintiff is a bystander or observer of defendant's behavior upon someone else; and
3. Where the plaintiff has been placed in the zone of danger because of the actions of the defendant.

Brown v. Philadelphia College, 674 A.2d 1130 (Pa. Super. 1996).

Plaintiff's Amended Complaint bases the negligent infliction of emotional distress claim upon the Defendant publicizing his HIV status. There are no allegations which invoke any of the three criteria as listed above. Case law in the Commonwealth is clear that one of the three criteria must be met. See also Stoddard v. Davidson, 513 A.2d 419 (Pa. Super. 1986). Plaintiff cannot meet the requirements under the factual averments and the Court does not believe that the Plaintiff will be able to file a further amended complaint which will set forth any facts which would meet with the requirements. Therefore, the Court will dismiss the Plaintiff's claim against Ms. Manning for negligent infliction of emotional distress.

Defendant Dr. Shah demurs to the Plaintiff's claim of invasion of privacy in Preliminary Objection D. Plaintiff's claim of invasion of privacy against Dr. Shah is not based upon any conduct of Dr. Shah, but instead on the premise that Dr. Shah was the employer of Ms. Manning during the time that she allegedly published the Plaintiff's condition. Plaintiff's Amended Complaint, paragraph 26, avers that Ms. Manning engaged in "intentionally outrageous conduct" by her actions. Plaintiff makes no allegation that Dr. Shah aided, abetted or facilitated his employee's conduct nor is there any allegation that Ms. Manning's conduct occurred during the course and scope of her employment duties with Dr. Shah. The Pennsylvania Superior Court, in R.A. v. First Church of Christ analyzed Pennsylvania law with respect to vicarious liability. The court stated as follows:

Pennsylvania law concerning the extent to which an employer is vicariously liable for the actions of its employee is well-established and crystal clear. It is well settled that an employer is held vicariously liable for the negligent acts of his employee which cause injuries to a third party, provided that such acts were committed during the course of and within the scope of employment. In certain circumstances, liability of the employer may also extend to intentional or criminal acts committed by the employee. The conduct of the employees considered "within the scope of the employment" for purposes of vicarious liability if: (1) it is of a kind and nature that the employee is empowered to perform; (2) it occurs substantially within the authorized time and space limits; (3) it is actuated, at least in part, by a purpose to serve the employer; and (4) if force is intentionally used by the employee against another, the use of force is not unexpected by the employer . . .

R.A. v. First Church of Christ, 748 A.2d at 699 - 700.

It is obvious that in the event that Ms. Manning did inappropriately publicize the Plaintiff's medical status that it would not have been performed within the course and scope of her employment with Dr. Shah. Additionally, no claim has been made by the Plaintiff that Dr. Shah failed to appropriately supervise Ms. Manning. Therefore, the Demurrer as to the

Plaintiff's claim against Dr. Shah for invasion of privacy based upon vicarious liability must be granted and Count I of the Amended Complaint dismissed.

In Preliminary Objection E, Dr. Shah demurrers to Plaintiff's claim that he violated the HIV-Related Information Act, 45 Pa. C.S. §7601, *et seq.* The Act, under certain circumstances provides for the imposition of civil liability upon those persons found to have disclosed confidential HIV-related information. Plaintiff's difficulty is that he pleads no facts concerning how Dr. Shah directly violated the statute. Section 7610 of the statute provides as follows:

Any person aggrieved by a violation of this Act shall have a cause of action against the person who committed the violation and may recover compensatory damages.

By plain reading of this section, the Act only creates a civil cause of action against the person who committed the violation. Plaintiff is clearly alleging in his Amended Complaint that it is Ms. Manning who committed the violation. The Court has already determined that Dr. Shah cannot be held responsible on the theory of vicarious liability. Plaintiff's only argument in regard to the applicability of the Act against Dr. Shah is that the Act does not say that an action cannot be brought against an employer. This argument must fail. As Dr. Shah cannot be said to be "the person who committed the violation" the Court will grant this Demurrer and dismiss this claim against Dr. Shah.

The Defendants' final Preliminary Objection is to the Plaintiff's claim for punitive damages. Pennsylvania law provides that punitive damages may be awarded only where "a person's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct and are awarded to punish that person for such conduct." SHV Coal, Inc. v. Continental Grain Co., 587 A.2d 702 (Pa. 1991). In this instance, the Court believes that in

regard to the claim made against Ms. Manning it is a jury question whether punitive damages should be awarded. Therefore, the Court will dismiss Defendants' Preliminary Objection F.

ORDER

NOW, this 20th day of June, 2005, consistent with the foregoing Opinion, it is the ORDER of this Court as follows in regard to the Defendants' Preliminary Objections to Plaintiff's Amended Complaint filed on March 1, 2005:

1. Defendants' Preliminary Objection B is hereby dismissed;
2. Preliminary Objection C, being a Demurrer to Plaintiff's claim of negligent infliction of emotional distress verses Susan Manning is hereby granted. Count V of the Plaintiff's Complaint is hereby dismissed;
3. Defendant Dr. Shah's Demurrer to Plaintiff's claim of invasion of privacy set forth in Preliminary Objection D is hereby granted. Count I of the Amended Complaint is hereby dismissed;
4. The Demurrer by Dr. Shah to the Plaintiff's claim that he violated the HIV-Related Information Act is hereby granted. Count II of the Complaint is hereby dismissed; and
5. The Defendants' Preliminary Objection F challenging Count VI of the Amended Complaint is hereby dismissed.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING	:
Plaintiff	:
	: Docket No. 04-1828-CD
vs.	:
	: CIVIL ACTION
SHIRISH N. SHAH, M.D.	: LAW
and	:
SUSAN MANNING	:
Defendants	:

NOTICE

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

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

DAVID S. MEHOLICK, COURT ADMINISTRATOR
CLEARFIELD COUNTY COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830
(814) 765-2642 EXT.5982

Received BRK

FEB 11 2005

TO DRJ
Place (x) Dictated on ()
Diary/Note ()
Copy to DRJ () Copy Key Doc ()

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

FEB 10 2005

Attest:

[Signature]
Court Administrator
Clearfield County



IN THE COURT OF COMMON PLEAS CLEARFIELD COUNTY PENNSYLVANIA

MARK MANNING	:
Plaintiff	:
	: Docket No. 04-1828-CD
vs.	:
	: CIVIL ACTION
SHIRISH N. SHAH, M.D.	: LAW
and	:
SUSAN MANNING	:
Defendants	:

AMENDED CIVIL COMPLAINT

AND NOW comes, the Plaintiff, by his attorney, Derek J. Cordier, and files this Amended Complaint.

1. The Plaintiff is Mark Manning, who currently resides at 17 Shaffer Street, Sykesville, Pennsylvania 15865.
2. The Defendant is Shirish N. Shah, M.D., hereinafter, Dr. Shah, and his current place of practice is located at 629 South Main Street, DuBois, Pennsylvania 15801,
3. The Defendant is Susan Manning who currently resides at 218 West 2nd Avenue, DuBois, Pennsylvania 15801.
4. In the Spring of 2002, the Defendant, Susan Manning obtained employment at the office of the Defendant, Dr. Shah.
5. The Defendant, Susan Manning, while working within the scope of her employment with the Defendant Dr. Shah, reviewed the Plaintiff's confidential health records that reveal the HIV status of the Plaintiff. See Transcript of Notes.
6. The Defendant then disclosed to numerous family members and acquaintances the Plaintiff's confidential HIV information that she discovered while employed with Dr. Shah.
7. The Plaintiff's brother, John Manning, learned of the Plaintiff's HIV status from Susan Manning during the Memorial Day weekend of 2002.
8. The Plaintiff, learned of the Defendant, Susan Manning's disclosures through Susan Manning's husband, John Manning, in September of 2003.

9.) During the months after September 2003, the Plaintiff also learned that Elizabeth Aravich, Diane Andres, and Melanie Cole, had also been informed of Plaintiff's confidential HIV information by the Defendant, Susan Manning.

10.) During conversations with John Manning and Diane Andres, the Defendant, Susan Manning admitted that she learned of the Plaintiff's confidential health information while reviewing the Plaintiff's confidential health records while employed at the Defendant, Dr. Shah's office.

COUNT I.

Mark Manning vs. Shirish N. Shah, M.D.

INVASION OF RIGHT TO PRIVACY

11. Paragraphs 1 through 10 hereof are hereby incorporated herein as if fully set forth.
12. As the employer of the Defendant, Susan Manning, the Defendant, Dr. Shah is responsible for Susan Manning's actions while working within the scope of her employment.
13. As the employer of the Defendant, Susan Manning, Dr. Shah is also responsible for the Defendant, Susan Manning's invasion of Plaintiff's right to privacy, by her disclosure of the Plaintiff's confidential health information to unauthorized third persons.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

COUNT II.

Mark Manning vs. Shirish N. Shah, M.D.

PENNSYLVANIA HIV-RELATED INFORMATION ACT

14. Paragraphs 1 through 13 hereof are hereby incorporated herein as if fully set forth.
15. The Defendant, Dr. Shah violated the Pennsylvania Confidentiality of HIV- Related Information Act by allowing the disclosure of the Plaintiff's confidential HIV information to unauthorized third persons.

DISMISSED
By Order
of CT
6/24/05

DISMISSED
By Order of
CT 6/24/05

16. The Plaintiff has come to fear local Doctors, due to the disclosure, and has been forced to travel to seek medical treatment and relocate his residence.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

COUNT III.

Mark Manning vs. Susan Manning

INVASION OF RIGHT TO PRIVACY

17. Paragraphs 1 through 16 hereof are hereby incorporated herein as if fully set forth.

18. The Defendant, Susan Manning has violated the Plaintiff's right to privacy by disclosing the Plaintiff's confidential health related information to unauthorized persons.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

COUNT IV.

Mark Manning vs. Susan Manning

PENNSYLVANIA HIV-RELATED INFORMATION ACT

19. Paragraphs 1 through 18 hereof are hereby incorporated herein as if fully set forth.

20. The Defendant, Susan Manning, violated the Pennsylvania Confidentiality of HIV-Related Information Act by disclosing Plaintiff's confidential HIV information to unauthorized third persons.

21. The Plaintiff has come to fear local Doctors, due to the disclosure, and has been forced to travel to seek medical treatment and relocate his residence.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of

\$35,000.00 and a jury trial is demanded.

COUNT V.

Mark Manning vs. Susan Manning

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

22. Paragraphs 1 through 21 hereof are hereby incorporated herein as if fully set forth.
23. The actions of the Defendant, Susan Manning have caused serious emotional devastation to the Plaintiff.
24. The Plaintiff has suffered anxiety and depression caused by the disclosure, by the Defendant,
Susan Manning.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

COUNT VI.

Mark Manning vs. Susan Manning

PUNITIVE DAMAGES

25. Paragraphs 1 through 24 hereof are hereby incorporated herein as if fully set forth.
26. Due to the intentionally outrageous conduct on the part of the Defendant, Susan Manning, as
a person put in the position to safeguard the Plaintiff's confidential health related information and who then discloses said information, the Plaintiff is seeking punitive damages.

WHEREFORE, Plaintiff requests the court to grant Plaintiff damages in excess of \$35,000.00 and a jury trial is demanded.

Respectfully submitted by:



Attorney for Plaintiff
Derek Cordier, Esq. #83284
319 South Front Street
Harrisburg, PA 17104-1621
(717) 919-4002

DISMISSED BY
ORDER OF
COURT
2/22/05

I verify that the statements made in this Amended Complaint are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Mark A Manning 2.9.05
Mark Manning Date

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA

MARK MANNING,	) CIVIL DIVISION
)
Plaintiff,	) No. 04-1828-CD
)
vs.	) DEPOSITION OF:
	) Mark A. Manning
)
SHIRISH N. SHAH, M.D. and	) DATE:
SUSAN MANNING,	) March 30, 2006
)
Defendants.	) REPORTED BY:
	) Lisa A. Rashid

MARK A. MANNING, the Plaintiff herein,
called upon for examination, taken pursuant to the
Rules of Civil Procedure, by and before Lisa A. Rashid,
a Court Reporter and Notary Public in and for the
Commonwealth of Pennsylvania, at DuBois Regional
Medical Center, DuBois, Pennsylvania on March 30, 2006
commencing at 10:00 a.m.

ORIGINAL

GOLDEN TRIANGLE REPORTERS
Pittsburgh, PA
(412) 261-4565

EXHIBIT

tabbles

C

1 Plus, there was two or three more doctors at that
2 facility, DRMC facility, in Reynoldsville. I chose
3 to go to Clearfield where I could, you know, feel
4 comfortable with being treated.

5 Q Sure. That's fine. And have you received adequate
6 care of Dr. Johnson in Clearfield?

7 A Wonderful care. Excellent care. More than I could
8 ever describe. And the hospital facilities there
9 are wonderful.

10 Q Would it be accurate that you have no plans to
11 change your care with Dr. Johnson because you're
12 entirely satisfied with the care he's providing
13 you?

14 A I'm very satisfied with my doctors.

15 Q You don't feel that you're being deprived of
16 healthcare in anyway way, do you?

17 A No.

18 Q Have you been hospitalized Clearfield?

19 A No.

20 Q The telephone call from your brother that you
21 mentioned, when was that?

22 A I believe that was around September, October of
23 2003.

24 Q By the way, what did you do to prepare for today's
25 deposition?

-
- 1 A Or longer, if it was.
- 2 Q -- the first time that he had ever mentioned
3 hepatitis to you?
- 4 A The very first time, yes. Correct.
- 5 Q And, at the time of that call, you explained to him
6 that you did not have hepatitis?
- 7 A Correct.
- 8 Q And the he allegedly said something about AIDS?
- 9 A And he asked, he said: Well, do you have AIDS.
10 And I said: No.
- 11 Q Now, when I asked your brother about it at his
12 deposition, he said: I called him that night when
13 I was home. I ask him if the rumors I heard was
14 true. He ask me: What rumors? Then your brother
15 said: The rumor about hepatitis. And your brother
16 said that you kind of laughed and said, I'll talk
17 to you tomorrow. And then you called him. Is he
18 right, or are you right?
- 19 A I believe I'm right. Because we spoke on the phone
20 for a long time. Unless he's getting another
21 conversation mixed up or something. But that's
22 what he said to me. And I know the first thing
23 was, he asked if I was hepatitis positive.
- 24 Q Now, do you recall explaining to your brother that
25 you had, in fact, acquired AIDS from your ex-wife?

1 A No, I never told him.

2 Q Now, let me ask you about this. Because what I'm
3 looking at is your brother's deposition transcript
4 that he gave under oath. And the question was
5 asked of him: Did he -- and this is talking about
6 yourself. Question: Did he tell you how he had
7 acquired AIDS?

8 Answer: Yes, he did.

9 Question: What did he tell you?

10 Answer: From his ex-wife, Bev.

11 Question: Did you tell him when you were
12 talking with him at that supper that you had not
13 heard before that he had AIDS?

14 Answer: Just the rumors that was going around
15 that he had AIDS.

16 Question: I thought rumors were hepatitis.

17 Answer: At first they were; then he had AIDS
18 also. The first time part was hepatitis. Then
19 later in the summer that year, the rumor was AIDS.

20 So my question to you is whether he told you
21 about hearing somewhere that you got it from your
22 wife; or whether you told him, as he testified at
23 his deposition?

24 A I didn't tell him --

25 MR. CORDIER: Excuse me. There were

1 two different conversations and at two
2 different time periods. The AIDS
3 question and hepatitis question were
4 answered honestly to his brother, because
5 he didn't have AIDS; he had HIV, which
6 didn't come up until the next summer.

7 THE DEPONENT: Correct.

8 BY MR. JOHNSON:

9 A But I'm going to say something here. I asked him:
10 Where did you get this information. I'm pretty
11 sure I did. And he said: From Sue, that I got
12 AIDS from my ex-wife. I said: That's not true. I
13 don't have AIDS and I don't have hepatitis. I
14 never was quarantined. They quarantine you if you
15 have hepatitis, they, you know, give you treatment.
16 So that's what I said. And that's when we got into
17 Sue telling him and other people about my health.

18 Q So, when he testified at his deposition that you
19 told him that you'd acquired AIDS from your ex-wife
20 Bev, that was inaccurate testimony?

21 A On his part, unless he misunderstood your question.
22 Because, sir, I don't have AIDS, man.

23 MR. CORDIER: And I think the timing
24 is the issue. Because that could have
25 occurred that next summer.

1 BY MR. JOHNSON:

2 A So he must have got something mixed up with your
3 line of questioning or something, Dave. How can I
4 admit to something that I don't have.

5 Q What is your understanding of the difference
6 between AIDS and being HIV positive?

7 A Well, you said it yourself. I'm HIV.

8 Q What's the difference between the two?

9 A A big difference. There's a big, big difference,
10 man.

11 Q What is it?

12 A I don't have -- my blood count hasn't shown that
13 I'm at the AIDS level, where my immune system is so
14 far shut down that I, you know, got AIDS. I don't.
15 I'm HIV positive. As a matter of fact, at one
16 point in my treatment, I was doing so good they
17 even took me off the medicine, which was wonderful
18 to hear. I mean, it was great.

19 MR. CORDIER: As you just stated,
20 most people don't know the difference.

21 THE DEPONENT: Right. A lot of
22 people don't know the difference. You
23 better believe it.

24 MR. CORDIER: Mr. Manning was --

25 MR. JOHNSON: Is this an objection,

1 Mr. Cordier, or just an observation as to

2 --

3 MR. CORDIER: Just an observation.

4 MR. JOHNSON: Okay. I don't think
5 it's appropriate then as part of the
6 record.

7 BY MR. JOHNSON:

8 Q At his deposition, your brother said that you
9 invited him down for supper the next night to talk
10 about this, and that that's when you revealed
11 information to him. Is that correct or incorrect?

12 A That's correct.

13 Q So did you, in fact, tell him anything during the
14 telephone call or did you just say: Come for
15 supper the next night?

16 A No. I'll explain how it came about. We invited
17 John down for supper. He came down. Me and Derek,
18 my lawyer, was talking and Derek explained to me
19 that I should explain to my brother, John, what I
20 had, that it was in my best interest to do that.
21 So that's why we invited John down for supper. So
22 we did. We sat him down in the living room after
23 we were done, me and my wife, and we talked about
24 my health for the first time. And that's when I
25 told my brother, John, and the only member of the

1 he was shocked and expressed deep concern?

2 A Yes, he pretty much was. I would say, at my
3 opinion, through the expression that I got from his
4 face.

5 MR. CORDIER: You already asked that
6 question.

7 BY MR. JOHNSON:

8 Q Now, with regard to the telephone conversation that
9 you had, he asked you about hepatitis. He then
10 asked you about AIDS. And the other thing you said
11 that he generally talked about was how he retained
12 the information. What did he tell you about that?

13 A He said, after I asked how he got this information.
14 He said it was rumors. And I said: How did you
15 get it? And he says: Through Sue. And he explain
16 how she come home from work at Dr. Shah's, at their
17 house where they were living, at come in and said:
18 Guess what I found out about your brother. And she
19 told him that I had AIDS. And I says: John, once
20 again, no, I don't. And I says: Who else -- I'm
21 pretty sure it got -- I remember a campfire in this
22 conversation too, that they were at a campground,
23 campfire gathering also with people. And my health
24 got brought up again, that I have AIDS.

25 Q Now, --

1 A Wait a minute. There's more.

2 Q Okay.

3 A He, I remember -- I believe he told Sue to quit
4 what she was doing, I'm pretty sure he said this,
5 and that she would get in big trouble, or that it
6 wasn't right for what she was doing.

7 Q And have you now completed your recollection of
8 what you recall during the telephone call?

9 A Yes. That was basically what we talked about.
10 But he still didn't know if I had anything or not.

11 Q In relating that information to me, you said that
12 he quoted his wife as coming home and saying that
13 you had AIDS. At his deposition, he claimed his
14 wife came home and said you had hepatitis. Are you
15 sure he said AIDS, as opposed to hepatitis?

16 A Maybe it was hepatitis. I know we talked about the
17 AIDS and hepatitis. How exactly it was, I can
18 remember some of it; some of it I can't remember
19 word for word.

20 Q And you, of course, do not have hepatitis, never
21 did have hepatitis?

22 A Never did. But I show positive for antibodies for
23 hepatitis, but I don't have hepatitis-C or anything
24 like that. I'm vaccinated.

25 Q Has anyone, other than your brother, ever said

1 anything to you about any information they've
2 received from Sue?

3 A After the phone call?

4 Q At any time, has anyone, besides your brother,
5 John, told you anything that Sue has ever said to
6 them about you?

7 A Yes.

8 Q First, give me the names of anybody who has told
9 you something Sue said to them.

10 A Liz Aravich.

11 Q How's her last name spelled?

12 A Well, she's married now. It's a new name. It was
13 Liz Aravich then.

14 Q A-v-a-r-i-c-h?

15 A A-r-a-v-i-c-h. Yeah, something like that.

16 Q What's her name now?

17 A Oh, boy. It's -- she got married out in Arizona.
18 It's a funny -- it's a long last name.

19 THE DEPONENT: Do you have Liz's
20 last name, Derek?

21 MR. CORDIER: Probably, somewhere.

22 THE DEPONENT: Anywhere you can get
23 a hold of it?

24 MR. CORDIER: Yeah, I can get it to
25 him.

-
- 1 Q Now, with respect to --
- 2 A That, I tell you what, if I can get whatever I can,
3 I hope I get it. Because I think that putting me
4 and subjected me through that type of humiliation,
5 you know --
- 6 Q Now, sir, with regard to your medical records, your
7 medical records, to the best of your knowledge,
8 would not anywhere say that you had AIDS, correct?
- 9 A Correct. There's not one diagnosis saying that I
10 have AIDS.
- 11 Q And, to the best of your knowledge, your medical
12 records would not anywhere say that you have
13 hepatitis, correct?
- 14 A No. I had -- if I can elaborate --
- 15 Q Well, if you need to. But --
- 16 A Well, there was a test -- well, sure there's going
17 to be something there that's going to say
18 hepatitis, but not hepatitis positive.
- 19 Q That's the point. Nothing in your records would
20 say you're hepatitis positive?
- 21 A As far as I know, no.
- 22 Q So someone looking at your records could not look
23 at your records and find in them that you either
24 have AIDS or hepatitis, correct?
- 25 A As far as I know, it shouldn't say none of that. I

1 mean, if it does, somebody either misread it or
2 something. I don't know how to explain that.

3 Q All right. So all I'm establishing, or trying to
4 establish is, to the best of your knowledge,
5 there's nothing in any of your medical records
6 anywhere that says either that you have AIDS or
7 that you have hepatitis, correct?

8 A As far as I know, correct.

9 Q Now, with respect to your claim that you don't want
10 the move to DuBois or something of that nature,
11 does the fact that the people in DuBois would know
12 that you had been twice convicted of child
13 molestation factor in on that feeling?

14 A You can weight into that all you want. As far as
15 I'm concerned, nobody's ever confronted me. I
16 never had to defend myself. I think I held myself
17 pretty good. And I believe the community and the
18 courts would back me up on that.

19 Q And with respect to whether or not you have AIDS,
20 aside from the one phone call from your brother, no
21 one's ever confronted you with that either, have
22 they?

23 A No, other than the phone call. Correct.

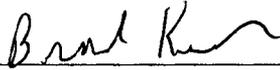
24 Q And the same with the alleged condition of
25 hepatitis. Except for the one phone call from your

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the document has been served upon the following counsel of record by facsimile transmission and via US Mails on this 8th day of Nov, 2005.

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for defendants

THOMSON, RHODES & COWIE, P.C.

Attorneys At Law

TWO CHATHAM CENTER, TENTH FLOOR
PITTSBURGH, PENNSYLVANIA 15219-3499

Direct Dial: 412-316-8685

Facsimile: 412-232-3498

Brad R. Korinski

Email: brk@trc-law.com

November 8, 2006

Mark Manning v. Shirish N. Shah, M.D. and Susan Manning. In the Court of Common Pleas of Clearfield County, Pennsylvania. Civil Division No. 04-1828-CD. Our File No. 14017.

William Shaw, Prothonotary
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830

Dear Mr. Shaw:

Enclosed for filing in the matter above captioned is an original and two copies of the motion for summary judgment, along with a scheduling order. Kindly submit the order to my office once a date has been scheduled for argument. I have enclosed a self addressed, stamped envelope for your convenience.

Thank you.

Very truly yours,



Brad R. Korinski

cah

Enclosures

cc: Derek Cordier, Esquire
(w/enclosures)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.	)	Issue No.
)	
SHIRISH N. SHAH, M.D. and SUSAN	)	Code: 007
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW on this _____ day of _____, 2006, it is hereby ORDERED, ADJUGED and DECREED that oral argument on defendants' motion for summary judgment is scheduled for the _____ day of _____, 20____, at _____ a.m./p.m. before Judge _____ in Courtroom No. _____ of the Clearfield County Courthouse.

BY THE COURT:

_____ J.

CA

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

MARK MANNING,
Plaintiff,

vs.

SUSAN MANNING,
Defendant

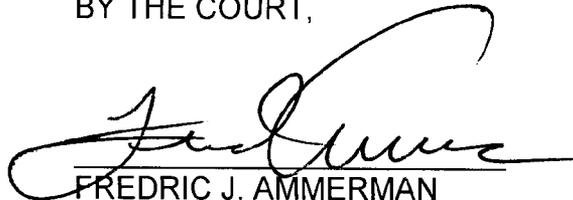
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*
*
*
*

No. 04-1828-CD

ORDER

NOW, this 16th day of November, 2006, it is hereby ORDERED, ADJUDGED and DECREED that oral argument on Defendant's Motion for Summary Judgment is scheduled for the **12th day of January, 2007, at 2:00 p.m.** before Judge Ammerman in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN
President Judge

FILED
04:00 PM
NOV 17 2006

William A. Shaw
Prothonotary/Clerk of Courts

cc
Att'y Derek Cordier
Att'y
David Johnson
Brad
Kerinski



DATE: 11/17/06

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED

NOV 17 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING
Plaintiff

CIVIL DIVISION

vs.

No. 04-1828-CD

SHIRISH N. SHAH, M.D
and
SUSAN MANNING

Issue No.

ANSWER TO DEFENDANTS
MOTION FOR SUMMARY JUDGMENT

Defendants

Counsel of Record:

Filed on behalf of the Plaintiff

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

Counsel of Record for These Parties:

Derek J. Cordier, Esquire
PA I.D. # 83284
The Law Offices of Derek J. Cordier and
Kelli J. Brownwell
319 South Front Street
Harrisburg, PA 17104-1621

(717) 919-4002

FILED 4cc Atty
01:40 um Cordier
JAN 12 2007
(12/12)

William A. Shaw
Prothonotary/Clerk of Courts

ANSWER TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT

AND NOW, comes Mark Manning, Plaintiff, by and through his attorney, Derek J. Cordier, Esquire, and files the following Answer to Defendants Motion for Summary Judgment.

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Neither admitted nor denied.

8. Admitted.

9. Admitted in part and denied in part. The Pennsylvania Confidentiality of HIV-Related Information Act (hereinafter referred to as the "Act") does not have an enumerated statute of limitations. The Act may sound as though it creates a cause of action for invasion of privacy but, according to the legislature, is not the sole purpose behind the Act. Therefore, claiming the Act is a cause of action for invasion of privacy would be incorrect. In fact, the legislature stated in Act:

"(c) It is the intent of the General Assembly to promote confidential testing on an informed and voluntary basis in order to encourage those most in need to obtain testing and appropriate counseling.

AND

"(b) It is the further intent of the General Assembly to provide a narrow exposure notification and information mechanism for individual health care providers or first responders, who experience a significant exposure to a patient's blood and/or body fluids, to learn of a patient's HIV infection status and thereby obtain

the means to make informed decisions with respect to modes and duration of therapy as well as measures to reduce the likelihood of transmitting an infection to others.”

Therefore, although part of the act sounds in invasion of privacy, that is not its sole purpose and hence why the legislature chose to leave out a restriction on the statute of limitations.

Furthermore, according to 42 Pa. C.S. §5527(b), “Any civil action or proceeding which is neither subject to another limitation specified in this subchapter nor excluded from the application of a period of limitation by section 5531 (relating to no limitation) must be commenced within six years.” Therefore, Plaintiff further avers that because the Act is silent in providing for a statute of limitations and the Act itself cannot be considered solely an Act for invasion of privacy because other causes of action can arise from violation of the Act, the six year limitation should apply.

10. Admitted in part and denied in part. The Act does provide for “compensatory damages” and, in limited circumstances, attorney’s fees. There is no provision in the Act for punitive damages. However, the claim for punitive damages is based upon the Defendant’s outrageous and willful conduct. In fact, in an Opinion submitted by The Honorable Judge Fredric Ammerman on June 20, 2005, SHV Coal, Inc. v. Continental Grain Co., 587 A.2d 702 (Pa. 1991) was cited to evidence how “Pennsylvania law provides that punitive damages may be awarded only where ‘a person’s actions are of such an outrageous nature as to demonstrate intentional, willful, wanton or reckless conduct and are awarded to punish that person for such conduct.’ In this instance, the Court believes that in regard to the claim made against Ms. Manning it is a jury question whether punitive damages should be awarded.”

11. Neither admitted nor denied.

12. Neither admitted nor denied.

13. Denied. Plaintiff has averred facts of the Defendant's willful misconduct to inform not only her husband, Plaintiff's brother, of Plaintiff's HIV status from confidential records contained where she was employed with Dr. Shah, but also disclosed such information to other members of the family and family friends without Plaintiff's consent. See, Amended Complaint, §6-10.

(a) Admitted.

(b) Admitted in part and denied in part. The fact that the Defendant made an error as to the correct diagnosis of Plaintiff's health status does not excuse her from stretching the truth and actually making Plaintiff's health situation out to be worse than what his confidential records stated. Plaintiff is HIV positive and the Defendant was telling family and friends that he had AIDS, which is an advanced form of the disease and raises more concern for the health and longevity of the individual diagnosed. Simply because the Defendant misstated Plaintiff's diagnosis as AIDS as opposed to HIV should not excuse her wrongdoing. In fact, it's appalling.

(c) Denied.

14. Denied. The Defendant did disclose confidential information contained in Plaintiff's medical records. She simply misstated one form of the disease for the other, as commonly done by others who are not fully informed of the differences between HIV and it's advanced form AIDS.

15. (a) Admitted.

(b) Admitted in part and denied in part. Plaintiff's cause of action under

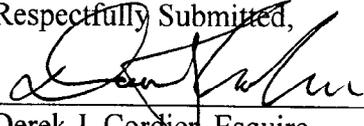
the Act was filed after one year passed by, however the Act does not provide for a statute of limitations and should therefore be subject to the six year statute of limitations provided by 42 Pa. C.S. §5527(b).

(c) Denied. Plaintiff believes the cause of action can still stand with the cause of action for violation of the Act and is a matter for a jury to decide.

(d) Denied.

WHEREFORE, Defendant's Motion for Summary Judgment should be denied. A jury trial is demanded.

Respectfully Submitted,



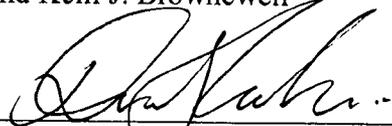
Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

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 1st day of January, 2008.

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

The Law Offices of Derek J. Cordier
and Kelli J. Brownell



Derek J. Cordier, Esquire
Attorney for Mark Manning, Plaintiff

LA

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

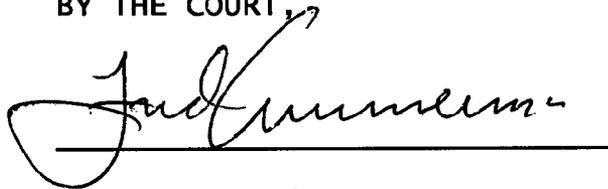
CIVIL DIVISION

MARK MANNING :
-VS- : No. 04-1828-CD
SUSAN MANNING :

O R D E R

AND NOW, this 12th day of January, 2007,
following argument on the Motion for Summary Judgment, it
is the ORDER of this Court that counsel for the Plaintiff
provide a letter brief to the Court within no more than
twenty (20) days from this date. The letter brief shall
address the issues of whether there remains any legal basis
for the Plaintiff to proceed with a claim for punitive
damages and as to the appropriate statute of limitations
for a claim filed under the Pennsylvania HIV-Related
Information Act.

BY THE COURT,



President Judge

FILED
01:43/SL
JAN 15 2007

cc Atty:
Cordier
Johnson

William A. Shaw
Prothonotary/Clerk of Courts



FILED

JAN 15 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 1/5/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

UA

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

MARK MANNING,
Plaintiff

vs.

SUSAN MANNING,
Defendant

*
*
*
*
*

NO. 04-1828-CD

FILED
012:5261
FEB 08 2007
ICE Anys:
Cordier
D. JOHNSON
(6R)

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

NOW, this 7th day of February, 2007, upon consideration of Defendant's Motion for Summary Judgment, it is the ORDER of this Court as follows:

1. Pursuant to the agreement of the parties, the action for Invasion of the Right to Privacy is time-barred by the Statute of Limitations and it is the ORDER of this Court that Defendant's Motion for Summary Judgment on Plaintiff's claim of Invasion of the Right to Privacy is GRANTED and such cause of action against Susan Manning is hereby DISMISSED.
2. Following the analysis of Coulter v. Rosenblum, 682 A.2d 838 (Pa.Super. 1996), this Court finds that there is "specific language creating a cause of action" in the Pennsylvania Confidentiality of HIV-Related Information Act, "HIV Information Act", (35 Pa. C.S. § 7601, et seq.). Coulter, 682 A.2d at 839. Thus, the six-year limitation provided by 42 Pa. C.S. § 5527(b) applies and Plaintiff is not time-barred from bringing a cause of action. It is the ORDER of this Court that Defendant's Motion for Summary Judgment regarding this issue is DENIED.
3. The HIV Information Act makes no provision for the award of Punitive Damages in the cause of action it creates, thus it is the ORDER of this Court that Defendant's Motion for Summary Judgment on Plaintiff's

claim for Punitive Damages in the Action for violation of the HIV Information Act is GRANTED.

4. It is the Opinion of this Court that a factual dispute exists for a Claim under the HIV Information Act to be litigated relative the question of whether confidential information was disclosed. Therefore, it is the ORDER of this Court that any remaining portions of the Defendant's Motion for Summary Judgment be and are hereby DENIED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED

FEB 08 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/8/07

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s)/Attorney Other

Defendant(s) Defendant(s)/Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.)	
)	
SHIRISH N. SHAH, M.D. and SUSAN)	
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW on this 27th day of February, 2008, it is hereby ORDERED, ADJUDGED and DECREED that oral argument on defendant's motion for leave to withdraw as counsel is scheduled for the 8th day of April, 2008 at 10:15 a.m./p.m. before Judge Ammerman in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:

Jud. Ammerman J.

FILED ^{icc}
 01:38:30
 FEB 27 2008
 Atty Johnson
 @

William A. Shaw
 Prothonotary/Clerk of Courts

DATE: 2/27/08

You are responsible for serving all appropriate parties.

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

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

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

FILED

FEB 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

MOTION FOR LEAVE TO WITHDRAW AS
COUNSEL

Code: 007

Filed on behalf of Susan Manning, the
defendant.

Counsel of Record for This Party:

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

Brad R. Korinski, Esquire
PA I.D. #86831

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

(412) 232-3400

FILED^{icc}
M/J 02/20/08 Amy Johnson
FEB 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

CE

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL

NOW COMES undersigned counsel, attorneys for the defendant, and file the following petition for leave to withdraw as counsel for the defendant.

1. At the outset of this case, plaintiff brought suit against Dr. Shah, Susan Manning's employer, and Susan Manning. Dr. Shah was insured by PMSLIC Insurance Company and undersigned counsel was retained by PMSLIC to represent Dr. Shah and Susan Manning.

2. Thereafter, Dr. Shah was dismissed from the lawsuit. Discovery ensued. Based upon the discovery that has taken place, PMSLIC Insurance Company has determined that it does not have any coverage applicable to the claims being asserted against Susan Manning and has determined that under the circumstances it does not owe Susan Manning a defense. Accordingly, PMSLIC Insurance Company has advised that it will no longer pay for counsel for Susan Manning.

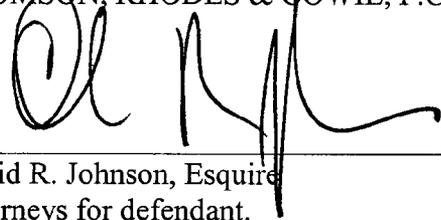
3. In view of the above developments, undersigned counsel petition for leave to withdraw as Susan Manning's counsel. Up to this point, undersigned counsel have been compensated by PMSLIC for the defense of this case. PMSLIC has advised that it will not further compensate counsel.

4. There are no immediately pending matters in this case. So that Susan Manning has an opportunity to acquire counsel of her choosing, defendant respectfully requests that the case be stayed for 90 days.

WHEREFORE, attorneys representing the defendant move for leave to withdraw as counsel and to have the case stayed. To this end, defendant's attorneys respectfully request that the court enter the attached order.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

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

David R. Johnson, Esquire
Attorneys for defendant.

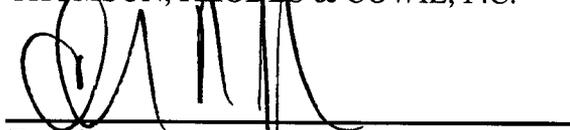
CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within MOTION FOR LEAVE TO WITHDRAW AS COUNSEL has been served upon the following counsel of record and same placed in the U.S. Mails on this 21st day of Feb., 2008:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

Susan Manning
218 West Second Avenue
DuBois, PA 15801

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.)	
)	
SHIRISH N. SHAH, M.D. and SUSAN)	
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, it is hereby ordered that the motion filed on behalf of the defendant's attorneys to withdraw as counsel is granted. It is hereby ordered that the appearances of David R. Johnson and Thomson, Rhodes & Cowie, P.C. are hereby withdrawn in this matter.

It is further ordered that all activity in this case is stayed for 90 days from the date of this order so that defendant can acquire attorneys of her choosing.

BY THE COURT:

_____ J.



PMSLIC
 MEDICAL LIABILITY INSURANCE
 ALWAYS WITH YOU

10. Dave Johnson

P.O. BOX 2080, MECHANICSBURG PA 17055-0787
 800 445-1212 T 717 796-8080 F PMSLIC.com

Received DRU

JAN 28 2008

Place () Discarded on ()
 Diary/ Note ()
 Copy to DRU () Copy Key Dec. ()

PERSONAL & CONFIDENTIAL

January 25, 2008

Greg Volpe, Risk Manager
 DuBois Regional Medical Center
 P.O. Box 447
 100 Hospital Avenue
 DuBois, PA 15801

RE: Claimant: Mark Manning
 Insured: DuBois Regional Medical Center (DRMC)
 GL Policy No: HCM000030-2001
 Effective Dates: 10/8/01 thru 9/7/03
 PMSLIC File #: 340123-01

DISCLAIMER OF COVERAGE

Dear Greg:

Please allow this letter to follow the Reservation of Rights letter that was sent to you on 1/28/05, regarding the above captioned matter. As you know, a Complaint was originally filed by Mark Manning against Shirish N. Shah, M.D. & Susan Manning in the Court of Common Pleas of Clearfield County; Docket No. 04-18280-CD.

The Complaint states that Mr. Manning presented to the offices of Dr. Shah on 10/2/00 for a Social Security Disability evaluation and at that time disclosed confidential information. It is alleged that during Susan Manning's employment with Dr. Shah, she reviewed Mark Manning's medical records and disclosed confidential information to various individuals, thereby violating the state law and HIPAA.

In response to the report of this claim, PMSLIC commenced an investigation under a Full Reservation of Rights. This was based on the possibility that the allegations of negligence involving unlawful disclosure of confidential information occurred subsequent to 1/1/03 thereby triggering coverage provided by PMSLIC under DRMC's General Liability policy. The 1/1/03

Greg Volpe, Risk Manager
January 25, 2008
Page 2

date is important since Dr. Shah and Susan Manning became employees of DRMC on that date and were thus covered as of that date under the PMSLIC policy listed above.

Based on the discovery that has taken place to date, all the alleged disclosures of confidential information took place prior to 1/1/03. The facts as developed as of now are that the disclosures began in April of 2002 and included several incidents through late October of 2002. Thus, we are respectfully denying coverage at this time given the fact that all alleged disclosures took place prior to 1/1/03, the effective date of coverage for Susan Manning on the PMSLIC policy listed above.

It is our understanding that Dr. Shah was provided insurance coverage through MIIX prior to 1/1/03. Although Dr. Shah was dismissed from this case on 6/20/05, please advise him to report this claim to MIIX for potential coverage for Susan Manning if he has not already done so as it is our understanding that she commenced employment at the offices of Dr. Shah in April of 2002.

Effective immediately, attorney Johnson should forward all invoices for handling of this matter directly to your attention. Should you disagree with our position, or if you have any other information that implicates our coverage, please let us know as soon as possible. Any new information provided will be given careful consideration.

Thank you for your attention.

Sincerely,



Stephanie Y. Chelius
Claims Representative

cc: David R. Johnson, Esq. (Thomson, Rhodes and Cowie)

FILED

MAR 03 2008

m/10:30
William A. Shaw
Prothonotary/Clerk of Courts
no c/c @

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,

CIVIL DIVISION

Plaintiff,

No. 04-1828-CD

vs.

Issue No.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

**AFFIDAVIT OF SERVICE OF ORDER
DATED FEBRUARY 27, 2008**

Defendants.

Code: 007

Filed on behalf 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

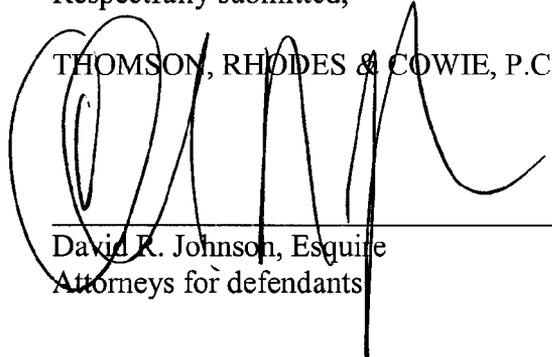
(412) 232-3400

AFFIDAVIT OF SERVICE

Notice has been made by U.S. Mail to Susan Manning, 218 West Second Avenue, DuBois, PA 15801 (defendant), and Derek Cordier, Esquire, 319 South Front Street, Harrisburg, PA 17104-1621, (plaintiff's counsel), of the order of court dated February 29, 2008 setting argument on defendant's motion for leave to withdraw as counsel for April 8, 2008 at 10:15 a.m.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

A large, stylized handwritten signature in black ink, appearing to read 'DR Johnson', is written over a horizontal line. The signature is highly cursive and loops around the text below it.

David R. Johnson, Esquire
Attorneys for defendants

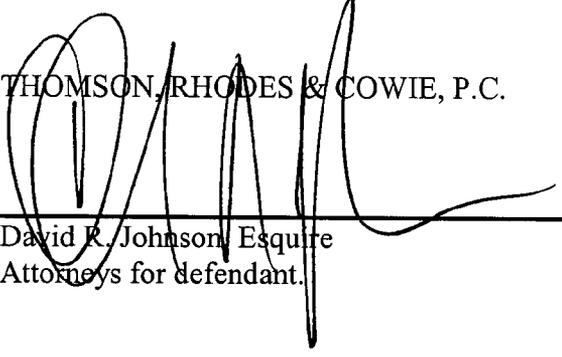
CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within AFFIDAVIT OF SERVICE OF ORDER OF FEBRUARY 27, 2008 has been served upon the following counsel of record and same placed in the U.S. Mails on this 29th day of Feb, 2008:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

Susan Manning
218 West Second Avenue
DuBois, PA 15801

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for defendant.

LA

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

MARK MANNING

}

VS

}

Shirish N. Shah, MD
SUSAN MANNING

}

~~03-761-CD~~
NO. ~~04-1828-CD~~
04-1828-CD

ORDER

NOW, this 8th day of April, 2008, following argument on the Motion for Leave to Withdraw as Counsel filed on behalf of Thomson, Rhodes and Cowie, P.C., requesting leave to withdraw as counsel for the Defendant, the Court noting that neither Plaintiff or his counsel have appeared, and further noting that Susan Manning has not appeared. Following discussion as will appear of record and the Court's review of the said motion for leave to withdraw as counsel, and the Court believing that insufficient facts have been pled relative the circumstance whereby the insurance company has denied coverage, it is the ORDER of this Court that the counsel acting on behalf of PMSLIC Insurance Company have no more than Twenty (20) Days from this date to file amended motion providing more specificity as was discussed during the proceeding.

BY THE COURT,

President Judge

FILED ^{acc}
02:44 BT
APR 09 2008
Amy Cordier
Johnson
William A. Shaw
Prothonotary/Clerk of Courts
CR

FILED

APR 09 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/9/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

**SUPPLEMENTAL PETITION TO
WITHDRAW AS COUNSEL**

Code: 007

Filed on behalf of Susan Manning, the
defendant.

Counsel of Record for This Party:

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

Brad R. Korinski, Esquire
PA I.D. #86831

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

(412) 232-3400

COUNSEL FOR PLAINTIFF:
Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

FILED ^{NO} ^{CC}
M 11:30 AM
APR 28 2008 (CK)

William A. Shaw
Prothonotary/Clerk of Courts

SUPPLEMENTAL PETITION TO WITHDRAW AS COUNSEL

NOW COME Thomson, Rhodes & Cowie, P.C. and David R. Johnson, Esquire, and supplement the previously filed petition to withdraw the appearances of Thomson, Rhodes & Cowie, P.C. and David R. Johnson, Esquire as counsel for the defendant, Susan Manning, averring as follows:

1. Thomson, Rhodes & Cowie, P.C. and David R. Johnson, Esquire [hereinafter collectively referred to as “movants”] incorporate by reference in its entirety the original petition to withdraw as counsel.
2. The following supplemental petition to withdraw as counsel follows argument which occurred before the Court and is in a response to the Court’s statements at oral argument and the Court Order issued April 8, 2008.
3. At the outset, the Court is requested to note and appreciate that this petition is being filed on behalf of the law firm currently representing the defendant. The law firm was selected for representation by PMSLIC Insurance Company and, up to January 25, 2008, the Insurance Company was being paid to represent the defendant by PMSLIC Insurance Company. PMSLIC has instructed counsel to terminate its representation to its account because it has determined that there is no applicable coverage for the remaining claims in the lawsuit. Given its position as counsel retained by an insurer to represent the defendants, counsel owes certain allegiances and loyalties to both the defendants and the insurer. Accordingly, counsel cannot ethically argue for or against coverage for the remaining claims. In this spirit, the following paragraphs of this supplemental petition will be written as neutrally as possible so that they cannot be

construed to advocate for or against any position which either PMSLIC or Ms. Manning may wish to take in the future.

4. In actuality, at this point, the insurance company has no stake in the present petition. It has denied coverage and it has made clear that it will not continue to pay counsel. The insurer is not a party to this lawsuit. Denial of this petition would not cause the insurer to be required to pay counsel. Accordingly, PMSLIC would not be adversely affected by denial of this motion.

5. The movants (Thomson, Rhodes & Cowie, P.C. and David R. Johnson, Esquire) would be adversely affected by denial of this motion, since denial of this motion would cause it to have ongoing responsibilities to represent the defendant and would require the law firm to provide professional services without anyone being responsible for compensation. It is respectfully submitted that it would be unprecedented, unfair and inappropriate for this Court to order the movants to provide free legal services to the defendant.

6. The defendant, Susan Manning, would not be adversely affected by the granting of this motion since she would be free to retain counsel of her choosing and the filed materials would be provided to them. It is respectfully submitted that neither Susan Manning, nor any other party, is entitled to have the Court order counsel to provide uncompensated legal services to a party.

7. In follow up to the original argument to the Court, the insurer was advised of what had occurred and was requested to provide an explanation of its denial of coverage at this time, for inclusion in this response. The insurer has instructed counsel to attach to this response, the disclaimer of coverage letter it issued on January 25, 2008.

Said letter is attached hereto as Exhibit "A" and it sets forth PMSLIC's coverage position. The letter makes reference to the original Reservation of Rights letter dated January 28, 2005, a copy of which is attached hereto as Exhibit "B." Subsequent to the January 25, 2008 denial of coverage letter, the insurer sent an email to Greg Volpe, Risk Manager at DuBois Regional Medical Center, further expressing its position. In pertinent part, the email stated as follows:

Greg:

With regard to defense counsel billings, our position is that defense counsel invoices can be directed to PMSLIC for any work done up until the time you received the denial of coverage letter. All invoices from Dave Johnson's office, for work done after that date, should be directed to DRMC.

With regard to MIIX being aware of this case, it is my understanding that Chris Moyles at MIIX had a file on this case in 2005 which was closed early on for reasons which are unclear to me. Do you know if it was Dr. Shah who put MIIX on notice at that time? In our letter of 1/25/08 I have recommended that Dr. Shah put MIIX on notice, if he has not already done so.

As you know, on 6/7/07, I sent a letter to Bruce Schuck at MIIX Insurance Company in Rehabilitation requesting that they take over defense and indemnity of this case (you and Dave Johnson were cc'd on this letter). I later received a memo from Bruce Schuck which denied coverage in this matter. MIIX position was largely based on Judge Ammerman's Order dismissing Dr. Shah, where they take the position that the court determined that there is no claim in this case that Ms. Manning was acting within the course and scope of her employment of Dr. Shah with regard to the disclosure of Mr. Manning's HIV status. I will fax to you a copy of that memo with the attachments that were sent along with the memo, concerning Dr. Shah's coverage with MIIX.

Should you have any questions or wish to discuss this matter further, feel free to contact me at 1-800-445-1212, extension 5421.

Sincerely,

*Stephanie Y. Chelius, Claims Representative
PMSLIC
1700 Bent Creek Boulevard
P.O. Box 2080
Mechanicsburg, PA 17055-0787*

DuBois Regional Medical Center has not accepted PMSLIC's invitation for it to supply coverage to Mrs. Manning since the alleged acts occurred before it took over Dr. Shah's practice. Accordingly, it has no responsibility to defend the claims against Ms. Manning or to provide her with counsel, and DRMC has advised counsel that it declines to do so.

8. Thus, the only issue before the Court is whether Thomson, Rhodes & Cowie, P.C. may withdraw as counsel where, if it were not permitted to do so, it would be required to provide free legal services to the defendant. It is respectfully submitted that under these circumstances, Thomson, Rhodes & Cowie, P.C. should be permitted to withdraw as counsel.

8. If, hypothetically, the insurer should have disclaimed coverage earlier, Ms. Manning, the defendant, has been the beneficiary because she has received the benefit of having legal services provided to her free of any charge to her by PMSLIC from the inception of this case up until early 2008. Such representation, if paid for by Ms. Manning, would have been very costly. Such representation has been undertaken fully, completely, professionally and without reservation at absolutely no cost to Ms. Manning. Ms. Manning is certainly better off than if the insurer had earlier denied coverage.

9. If, hypothetically, the insurer has engaged in any impropriety, and, hypothetically, if Ms. Manning has any cognizable claim against the insurer, there are legal remedies which remain available to the defendant. For obvious reasons, the

movants cannot take any position one way or another with regard to this issue, and do not suggest there is a basis for a claim, but, if there is, then remedies exist.

10. If the motion to withdraw as counsel is granted, the defendant, Ms. Manning, will have been effectively represented since the beginning of the case and will only be required to incur the costs of counsel for the remainder of the case. In this sense, her defense costs will be considerably less than if she had been required to pay for counsel from the beginning of the case.

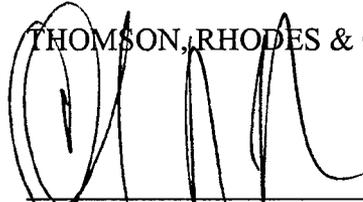
11. If the motion to withdraw as counsel is denied, the movants, Thomson, Rhodes & Cowie, P.C. and David R. Johnson, Esquire, will be adversely affected because they will be compelled to engage in representation of a client without being paid to do so.

12. A requested Order of Court is attached hereto.

WHEREFORE, the movants again request that the Court enter an Order permitting Thomson, Rhodes & Cowie, P.C. and David R. Johnson, Esquire, to withdraw as counsel.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for defendant.



PMSLIC

MEDICAL LIABILITY INSURANCE

ALWAYS WITH YOU

To: Dave Johnson

P.O. BOX 2080, MECHANICSBURG PA 17055-0787
800 445-1212 T 717 796-8080 F PMSLIC.com

Received DRJ

JAN 28 2008

Print () Discard on ()
Date Filed ()
Copy to DRJ () Copy Key Doc. ()

PERSONAL & CONFIDENTIAL

January 25, 2008

Greg Volpe, Risk Manager
DuBois Regional Medical Center
P.O. Box 447
100 Hospital Avenue
DuBois, PA 15801

RE: Claimant: Mark Manning
Insured: DuBois Regional Medical Center (DRMC)
GL Policy No: HCM000030-2001
Effective Dates: 10/8/01 thru 9/7/03
PMSLIC File #: 340123-01

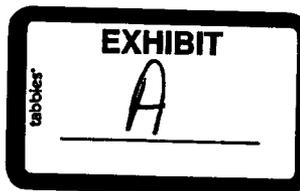
DISCLAIMER OF COVERAGE

Dear Greg:

Please allow this letter to follow the Reservation of Rights letter that was sent to you on 1/28/05, regarding the above captioned matter. As you know, a Complaint was originally filed by Mark Manning against Shirish N. Shah, M.D. & Susan Manning in the Court of Common Pleas of Clearfield County; Docket No. 04-18280-CD.

The Complaint states that Mr. Manning presented to the offices of Dr. Shah on 10/2/00 for a Social Security Disability evaluation and at that time disclosed confidential information. It is alleged that during Susan Manning's employment with Dr. Shah, she reviewed Mark Manning's medical records and disclosed confidential information to various individuals, thereby violating the state law and HIPAA.

In response to the report of this claim, PMSLIC commenced an investigation under a Full Reservation of Rights. This was based on the possibility that the allegations of negligence involving unlawful disclosure of confidential information occurred subsequent to 1/1/03 thereby triggering coverage provided by PMSLIC under DRMC's General Liability policy. The 1/1/03



Greg Volpe, Risk Manager
January 25, 2008
Page 2

date is important since Dr. Shah and Susan Manning became employees of DRMC on that date and were thus covered as of that date under the PMSLIC policy listed above.

Based on the discovery that has taken place to date, all the alleged disclosures of confidential information took place prior to 1/1/03. The facts as developed as of now are that the disclosures began in April of 2002 and included several incidents through late October of 2002. Thus, we are respectfully denying coverage at this time given the fact that all alleged disclosures took place prior to 1/1/03, the effective date of coverage for Susan Manning on the PMSLIC policy listed above.

It is our understanding that Dr. Shah was provided insurance coverage through MIIX prior to 1/1/03. Although Dr. Shah was dismissed from this case on 6/20/05, please advise him to report this claim to MIIX for potential coverage for Susan Manning if he has not already done so as it is our understanding that she commenced employment at the offices of Dr. Shah in April of 2002.

Effective immediately, attorney Johnson should forward all invoices for handling of this matter directly to your attention. Should you disagree with our position, or if you have any other information that implicates our coverage, please let us know as soon as possible. Any new information provided will be given careful consideration.

Thank you for your attention.

Sincerely,



Stephanie Y. Chelius
Claims Representative

cc: David R. Johnson, Esq. (Thomson, Rhodes and Cowie)



PMSLIC

Physician Owned, Physician Directed

PERSONAL & CONFIDENTIAL

PMSLIC
1700 Bent Creek Blvd.
P.O. Box 2080
Mechanicsburg, PA 17055-0787

Tel: 717.791.1212
Toll Free: 800.445.1212
Fax: 717.796-8080
www.pmslic.com

Received DRJ

FEB 10 2005

Place Disclaim on ()
Change Policy ()
Copy to DRJ () Copy to DRJ ()

January 28, 2005

Greg Volpe, Risk Manager
DuBois Regional Medical Center
P.O. Box 447
100 Hospital Avenue
DuBois, PA 15801

RE: Claimant: Mark Manning
Insured: DuBois Regional Medical Center
Dates of Incident: 10/2/00 and Spring of 2002
GL Policy No: HCM000030-2001
Effective Dates: 10/8/01 thru 9/7/03
PMSLIC File #: 340123-01

Dear Greg:

We acknowledge receipt of the Report of Claim as well as a copy of the Complaint filed by Mark Manning against Shrirish N. Shah, M.D. & Susan Manning in the Court of Common Pleas of Clearfield County; Docket No. 04-18280-CD. It is our understanding that both Dr. Shah and Susan Manning became employees of DuBois Regional Medical Center, effective 1/1/03, and that prior to 1/1/03, Susan Manning was employed by Dr. Shah's physician offices.

Our review of the Complaint indicates that plaintiff Mr. Manning presented to the offices of Dr. Shah on 10/2/00 for a Social Security Disability evaluation and at that time disclosed his positive HIV status. In the spring of 2002 Susan Manning commenced employment at the offices of Dr. Shah. Plaintiff alleges that during the course of her employment with Dr. Shah, Susan Manning reviewed the medical records and disclosed confidential information to various individuals pertaining to Mr. Manning's HIV status, thereby violating the Confidentiality of HIV-Related Information Act and HIPPA.

Please note that according to our records Dr. Shah never had a separate professional liability insurance policy with PMSLIC. However, on 1/1/03, when Dr. Shah and Susan Manning became employees of DRMC, they were provided coverage through DRMC's policy with PMSLIC, effective 1/1/03. It is our understanding that, prior to 1/1/03, Dr. Shah was in private practice and that Susan Manning was employed by Dr. Shah's practice. We understand that at that time and prior to 1/1/03, Dr. Shah was provided insurance coverage through MIIX.



Greg Volpe, Risk Manager

February 7, 2005

Page 2

Based on our review and analysis, it appears there is no PMSLIC coverage for any alleged acts of negligence against Dr. Shah and Susan Manning prior to 1/1/03, the effective date of their employment with DRMC. The allegations of negligence against Dr. Shah and Susan Manning for negligent acts occurring subsequent to 1/1/03 and involving the unlawful disclosure of confidential information and breach of privacy, may fall within coverage provided under your PMSLIC General Liability Insurance Policy for the policy period 1/1/03 through 9/7/03. As such, we have opened a file under your general liability policy for that period of time and will defend the claims asserted against Dr. Shah and Susan Manning, as employees of DRMC, under a full reservation of rights, until we are able to more fully ascertain the exact dates and nature of the incident in question.

It is to be understood that no action taken by PMSLIC, or any attorney that it assigns to defend the plaintiff's claim on your behalf, including but not limited to the investigation, defense, compromise or attempted compromise of the claim, shall be construed as a waiver of the right of PMSLIC to at any time hereafter deny coverage, assert any defense which it has or may have under the policy, withdraw any defense that it may assign to an attorney, and/or withdraw from the proceedings in this matter. PMSLIC also reserves the right to clarify the coverage issue.

If you have not yet done so, you should take immediate steps to notify your previous and subsequent insurance carriers of this pending lawsuit. In addition, you may wish to retain personal counsel, at your expense, to protect your interests.

In the meantime, David Johnson, Esq. of the law firm of Thomson, Rhodes and Cowie has been assigned to provide you a defense as to all claims asserted against you in the Complaint. In the event you have additional information regarding your PMSLIC coverage that you wish us to consider, please do not hesitate to call me.

Sincerely,



Stephanie Y. Chelius
Claims Representative

✓ cc: David R. Johnson, Esq. (Thomson, Rhodes and Cowie)

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the within SUPPLEMENTAL PETITION TO WITHDRAW AS COUNSEL has been served upon the following counsel of record and same placed in the U.S. Mails on this _____ day of _____, 2008:

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

Susan Manning
218 West Second Avenue
DuBois, PA 15801

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

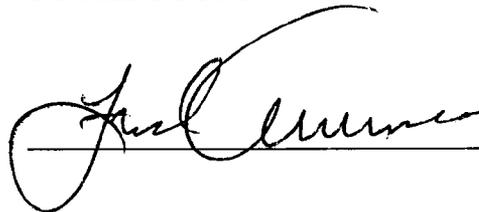
MARK MANNING,) CIVIL DIVISION
)
Plaintiff,) No. 04-1828-CD
)
vs.)
)
SHIRISH N. SHAH, M.D. and SUSAN)
MANNING,)
)
Defendants.)

ORDER OF COURT

AND NOW, this 28th day of April, 2008, it is hereby ordered that the motion filed on behalf of the defendant's attorneys to withdraw as counsel is granted. It is hereby ordered that the appearances of David R. Johnson and Thomson, Rhodes & Cowie, P.C. are hereby withdrawn in this matter.

It is further ordered that all activity in this case is stayed for 90 days from the date of this order so that defendant can acquire attorneys of her choosing.

BY THE COURT:

 J.

FILED 2cc
013:49/BAW Atty
APR 28 2008 Johnson

William A. Shaw
Prothonotary/Clerk of Courts 

FILED

APR 28 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/28/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

04-1828-CD

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the COURT ORDER dated April 28, 2008 has been served upon the following via U.S. mail, first class, postage prepaid on this 1st day of May, 2008.

Susan Manning
218 West Second Avenue
DuBois, PA 15801

Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

FILED

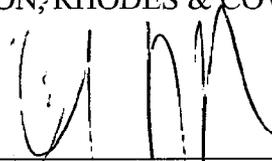
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William A. Slav
Prothonotary/Clerk of Courts

wo c/c

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for defendants

FILED
MAY 05 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

MARK MANNING,

Plaintiff,

vs.

SHIRISH N. SHAH, M.D. and SUSAN
MANNING,

Defendants.

CIVIL DIVISION

No. 04-1828-CD

Issue No.

**SUPPLEMENTAL PETITION TO
WITHDRAW AS COUNSEL**

Code: 007

Filed on behalf of Susan Manning, the
defendant.

Counsel of Record for This Party:

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

Brad R. Korinski, Esquire
PA I.D. #86831

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

(412) 232-3400

COUNSEL FOR PLAINTIFF:
Derek Cordier, Esquire
319 South Front Street
Harrisburg, PA 17104-1621

FILED
APR 28 2008
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

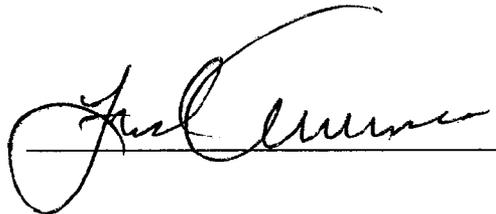
MARK MANNING,	)	CIVIL DIVISION
)	
Plaintiff,	)	No. 04-1828-CD
)	
vs.)	
)	
SHIRISH N. SHAH, M.D. and SUSAN)	
MANNING,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this 28th day of April, 2008, it is hereby ordered that the motion filed on behalf of the defendant's attorneys to withdraw as counsel is granted. It is hereby ordered that the appearances of David R. Johnson and Thomson, Rhodes & Cowie, P.C. are hereby withdrawn in this matter.

It is further ordered that all activity in this case is stayed for 90 days from the date of this order so that defendant can acquire attorneys of her choosing.

BY THE COURT:

 J.

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

APR 28 2008

Notice of Proposed Termination of Court Case

July 1, 2011

RE: Mark Manning
Vs.
Shirish N. Shah, M.D.
and Susan M. Manning
2004-1828-CD

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

Dear David R. Johnson, Esq.

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **September 2, 2011**.

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,

F. Cortez Bell, III

F. Cortez Bell, III, Esq.
Court Administrator

Notice of Proposed Termination of Court Case

July 1, 2011

RE: Mark Manning
Vs.
Shirish N. Shah, M.D.
and Susan M. Manning
2004-1828-CD

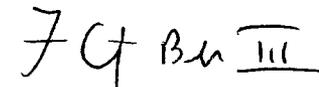
Dear Derek J. Cordier, Esq.

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **September 2, 2011**.

If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.

By the Court,



F. Cortez Bell, III, Esq.
Court Administrator

Court of Common Pleas of Clearfield County, Pennsylvania
Civil Division

Mark Manning

Vs.

2004-01828-CD

Shirish N. Shah MD
Susan M. Manning

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William A. Shaw
Prothonotary/Clerk of Courts

1cc Atty Cordier

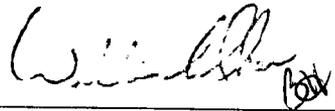
1cc Atty Johnson

1cc S. Manning

772 Treasure Lake
Dubois, PA 15801

Termination of Inactive Case

This case is hereby terminated with prejudice this
September 7, 2011, as per Rule 230.2



William A. Shaw
Prothonotary