05-364-CD
Angela Hale et al vs. M. Kush et al

Angela Hale et al v. Gary Ott MD. et al
2005-364-CD

Comprehensive Genetics

**MARK I. EVANS, M.D.**
President, Fetal Medicine Foundation of America
Professor of Obstetrics & Gynecology
Mt. Sinai School of Medicine

September 22, 2006

Mr. David R. Johnson
Thomson, Rhodes, and Cowie, PC
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

RE: Hale v Kush, et al
Your file #14176

Dear Mr. Johnson:

As per your request, I have reviewed numerous files in the above mentioned case. These initially included:

1. Complaint
2. Answer and new matter of Kush and DRMC
3. Medical Records of Dr. Kush, Dr. Ott,
4. Medical Records of DRMC ER 11/9/02 and admission of 11/10/02
5. Medical Records of Dr. Cherian and Punxsutawney Area hospital records for 1996 pregnancy
6. Deposition transcripts of Drs. Kush, Kay, Raybuck, Smith-Fremmer, and Ott.

I subsequently received reports from:

1. Curtis Cetrulo MD
2. Bennett Walstatter, MD
3. Robert Atlas, MD
4. Robert McDowell, Jr. MD
5. Mark Epstein, MD
6. Patricia Fedorka, Ph.D., R.N.C

Received DRJ
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Place ( ) Dictated on ( )
Diary/ Note ( )
Copy to DRJ ( ) Copy Key Doc.( )

Mark I. Evans, M.D., PLLC, 131 East 65th Street, New York, New York 10021 Phone: 212.744.2590 / Fax: 212.879.2606
Web: www.CompreGen.com / E-mail: Evans@CompreGen.com



Clinical History

Angela Hale was a 26 year old G4 P1021 white female patient of Dr. Ott with an LMP of 4 28 02 and EDC of 2 3 03 whose prenatal course was noted for an near elevated MSAFP of 2.46 MOM at 16.6 weeks which lead to an ultrasound by Dr. Kush that diagnosed a monozygotic diamniotic twin pregnancy.

Her past history was noted for one spontaneous loss, one molar pregnancy, and a previous full term birth in 1996 that had itself had an episode of preterm labor.

Prior to the time of the near elevated MSAFP, her prenatal course had been uneventful. She was 5'3" and 190lbs at her first visit and put on 25 lbs through 28 weeks.

Evaluation by Dr. Kush on 9/11/02 revealed a monochorionic diamniotic twin pregnancy. A plan was made for co-management of the remainder of the pregnancy. Subsequent ultrasounds were scheduled monthly and performed on 10/9/02 and 11/6/02 which showed continuing concordant growth.

| DATE | Twin A | Twin B |
|---|---|---|
| 9/11/02 | 18.6wks/249g 13% | 19.2wks/261g 22% |
| 10/9/02 | 23.1wks/562g 43% | 23.1wks/588g 40% |
| 11/6/02 | 27.1wks/1054g 33% | 26.6wks/1058g 34% |

Mrs. Hale presented to Dubois regional Medical Center on 11/9/02 with complaints of irregular contractions and brownish discharge. She had no fluid leakage or vaginal bleeding. Her cervix was long and closed without change from her previous prenatal visit. FHTs were positive for both twins. She was sent home and instructed to return to Dr. Ott's office within several days.

She returned to DRMC on 11/10/02 complaining of increasing frequency of irregular, crampy pelvic pain. Cervical exam at 17:30 was consistent with the night before. She was given one dose of Terbutaline, but exam at about 20:30

showed her to have dilated to 3-4cm, 90% effaced and 0 station. She was admitted with a plan for hydration, tocolysis, and steroids. She received one dose of Celestone on 11/10/02.

Her labor did not stop and decision was then made to perform a 1* LTCS delivering

1. Viable female "A" 1136g Apgars 7/8
2. Viable female "B" 1228g Apgars 4/7

Subsequently, Reganne and Ashtyn were followed in the DRMC NICU. Reganne was transferred to Children's Hospital in Pittsburgh and was said to have a Grade 1 intraventricular hemorrhage, retinopathy of prematurity, reflux, and bronchopulmonary dysplasia. She was later said to have developed at Grade III IVH, hydrocephalus, periventricular leukomalacia ,and diplegic spastic cerebral palsy.

ASSESSMENT

Plaintiff alleges that Reganne's problems are related to negligence on the part of Drs. Kush and Ott, and DRMC essentially arguing that there was failure to follow the pregnancy closely, failure to order growth ultrasounds, evaluate her cervix, have Dr. Kush manage the pregnancy, observe the patient for an "extended" period on 11/9/02, order tocolysis and steroids on 11/9/02, and failure to diagnose and treat her preterm labor on 11/10/02.

Evaluation of the records and testimony in this case does not support these allegations. In fact, many of the specifics alleged as not being done were, in fact, done.

1. It is perfectly appropriate for an MFM and generalist to co-manage a concordant monozygotic twin pregnancy
2. Growth ultrasounds were ordered and performed monthly as appropriate.
3. The ultrasounds showed concordant, normal growth
4. Her MSAFP, which was the cause of her initial US and diagnosis of the twin pregnancy, was actually normal for a twin pregnancy.
5. Her cervix was evaluated both on 11/9/02 and 11/10/02 and was unchanged on at least two exams before labor resulted in dilatation

6. Tocolysis and steroids were not indicated until there was evidence of labor having an effect on the cervix and thus a serious concern for premature delivery.
7. Steroids and tocolysis were started when appropriate.
8. Delivery was effected appropriately by CS when it appeared imminent
9. Intraventricular hemorrhage is an unfortunate and unpreventable complication of premature delivery at 28 weeks and is more common in monozygotic twins that dizygotic twins.
10. The remainder of Reganne's conditions are sequelae related to the premature delivery, per se, and not of any negligence of the health care providers who all complied with the standards of care.
11. Even if tocolysis and steroids were given the day before, it is most likely that the outcome would have been exactly the same.

Review of the reports submitted by plaintiff's experts does not change my opinions:

Dr. Epstein states that Reganne's conditions are likely related to the premature birth. I agree. However, as a pediatric neurologist, he is not in any expert position to opine on the use by obstetricians of tocolytics.

Dr. McDowell likewise states that the child's problems are related to prematurity. I have no disagreement with this specific conclusion.

Dr. Atlas argues, in effect, that since labor eventually progressed that the contractions appreciated by the medical staff on 11/9/02 had to be "more frequent than that." This is not a reasonable conclusion. Furthermore, the use of fibronectin has very low sensitivity and positive predictive value in such situations and is in my opinion virtually worthless. Clinical exam is likewise just as useful as cervical ultrasound. There is absolutely no requirement by the standard to use these two approaches as opposed to those used. For 11/10/02 he opines that since the exam changed over 3 hours that the first exam had to have been wrong. This is unreasonable.

Dr. Cetrulo states that it was a breach of standard to not admit Ms. Hale on 9/11/02 even without any hard evidence of labor. This is unreasonable and absolutely not appropriate. Admitting everyone with contractions in pregnancy would have a profound cost for essentially no benefit. Furthermore, even if she had been admitted, there is no reason to believe that tocolysis would have made any difference in the clinical outcome.

Dr. Walstatter likewise argues that is was beneath the standard not to have examined the patient at an hourly interval. This is inappropriate and inconsistent with standard obstetrical teaching.

Ms. Fedorka opines that there should have been more exams. While as an obstetrician gynecologist, I will refrain from making specific nursing standards statements, I have worked with obstetrical nurses my entire career, and did not have any problem with the care provided here. Multiple plaintiff experts opine in effect that since she delivered, her exams earlier had to have been wrong. This is nonsense.

Over the past 25 years, I have managed thousands of multiple pregnancies. Even with the most aggressive of management, poor outcomes are very common particularly with monozygocity. Therefore, I can state to a reasonable degree of medical certainty that there were no deviations in the standard of care by any of the healthcare providers that were responsible for the medical problems in the female twin. I base my opinions on my expertise, review of relevant literature over the years, and clinical experience and board certification in the specialties of Obstetrics and Gynecology and Medical Genetics. I reserve the right to modify these opinions as additional information and details might become available.

Thank you very much.

Sincerely,

Mark I. Evans, MD

COMPREHENSIVE GENETICS

Mark I Evans, M.D.
President, Fetal Medicine Foundation of America
Professor of Obstetrics and Gynecology
Mt. Sinai School of Medicine

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New York, New York 10021
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June 24, 2007

Mr. David R. Johnson
Thomson, Rhodes, and Cowie, PC
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

RE: Hale v Kush, et al
Your file #14176

Dear Mr. Johnson:

As per your request, since my formal report to you on September 22, 2006 I have reviewed further files in the above mentioned case.

These include:

1. Deposition of Angela Hale
2. Deposition of Randy Hale
3. Deposition of George Cherian, MD

ASSESSMENT

As I stated in my original report, plaintiff alleges that Reganne's problems are related to negligence on the part of Drs. Kush and Ott, and DRMC essentially arguing that there was failure to follow the pregnancy closely, failure to order growth ultrasounds, evaluate her cervix, have Dr. Kush manage the pregnancy, observe the patient for an "extended" period on 11/9/02, order tocolysis and steroids on 11/9/02, and failure to diagnose and treat her preterm labor on 11/10/02.

Evaluation of the records and testimony in their entirety as I have received them in this case does not support these allegations.

Review of the new depositions does not change my opinions and continues to support the position that there were no violations of the standard of care by any of the health care providers or the hospital. Premature delivery in a monozygotic twin pregnancy is an unfortunate, not uncommon, and generally unpreventable complication well known in the obstetrical literature. The problems of Reganne Hale in this pregnancy are unfortunate sequelae of a premature birth and not related to the obstetrical management.

I can state to a reasonable degree of medical certainty that there were no deviations in the standard of care by any of the healthcare providers that were responsible for the medical problems in the female twin. I base my opinions on my expertise, review of relevant literature over the years, and clinical experience and board certification in the specialties of Obstetrics and Gynecology and Medical Genetics. I reserve the right to modify these opinions as additional information and details might become available.

Thank you very much.

Sincerely,

Mark I. Evans, MD

*Geraldine A. Jones, RNC, BS*

*204 Holly Drive*
*Camp Hill, PA 17110*
*Tax ID: 200-40-7456*

*Phone: (717) 975-5111 (h)*
*(717) 782-4775 (w)*

May 28, 2007

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

RE: Ashtyn Hale, a minor by her parents and natural guardians, Angela and Randy Hale vs. Dubois Regional Medical Center et al.
Case No. : 05-364-CD

Dear Mr. Johnson:

Thank you for the opportunity to review the materials concerning the above mentioned matter. The following are the documents I reviewed and my clinical summary and opinion of the nursing care rendered to Angela Hale and her unborn infants at Dubois Regional Medical Center on November 9, 2002 and November 10, 2002.

**DOCUMENTS REVIEWED**

1. Dubois Regional Medical Center inpatient records for Angela Hale from 11/9/02 and 11/10/02
2. Fetal monitor strips from 11/9/02 and 11/10/02
3. Deposition transcripts of Dr. Kush, Kathyrn Raybuck, RN, Desiree Smith-Fremmer, RN, and Dr. Ott
4. Office records of DRMC Maternal Fetal Medicine for Angela Hale
5. Complaint and Answer
6. Expert report from Patricia Fedorka, Ph.D., RNC

## CLINICAL SUMMARY

In 2002, Angela Hale was a 26 year-old married female, Gravida 4, para 1 with a LMP of 4/28/02 and an EDD of 2/2/03. She was 5 ft. 3 in. tall and weighed 190 pounds. Her total weight gain was 24 pounds. Her past medical history was significant for an irregular heartbeat and a heart murmer that required prophylactic antibiotics for dental work. She had no known allergies and was a nonsmoker. She denied the use of alcohol and illicit drugs.

Her past obstetrical history included a spontaneous miscarriage at 4 weeks gestation in 1995, a spontaneous vaginal delivery in 1996 of a 6 pound 7 ounce female with preterm labor during that pregnancy, and a molar pregnancy in 1999.

Her first prenatal visit with Dr. Ott was on 6/13/02 at approximately 6 weeks gestation. Initial prenatal labs were all within normal limits except for a mild anemia (11.8/34.0). Her blood type was A negative. She received Rhogam at 28 weeks. Medications included prenatal vitamins, iron and folic acid. An MAFP was drawn on 8/22/02 at approximately 17 weeks gestation and was elevated (2.46). For this reason she was referred to the office of Dr. Kush of DRMC Maternal Fetal Medicine for a level 2 ultrasound. The ultrasound revealed a monochorionic/diamniotic twin gestation with appropriate growth for her gestation (19-20 weeks). His plan was to do obstetrical growth scans every 3-4 weeks. She had 2 additional ultrasounds performed by Dr Kush prior to going into preterm labor. These were performed on 10/14/02 and 11/07/02 and were reported as normal interval growth and amniotic fluid and no evidence of twin to twin transfusion syndrome. She had 6 prenatal visits with Dr. Ott between 6/13/02-10/31/02.

On 11/9/02 at 1200 she presented to the ER at DRMC at 28 weeks gestation with complaints of brownish vaginal discharge and pressure in her lower abdomen. Dr. Ott was present at 1210 and performed a cervical exam. At that time the cervix was closed, 2 1/2 cms thick and high. A NST was ordered and electronic fetal monitoring (EFM) was initiated. A clean catch urine for urinalysis and culture was obtained (3+ bacteria and negative protein). Results of the culture or any treatment was not found in the documentation. No medications were administered. Documentation on the focus notes revealed "accels present, much fetal movement and mild decels." At 1430 no contractions were noted and at 1515 irregular contractions were noted; no bloody show or leakage of fluid. She was observed for 3 hours and 35 minutes and reexamined at 1515 by Dr. Ott. There was no cervical change noted and she was discharged to home with appropriate discharge instructions including modified bedrest and a follow up appointment with Dr. Ott on 11/12/02.

On 11/10/02 at 1645 Angela presented to the DRMC outpatient testing area with complaints of increased frequency of irregular crampy pelvic pain. A phone order was received from Dr. Ott for EFM to rule out labor and to perform a sterile vaginal exam (SVE). EFM was initiated at 1647. The nursing documentation revealed contraction activity was irregular and mild to palpation.

At 1730 a SVE revealed that the cervix was unchanged since her last exam on 11/9/02. At 1805 the nurse called Dr. Ott with a verbal report and received orders for PO and SC Terbutaline 25 mg. and the patient was to be given an Rx for Brethine (5 mg. q 6 hours). She received the medications at 1830. At 1840 she c/o back and groin discomfort and no contractions were seen on the monitor. At 2000 the patient requested pain medication. Dr. Ott was called and arrived at 2014. He reviewed the EFM strips and performed a SVE. At that time she was 3-4 cms 90% effaced and 0 station with intact membranes.

She was admitted to Labor and Delivery at 2020. IV hydration was started and Magnesium Sulfate was initiated at 2030 (6 gmn loading dose then 2 gms/hr). She was also given Betamethasone 12 mg IM and SQ Terbutaline at 2030. A foley catheter was inserted at 2043. At 2117 she was 6 cms dilated and a c-section was called. Magnesium Sulfate was then discontinued. Baby A's FHR was recording in the120 -130's and Baby B's was noted as 150-160's. EFM was discontinued at 2140.

A primary low transverse c-section was performed under spinal anesthesia. Incision time was 2204. Twin A (Reganne) was in the vertex position and delivered at 2208 with apgars of 7/9 and a weight of 1136 gms. Twin B (Ashtyn) was in the double footling position and delivered at 2209 with apgars of 4/7 and weighed 1228 gms. Angela was transferred to PACU in stable condition. EBL was noted as less than 1000cc. After delivery the infants were transferred to the NICU under the care of Dr. Grout. Records of their post delivery care were not received. Angela was discharged on 11/12/02. Medications included Zoloft, Motrin, and PNV. Follow up appointment was scheduled for 11/18/02.

Placental pathology revealed a monochorionic diamnotic slightly hypomature twin placenta. Bilateral trivascular umbilical cords; no evidence of chorioamnioniotis or funisitis.

**OPINION**

ED visit on 11/9/02

I see no exposure for the hospital or nurses on this day. The nurses were attentive and at the bedside continuously. Monitoring was technically difficult and the EFM strips are sketchy due to early gestational age, fetal activity, and twin pregnancy. However, the nurse did document both FHR's in the nurses notes every half hour. Contraction (ctx.) activity was assessed and documented as irregular, however, the EFM did evidence ctx. 2-6 minutes. A second nurse also assessed the EFM strip. The patient was personally seen, examined and discharged by Dr. Ott. There was no cervical change. Appropriate discharge instructions were given.

Observation, admission and delivery on 11 /10/02

It is my expert nursing opinion that the nursing staff acted reasonably and within the standard of care on this day. The nurses were constantly assessing this patient and

her unborn infants and they never left her bedside. IV hydration and tocolytic medications were timely administered, neonatal resuscitation was anticipated and appropriate personnel available.

Nurse Fedorka, the plaintiff expert, stated the nurse did not palpate the uterus but this can be disputed by the documentation in the nurses notes. At 1650 and 1830 the uterine contractions were noted to be "mild to palpation and zero to palpation." The patient was also asked to press the mark button on the EFM when she felt contractions. The nurses were making every effort to evaluate the uterine activity as stated above.

Nurse Fedorka also stated that the nurses did not reassess cervical status. It is not unreasonable to wait a period of time for IV hydration and tocolytic medications to take effect before reassessing cervical status. These were administered at 1805. A patient at 28 weeks gestation does not get frequent cervical exams unless there is a change in her comfort level or uterine activity. Cervical exams can release prostagladins which can stimulate more contractions and the risk of infection increases with the increased number of cervical exams. The patient did not request pain medication until 2000. That is when the nurse re-examined her. There is no basis to conclude that doing a cervical exam 1-2 hours earlier would have prevented the preterm labor from occurring or changed the outcome in this case.

It has to be said that even in the best of circumstances good medical care does not always result in stopping preterm labor, especially in multiple gestations. In this case I don't believe her labor could have been stopped.

Please feel free to contact me at any time if I can be of further assistance to you. I reserve the right to amend my opinion should additional materials become available. Thank you for the opportunity to review this case.

Respectfully submitted,

Geraldine A Jones, RNC, BS

Geraldine A. Jones, RNC, BS

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION IN LIMINE TO LIMIT EXPERT TESTIMONY** has been served on the 25th day of July 2007 to the following via facsimile and/or U.S. Mail:

**Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; ET AL. | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, to-wit, this ___ day of _____ 2007, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion in Limine to Limit Expert Testimony is GRANTED.

1. The Plaintiffs are limited to the expert testimony of one obstetrician and one nurse;
2. Defendant Dr. Ott is limited to the expert testimony of one obstetrician;
3. Dubois Regional Medical Center is limited to the expert testimony of one nurse; and
4. Each party shall designate, in writing, which experts they will use for trial prior to the Pre-Trial Conference.

BY THE COURT:

_____,J.

CA

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE as parents and natural guardians of REGANNE HALE, a minor and ASHTYN HALE, a minor,<br>Plaintiffs | * | |
| vs. | * | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult individual, GARY D. OTT, an adult individual, YOO, TAI Y., M.D., and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br>Defendants | * | |

**ORDER**

AND NOW, this 27th day of July, 2007, it is the ORDER of the Court that a Pre-Trial Conference in the above matter shall be held on the **24th day of August, 2007, in Chambers at 9:30 o'clock a.m.**

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED 1cc Attys:
01/4:00/BL
JUL 27 2007
William A. Shaw
Prothonotary/Clerk of Courts

Cohen and Bowlus
Johnson and Oliver
Blasko and Neely
T. Cherry

FILED
JUL 27 2007
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/27/07

____ You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) __X__ Plaintiff(s) Attorney ____ Other

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |
| Defendants. | : | |

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| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; ET AL. | : | |
| Defendants. | : | |

**RULE TO SHOW CAUSE**

AND NOW, this 27th day of July 2007, a Rule is hereby issued to show cause why Plaintiffs' Motion in Limine to Limit Expert Testimony should not be granted.

Rule returnable the 10th day of August 2007 in Clearfield County Courthouse, Courtroom 1 at 10:00 o'clock. A.M.

BY THE COURT:

/s/ Fredric Ammerman ,J.

FILED 3cc
01:43 BA
JUL 27 2007
Atty Bowles
GK

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/27/07

X You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; ET AL. | : | |
| Defendants. | : | |

**RULE TO SHOW CAUSE**

AND NOW, this 27 day of July 2007, a Rule is hereby issued to show cause why Plaintiffs' Motion in Limine to Preclude Irrelevant Evidence should not be granted.

Rule returnable the 10th day of August 2007 in Clearfield County Courthouse, Courtroom 1 at 10:00 o'clock. A.M.

BY THE COURT:

_____, J.

FILED 3cc
01:43:30 Atty Bowles
JUL 27 2007
(GK)

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/27/07

X You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

CA

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE as parents and natural guardians of REGANNE HALE, a minor and ASHTYN HALE, a minor,<br>Plaintiffs | * | |
| vs. | * | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult individual, GARY D. OTT, an adult individual, YOO, TAI Y., M.D., and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br>Defendants | * | |

**ORDER**

AND NOW, this 27th day of July, 2007, it is the ORDER of the Court that any party filing any Motion or Petition of any type including but not limited to those regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same by no later than August 16, 2007. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than ten (10 days prior to trial.)

FILED
01:30 PM
JUL 30 2007
William A. Shaw
Prothonotary/Clerk of Courts

1CC Attys:
Cohen and Bowles
Johnson and Oliver
Blasko and Neely
T. Cherry
GK

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED

JUL 30 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/30/07

___ You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) X Plaintiff(s) Attorney ___ Other

___ Defendant(s) X Defendant(s) Attorney

___ Special Instructions:

FILED NO CC
AUG 03 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**AFFIDAVIT OF SERVICE FOR RULES TO SHOW CAUSE OF 7/27/07**
**Re: Motions in Limine**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

August 1, 2007

**JURY TRIAL DEMANDED**

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |

**AFFIDAVIT OF SERVICE**

Before me, the undersigned authority, personally appeared Todd D. Bowlus, Esquire, who being duly sworn, deposes and says that a true and correct copies of Rules to Show Cause dated July 27, 2007 RE Plaintiffs' Motion in Limine to Preclude Irrelevant Evidence and Plaintiffs' Motion in Limine to Limit Expert Testimony and signed by the Honorable Fredric J. Ammerman, in the above-captioned case was served upon counsel of record: John W. Blasko, Esquire, McQuaide Blasko, 811 University Drive, State College, PA, 16801-6699 and David R. Johnson, Esquire, Thomson, Rhodes & Cowie, PC, 1010 Two Chatham Center, Pittsburgh, PA, 15219 by U.S. First Class Mail on the 1st day of August 2007.

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

Sworn to and subscribed before me
This 1st day of August 2007

_____
Notary Public

My commission expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Sherry Pugliano, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires May 19, 2008
Member, Pennsylvania Association Of Notaries

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

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br>Plaintiffs,<br><br>vs.<br>MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br>Defendants. | *Civil Action-Medical Professional Liability Action*<br>Case No. 2005-364 CD<br>*Consolidated at No. 2005-364-CD*<br><br>JURY TRIAL DEMANDED |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br>Plaintiffs,<br><br>vs.<br>MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br>Defendants. | Case No. 2006-936 CD<br>*Consolidated at No. 2005-364-CD*<br>*Civil Action-Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED<br><br>Type of Pleading:<br>Answer to Plaintiffs' Motion in Limine to Limit Expert Testimony<br><br>Filed on Behalf of Defendant<br>***Gary D. Ott, M.D.***<br><br>Counsel of Record for This Party<br>***John W. Blasko, Esquire***<br>Pa. Supreme Court I.D. #6787<br>McQuaide, Blasko, Fleming & Faulkner, Inc.<br>811 University Drive<br>State College, PA 16801<br>(814) 238-4926<br>Fax: (814) 238-9624<br><br>Counsel for Adverse Party Plaintiffs<br>***Harry S. Cohen, Esquire***<br>***Todd D. Bowlus, Esquire*** |

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William A. Shaw
Prothonotary/Clerk of Courts

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

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***ANSWER OF DEFENDANT GARY D. OTT, M.D. TO PLAINTIFFS' MOTION IN LIMINE TO LIMIT EXPERT TESTIMONY***

1. Paragraph 1 is admitted.

2. Paragraph 2 is denied as stated. Although the standard of care is an issue as in any medical malpractice action, in this case there are multiple medical issues and standards which are required to be addressed by the Defendant's experts.

3. Paragraph 3 is denied as a general statement. The trial will be on liability only which will require evidence and testimony from medical experts on the medical issues relating to the standards of care and whether those standards were breached. The Plaintiffs in their

Complaint have alleged over 13 specific areas of the standards of care which they contend Dr. Ott breached.

4. Paragraph 4 is admitted for the Plaintiffs recognize the requirements and necessity to produce the 4 medical experts to meet their burden of proof in addressing the 13 allegations of negligence in the breach of the standards of care against Dr. Ott and approximately 18 allegations of negligence in the breach of the standards of care against the Defendant DuBois Regional Medical Center. Simply because Plaintiffs now have decided to use only one of their experts at trial, is not a reason to limit the Defendant's experts under the guise of being cumulative, to permit this would be a direct interference in the presentation of the defense of their case.

5. Paragraph 5 is denied as stated. Dr. Ott has produced reports from Deborah Sommer, M.D., a board certified OB/GYN; James L. Martin, Jr., M.D., a board certified OB/GYN with a specialty in Maternal/Fetal Medicine; Julian N. Robinson, M.D., a board certified OB/GYN with a specialty in Maternal/Fetal Medicine; Lyndon M. Hill, M.D., a board certified OB/GYN with a specialty in Maternal/Fetal Medicine and with a further specialty in Maternal/Fetal ultrasound. Three of the experts for Dr. Ott have specific specialties beyond the certification of obstetrics. The specialties of Maternal/Fetal Medicine are extremely important and relevant as qualifications in this case to defend the complex medical issues involved.

6. Paragraph 6 is admitted.

7. Paragraph 7 is a legal conclusion. Pa.R.E. Rule 403 provided that although relevant, evidence **may be** excluded if there is **"needless presentation of cumulative evidence."** All of Dr. Ott's experts' testimony is required to defend the allegation of malpractice, and, the number of Dr. Ott's experts in their particular specialty, is not unreasonable in view of the many

malpractice issues raised by the Plaintiffs, and, the importance of the defense in upholding the propriety of his professional actions.

8. Paragraph 8 is denied for the following reasons.

[a] This Honorable Court entered an Order dated December 5, 2006, scheduling this case for trial beginning Monday, September 17 and continuous through and including Wednesday, September 26, 2007 before the Honorable John K. Reilly, Jr., Senior Judge specially presiding. The scheduling was reaffirmed by this Honorable Court by Order dated May 11, 2007 which bifurcated the trial.

[b] Judicial economy would not necessarily be a factor since the dates have been set aside for Judge Reilly for over six months. The testimony of Dr. Ott's experts will not be totally cumulative, but as with all witnesses and testimony, there may be minimal overlaps.

[c] The Plaintiffs' request that the parties designate in writing at the time of Pre-Trial Conference the experts intended to be used is unreasonable and interferes with the strategy of the defense's presentation.

[d] The issues in this case are complex, and, as a result, the defense was required to retain highly qualified experts who have committed to appear personally at the trial to explain to the jury why Dr. Ott's care and treatment met all the standards expected of him.

[e] Dr. Ott's attorney has already committed and made arrangements to travel to meet with his expert, Dr. Martin, in Jackson, Mississippi on August 22, 2007; travel to Boston to meet with his expert, Dr. Robinson on August 29, 2007; and, to Pittsburgh to meet with his experts on August 31, 2007.

[f] Dr. Ott personally expects that the defense of his professional action will include all the highly qualified experts the defense was fortunate enough to retain in support of his care and treatment.

[g] Each of Dr. Ott's experts address issues based on their own expertise in a manner consistent with their conclusions as to the standards of care applicable, and, a lack of breaches of those standards. As in every case there may be some overlap, but that is not a reason to exclude relevant testimony for instance:

[i] Dr. Martin, a Maternal/Fetal Specialist, discusses elective use of tocolytic agents to prevent pre-term labor. However, unlike Dr. Martin, Dr. Robinson, a Maternal/Fetal Specialist, discussed contractions of normal pregnancies, the medical literature, evidence based medical reviews of the literature, and the plethora of literature as to the effectiveness of tocolytic agents over the last 30 years. Dr. Sommers, an OB/GYN discusses and criticizes the Plaintiffs' experts. Dr. Hill, a Maternal/Fetal Specialist, discusses Dr. Ott's cervical examination, and, that contrary to Plaintiffs' assertions, a transvaginal assessment of the cervix would not have had any additional information to prevent pre-term labor. This may involve minimal overlap, but is not cumulative.

[h] The testimony of all of Dr. Ott's experts should be received into evidence, and, it then becomes the jury's function to determine the qualifications of the experts, and, the weight to be attached to the testimony of each of Dr. Ott's experts, if any. The Court should permit the jury to decide rather than take that issue from the jury. All of Dr. Ott's experts have extensive CVs, Dr. Martin, 69 pages; Dr. Robinson, 24; and, Dr. Hill, 40 pages. A jury may give greater weight to testimony of one expert over the other or reject the testimony, and, this is not considered cumulative.

[i] The Plaintiffs' request to limit Dr. Ott to one expert would be severely prejudicial to Dr. Ott's defense and presentation, and, would in effect permit the Plaintiffs to dictate the defense's strategy and trial tactics.

WHEREFORE, it is requested that the Plaintiffs' Motion in Limine to Limit Experts be dismissed.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

Dated: August 7, 2007

By: _____
JOHN W. BLASKO
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
Gary D. Ott, M.D.

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

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | ) | *Civil Action-Medical Professional Liability* |
| | ) | Case No. 2005-364-CD |
| vs. | ) | *Consolidated at No. 2005-364-CD* |
| MICHAEL J. KUSH, M.D., et al., Defendants. | ) | JURY TRIAL DEMANDED |

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| | ) | *Consolidated at No. 2005-364-CD* |
| vs. | ) | |
| MICHAEL J. KUSH, M.D., et al., Defendants. | ) | JURY TRIAL DEMANDED |

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Answer of Defendant Gary D. Ott, M.D. to Plaintiffs' Motion in Limine to Limit Expert Testimony in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 7th day of August, 2007, to the attorney(s) of record:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

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

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
Gary D. Ott, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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FILED
AUG 07 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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***ANSWER OF DEFENDANT GARY D. OTT, M.D. TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE IRRELEVANT EVIDENCE***

1. Paragraph 1 is admitted.

2. Paragraph 2 is admitted only as to the extent it states that Plaintiffs allege a breach of a standard of care. Defendant demands strict proof of the same at the time of trial.

***Plaintiffs' Prior Motion to Dismiss Ashtyn Hale's Case Without Prejudice***

3. It is only admitted that Plaintiffs filed a Motion to Dismiss Ashtyn Hale's case without prejudice. The remainder of the allegations are within the knowledge and sole control of the Plaintiffs, and, as such, the Defendant Dr. Ott demands strict proof of the allegations.

4. Paragraph 4 is denied. The Court did rule on Plaintiffs' Motion by Order dated May 11, 2007 wherein the Court ordered as follows:

> ". . . 2. The Plaintiffs' Motion to Dismiss Case 2006-936 CD without prejudice is hereby denied as is any request for continuance of the previously scheduled jury trial and the case of both minor Plaintiffs will proceed." [A copy of the Order is attached hereto marked, Exhibit "A."]

5. Paragraph 5 is admitted.

6. Paragraph 6 is admitted.

7. Paragraph 7 as to relevancy as to the deviation from the standards of care is admitted. As to the extent of Ashtyn's Hale's injuries, the relevancy will depend on Plaintiffs' testimony and evidence. Should Plaintiffs introduce any evidence or testimony relative to the condition of Ashtyn Hale at the time of the birth or thereafter, the Defendant should be able to utilize the contents of Plaintiffs' Motion as rebuttal or to attack credibility.

8. In response to Paragraph 8, Paragraph 7 of this Answer is incorporated herein. The Defendant should not precluded from introducing evidence should the Plaintiffs, directly or indirectly, have testimony or evidence on any alleged injury of Ashtyn Hale.

***Dr. Kush's Pending Dismissal from the Case***

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied. The Plaintiffs have filed a Complaint alleging seven specific facts of negligence against Dr. Kush which was verified by them under oath. Further, the Plaintiffs' counsel, Harry S. Cohen, certified the Certificate of Merit as to Defendant Michael J. Kush, M.D. dated February 28, 2005 stating that he had a basis to conclude that the care, skill or knowledge exercised or exhibited by Dr. Kush in his treatment of the Plaintiffs fell outside the

acceptable professional standards and brought about harm. Both of these statements would be relevant as to the credibility of the Plaintiffs and their counsel.

11. Paragraph 11 is denied as stated. The Plaintiffs' credibility is at issue in this case as well as Plaintiffs' counsel. Accordingly, the verified Complaint and the Certificate of Merit stating that there was a medical basis for an action against Dr. Kush would be appropriate for cross examination going to the question of credibility.

WHEREFORE, it is requested that the Plaintiffs' Motion in Limine to Preclude Irrelevant Evidence be dismissed.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

Dated: August 7, 2007

By: _____
JOHN W. BLASKO
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
Gary D. Ott, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor | : | |
| VS. | : | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation | : | |

O R D E R

NOW this 11th day of May, 2007, following argument and discussion as will appear of record this date, it is the ORDER of this Court as follows:

1. The Plaintiffs' Motion for Extension of Time to File Expert Reports is hereby granted relative only to damage experts. In regard to any experts on the issues of negligence or causation, the Court's prior case management Order will continue to be in effect.

2. The Plaintiffs' Motion to Dimiss Case 2006-936-CD without prejudice is hereby denied as is any request for continuance of the previously scheduled jury trial and the case of both minor Plaintiffs will proceed.

3. The parties have agreed that they will proceed to trial on September 17, 2007, and that the matter be

bifurcated. The jury trial scheduled to commence on said date shall be relative issues of alleged negligence and causation only. Any legal determination relative to damages shall be done, if necessary, at a later proceeding.

BY THE COURT,

/S/ Fredric J Ammerman

President Judge

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

MAY 14 2007

Attest. Prothonotary/ Clerk of Courts

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

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| MICHAEL J. KUSH, M.D., et al., Defendants. | ) | JURY TRIAL DEMANDED |

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Answer of Defendant Gary D. Ott, M.D. to Plaintiffs' Motion in Limine to Preclude Irrelevant Evidence in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 7th day of August, 2007, to the attorney(s) of record:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
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David R. Johnson, Esquire
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McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

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State College, PA 16801
(814) 238-4926
Attorneys for Defendant
Gary D. Ott, M.D.

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

FILED
02:25 BDH
AUG 13 2007
William A. Shaw
Prothonotary/Clerk of Courts

1CC Attys:
Cohen & Bowles
T. Chesry
Johnson & Oliver
Blasko & Neely

ANGELA HALE and RANDY A. HALE as parents and natural guardians of REGANNE HALE, a minor and ASHTYN HALE, a minor,
Plaintiffs

vs.

MICHAEL J. KUSH, M.D., an adult individual, GARY D. OTT, an adult individual, YOO, TAI Y., M.D., and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,
Defendants

NO. 05-364-CD

**ORDER**

NOW, this 10th day of August, 2007, following argument on the Motion in Limine to Limit Expert Testimony and Motion in Limine to Preclude Irrelevant Evidence both filed on behalf of the Plaintiff and Motion for Summary Judgment filed on behalf of Defendant Michael J. Kush, M.D., it is the ORDER of this Court as follows:

1. Upon agreement of counsel for the Plaintiff, the Motion for Summary Judgment filed on behalf of Michael J. Kush, M.D. is hereby GRANTED;
2. Michael J. Kush, M.D. is hereby removed as a party Defendant in the case;
3. Plaintiff's Motion in Limine to Preclude Irrelevant Evidence is granted to the extent that the Defense shall be precluded at time of trial from raising the issue that Dr. Michael J. Kush was a party Defendant who was thereafter removed with the consent of the Plaintiff and that the Plaintiff had previously requested the Court to dismiss, without prejudice, the civil action relating to minor Plaintiff Ashtyn Hale.

4. The Plaintiffs' Motion in Limine directed to Defendant Gary D. Ott, M.D. in regard to limiting the number of expert witnesses is hereby granted in that the Defendant Gary D. Ott, M.D. has agreed to limit the number of expert witnesses he will present at time of trial to two experts instead of four experts. The Court notes that this ruling does not apply to Defendant DuBois Regional Medical Center. Plaintiff and Dr. Ott agree that the Judge presiding at time of jury trial may further rule on requests by either or both parties to limit and/or exclude expert testimony.

BY THE COURT

FREDRIC J. AMMERMAN
President Judge

FILED

AUG 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/13/07

____ You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) __X__ Plaintiff(s) Attorney ____ Other

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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FILED NO CC
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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**DEFENDANT GARY D. OTT'S MOTION IN LIMINE TO PRECLUDE TESTIMONY OF DR. GEORGE CHERIAN AND/OR EVIDENCE REGARDING IRRELEVANT AND INADMISSIBLE MATTERS**

Defendant, Dr. Gary D. Ott, by and through his attorneys, McQuaide, Blasko, Fleming & Faulkner, Inc., files the within Motion in Limine and in support thereof avers as follows:

1. This is a medical malpractice action alleging negligence concerning the management of Plaintiff-wife's pregnancy on or about November 9 and 10, 2002.

2. The pleadings are closed and the trial of this matter is scheduled to begin on September 17, 2007 before The Honorable John K. Reilly, Jr., (S.J.).

3. On March 29, 2007, Plaintiffs took the deposition of Dr. George Cherian regarding the circumstances surrounding a previous pregnancy of Plaintiff-wife in 1996. (See Notice of Deposition dated March 7, 2007, attached to Defendant's MacDonald Motion as Exhibit "A").

4. Defendant physician, Dr. Ott, files the instant Motion in Limine requesting that this Court preclude Plaintiffs from introducing any testimony by prior treating physician Dr. Cherian, as well as evidence or argument related thereto, concerning Plaintiff-wife's unrelated, previous pregnancy that resulted in the birth of another child in 1996, during which time Plaintiff Angela Hale was not even under the care of Defendant physician Dr. Ott.

**I. Motion in Limine to Preclude Plaintiffs from Introducing Any Testimony, Evidence, or Argument Concerning Plaintiff-wife's Unrelated Pregnancy in 1996.**

5. Paragraphs 1 through 4 are incorporated by reference as though set forth herein at length.

6. Testimony or evidence concerning the 1996 pregnancy is irrelevant to the Plaintiffs' claims at issue, raises collateral issues, is tantamount to the introduction of an improper standard of care opinion and is unduly prejudicial to Defendant.

7. Under the Pennsylvania Rules of Evidence: "All relevant evidence is admissible...Evidence that is not relevant is not admissible." Pa.R.E. 402.

8. Evidence is relevant only if it has "any tendency to make the existence **of any fact that is of consequence to the determination of the action** more probable or less probable than it would without the evidence." Pa.R.E. 401. (Emphasis added.)

9. However, even if relevant, evidence may be excluded "if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury...." Pa.R.E. 403.

10. In his deposition, Dr. Cherian, who was the treating physician of Plaintiff-wife, testified that she had a term pregnancy in 1996 that resulted in the delivery of a healthy baby girl. (Deposition of Dr. Cherian, pp. 4-7, attached as Exhibit "B")

11. Specifically, Dr. Cherian testified on direct as follows:

"Q. This 1996 pregnancy resulted in the birth of a healthy baby girl; is that correct?

A. Yes.

Q. And that was a near-term pregnancy at about 37 weeks' gestation; is that correct?

A. It's a term pregnancy.

Q. Would you refer to the Discharge Summary from Punxsutawney Area Hospital that was contained within your records? It is for a hospitalization at Punxsutawney and you dictated this on December 21st, 1996. Do you have that in front of you?

A. Yes.

Q. Is this a record that you would have prepared, you would have dictated into a tape machine and it would have been transcribed?

A. Yes

Q. Would you please read it?

A. The whole dictation?

A. Yes, sir.

. . .

A. 'This 20-year-old white female 32 to 33 weeks of gestation with complaints of severe back pain and irregular uterine contractions. On physical examination patient was found to be a centimeter dilated and 90 percent effaced and preterm labor was diagnosed and patient was placed on tocolytic therapy. Patient was also placed on Micro K since her serum potassium values were slightly low. Urinalysis was normal. Her total white count was 15,000, hematocrit was 35 percent with normal differential values. Urine cultures showed no significant growth.'

'She was placed on Terbutaline 1.25 milligram q. four hourly and also she was placed on Micro K 10 milliequivalent one tablet daily.'

'Cardiac consultation was obtained because electrocardiogram showed evidence of sinus tachycardia and left atrial enlargement and probable left ventricular hypertrophy. Dr. Dajani had done an echocardiogram and full cardiac evaluation was found to be within normal limits.'

'At the time of discharge, patient advised to continue the tocolytic therapy and return to my office within on week.'

'Discharge diagnosis: 32 weeks of gestation in preterm labor controlled with tocolytic therapy. Abnormal electrocardiogram evaluated by cardiologist and was found to be in normal health.'

Q. So this episode occurred when Angela Hale was at 32 weeks and then she went on to deliver a healthy baby girl at about 37 weeks?

A. Yes."

(Id., attached as Exhibit "B")

12. Any evidence concerning Plaintiff-wife's pregnancy and delivery of a healthy baby in 1996 is entirely irrelevant and raises collateral issues to the facts at issue in this case and is unduly prejudicial to the Defendants.

13. Any testimony by Dr. Cherian concerning the 1996 pregnancy has absolutely no tendency to make it more or less probable that Dr. Ott's care and treatment in 2002 met the appropriate standard of care regarding same.

14. If Plaintiffs are permitted to introduce Dr. Cherian's deposition testimony at trial, then Defendant must be permitted to introduce those portions of Cherian's testimony that Defendant finds significant for purposes of the defense. The introduction of such evidence will serve to confuse the jury by raising collateral issues and detract from its assessment of the events which are truly at issue.

15. Plaintiffs are apparently attempting to assert that Dr. Cherian's treatment in 1996 is somehow relevant to the standard of care that Dr. Ott should have followed six years later. This is inappropriate and would serve only to confuse the jury with irrelevant considerations.

16. Furthermore, introduction of evidence about the 1996 pregnancy could lead to a "trial within a trial" situation whereby the defense would be compelled to point out the numerous ways in which the medical facts and circumstances surrounding the prior pregnancy differ markedly from those present in 2002. This would be tremendously inefficient and would serve only to detour the trial into irrelevant territory.

17. Any effort by Plaintiffs to proclaim directly, or merely suggest that a prior physician's treatment of a 1996 pregnancy somehow relates to the Dr. Ott's management of Plaintiff-wife's pregnancy in 2002 would be unduly prejudicial to the Defendants because it has absolutely nothing to do with the facts at issue.

18. It is well-established law in Pennsylvania that evidence of prior acts is presumptively inadmissible unless the proponent of the evidence can make a strong showing that a 'substantial similarity' exists between the **defendant's** prior acts and the **defendant's** acts at

issue. Here, Plaintiffs should not be permitted to attempt to prove that the Defendant was negligent in this instance by introducing evidence of the circumstances and acts of a **different health care provider** from an unrelated pregnancy remote in time.

19. The ability to object to such irrelevant testimony at trial is not sufficient to protect the Defendant's interest in this matter, particularly where Plaintiffs are attempting to introduce through the backdoor an improper standard of care opinion via Dr. Cherian. An advance ruling of the court on this Motion is necessary to ensure that such prejudicial testimony is not presented to the jury.

20. Because the 1996 pregnancy and childbirth is completely irrelevant, and because Dr. Cherian's only area of testimony would be concering such irrelevant matters, Plaintiffs should be barred from presenting Dr. Cherian at a witness, whether via deposition or live testimony.

WHEREFORE, Defendants respectfully request that this Honorable Court enter an Order precluding Plaintiffs from presenting the testimony of Dr. Cherian and further precluding admission of any testimony or evidence concerning Plaintiff-wife's unrelated pregnancy resulting in the childbirth in 1996.

Respectfully submitted,
MCQUAIDE, BLASKO
F;LEMING & FAUILNER,

Dated: August 15, 2007

BY _____
JOHN W. BLASKO
FREDERICK BATTAGLIA
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
Gary D. Ott, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**SECOND NOTICE OF DEPOSITION OF GEORGE CHERIAN, M.D. WITH SUBPEONA DUCES TECUM**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
*Consolidated at 2005-364-CD*

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

March 7, 2007

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD<br>*Consolidated at 2005-364-CD* |

**SECOND NOTICE OF DEPOSITION OF**
**GEORGE CHERIAN, M.D. WITH SUBPEONA DUCES TECUM**

TO: George Cherian, M.D.
George Cherian, M.D., P.C.
803 West Mahoning Street
Punxsutawney, PA 15767

**PLEASE TAKE NOTICE** that the Deposition of George Cherian, M.D. will be taken for the purposes of discovery, pursuant to the Pennsylvania Rules of Civil Procedure, before a

Notary Public duly authorized by law to administer oath in the conference room to be determined at Dubois Regional Hospital on the **Thursday, March 29, 2007 at George Cherian, M.D., P.C., 803 West Mahoning Street, Punxsutawney, Pennsylvania 15767 at 10:30 a.m.** at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts regarding the treatment of Angela Hale's 1996 pregnancy and to authenticate the medical records there from.

**SUBPOENA DUCES TECUM**

You are hereby instructed to bring the following with you:

1. The complete medical chart in your possession with regard to Plaintiff Angela Hale and her 1996 pregnancy.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By:_____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **SECOND NOTICE OF DEPOSITION OF GEORGE CHERIAN, M.D. WITH SUBPEONA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing or hand delivery of a true and correct copy to the party and address listed below on the 7th day of March 2007:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

**George Cherian, M.D.**
George Cherian, M.D., P.C.
803 West Mahoning Street
Punxsutawney, PA 15767

**Johnson & Mimless**
*(via facsimile @ 412.765.3539)*

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | CIVIL DIVISION |
| vs. | ) | No. 2005-364 |
| MICHAEL J. KUSH, M.D., an adult individual, MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation, and DUBOIS MEDICAL CENTER, a Pennsylvania corporation, | ) | |
| Defendants. | ) | |

DEPOSITION OF GEORGE R. CHERIAN, M.D.
THURSDAY, MARCH 29, 2007

Deposition of GEORGE R. CHERIAN, M.D., called as a witness by the Plaintiff, taken pursuant to Notice of Deposition and the Pennsylvania Rules of Civil Procedure, by and before Carla L. Lennartz, a Court Reporter and a Notary Public in and for the Commonwealth of Pennsylvania, at the offices of George R. Cherian, M.D., 803 West Mahoning Street, Punxsutawney, Pennsylvania, commencing at 10:42 a.m. on the day and date above set forth.

APPEARANCES:

On behalf of the Plaintiffs:

Harry S. Cohen & Associates, P.C.
Harry S. Cohen, Esquire
Two Chatham Center, Suite 985
Pittsburgh, Pennsylvania 15219

On behalf of the Defendants Michael J. Kush, M.D., Maternal Fetal Medicine of DuBois Regional Medical Center and DuBois Regional Medical Center:

Thomson, Rhodes & Cowie
Brad R. Korinski, Esquire
Two Chatham Center, 10th Floor
Pittsburgh, Pennsylvania 15219

On behalf of the Defendants Gary D. Ott, M.D. and Yoo, Tai, Y., M.D.:

McQuaide Blasko
John W. Blasko, Esquire
811 University Drive
State College, Pennsylvania 16801-66699

On behalf of George R. Cherian, M.D.:

White and Williams, LLP
Steven J. Forry, Esquire
The Frick Building
437 Grant Street, Suite 1001
Pittsburgh, Pennsylvania 15219

- - -

INDEX


| WITNESS: | PAGE: |
|---|---|
| GEORGE R. CHERIAN, M.D. | |
| Examination by Mr. Cohen | 4 |
| Examination by Mr. Blasko | 10 |




EXHIBITS:


| | PAGE: |
|---|---|
| Cherian Deposition Exhibit No. 1 | 4 |
| Cherian Deposition Exhibit No. 2 | 10 |
| Cherian Deposition Exhibit No. 3 | 27 |


- - -

PROCEEDINGS

- - -

MR. FORRY: I assume this is merely a fact deposition in connection with a pregnancy my client was not involved in. You're in no way asserting that the first pregnancy in '96 -- that there's potential litigation over that pregnancy and the delivery of that little girl?

MR. COHEN: That's correct.

GEORGE R. CHERIAN, M.D.,

called as a witness by the Plaintiffs, being first duly cautioned and sworn, as hereinafter certified, was deposed and said as follows:

EXAMINATION

BY MR. COHEN:

Q. Would you state your name, please?

A. George Cherian.

Q. Dr. Cherian, you are a medical doctor specializing in obstetrics and gynecology; correct?



A. Yes.

Q. And we are taking this deposition today here in your medical office in Punxsutawney, Pennsylvania; correct?

A. Yes.

Q. Dr. Cherian, in May of 2004, my office sent you a letter requesting Angela Hale's records from your office relating to her pregnancy in 1996 in response to which you sent me your office records related to that pregnancy; is that correct?

A. Yes.

Q. I'm going to show you what we'll mark as Deposition Exhibit No. 1 and ask you if that is not an authentic copy of your office chart for Angela Hale relating to her 1996 pregnancy?

A. Yes, it is.

(Cherian Deposition Exhibit No. 1 was marked for identification.)

Q. This 1996 pregnancy resulted in the birth of a healthy baby girl; is that correct?

A. Yes.

Q. And that was a near-term pregnancy at about 37 weeks' gestation; is that correct?



A. It's a term pregnancy.

Q. Would you refer to the Discharge Summary from Punxsutawney Area Hospital that was contained within your records? It is for a hospitalization at Punxsutawney and you dictated this on December 21st, 1996. Do you have that in front of you?

A. Yes.

Q. Is this a record that you would have prepared, you would have dictated into a tape machine and it would have been transcribed?

A. Yes.

Q. Would you please read it?

A. The whole dictation?

Q. Yes, sir.

MR. FORRY: Out loud, I assume?

MR. COHEN: Yes.

MR. FORRY: Please read slowly so she can take down everything you say.

A. "This 20-year-old white female 32 to 33 weeks of gestation admitted with complaints of severe back pain and irregular uterine contractions. On physical examination patient was found to be a centimeter dilated and 90 percent effaced and preterm labor was

Page 6

diagnosed and patient was placed on tocolytic therapy. Patient was also placed on Micro K since her serum potassium values were slightly low. Urinalysis was normal. Her total white count was 15,000, hematocrit was 35 percent with normal differential values. Urine cultures showed no significant growth.

"She was placed on Terbutaline 1.25 milligram q. four hourly and also she was placed on Micro K 10 milliequivalent one tablet daily.

"Cardiac consultation was obtained because electrocardiogram showed evidence of sinus tachycardia and left atrial enlargement and probable left ventricular hypertrophy. Dr. Dajani had done an echocardiogram and full cardiac evaluation was found to be within normal limits.

"At the time of discharge, patient advised to continue the tocolytic therapy and return to my office within one week.

"Discharge diagnosis: 32 weeks of gestation in preterm labor controlled with tocolytic therapy. Abnormal electrocardiogram evaluated by cardiologist and was found to be in normal health."

Q. So this episode occurred when Angela Hale was

Page 7

at 32 weeks and then she went on to deliver a healthy baby girl at about 37 weeks?

A. Yes.

Q. Doctor, when a patient of yours goes on to treat with another physician and you receive a request from another treating physician with the proper authorization, do you send out your medical records to those type physicians?

A. Yes, if the consent is signed by the patient to be sent out.

MR. COHEN: That's all. Thank you.

EXAMINATION

BY MR. BLASKO:

Q. Doctor, did you follow up with Mrs. Hale after the birth of her child?

A. Yes, I did.

Q. What was the last date that you saw her?

A. I don't have any independent memory. All I can recall is from the records. I see a last visit in my records says February '99.

Q. February '99. Do your records indicate whether or not she had contacted your office since that time?

A. No, I don't recall.

Page 8

Q. And you have no record of her contacting your office since 1999; is that correct?

A. That's from my records.

Q. Yes, from your records. Do you have any consent in your records signed by Mrs. Hale forwarding the medical records to another doctor?

A. I don't see it in my records.

Q. So that would mean that you do not have a consent signed by Mrs. Hale to forward your medical records to any other doctor?

A. I don't see it in my records.

Q. Okay. I guess to make --

A. Wait a minute. No. Sorry. This is something else.

Q. And as Mr. Cohen asked you, if you were to forward your medical records to another physician, you would require a signed consent by the patient?

A. Yes.

Q. Do your records, for instance, show whether or not there's any fax to any particular doctor forwarding your records?

A. No.

Q. Doctor, do you still practice OB/GYN?

Page 9

A. Yes, I do.

Q. I just saw some of the cards where they congratulated you on the wall for births.

A. I do part time OB now, obstetrics.

Q. And in 1996, were you full time; is that the idea?

A. Yes, I was.

Q. But you continue to do OB to the present date?

A. I stopped in 2000 for four or five years; and last year I started part time obstetrics.

Q. Anyhow, in any event, getting back to my initial questions then, from the records which you produced here and which are part of the exhibit, there's no consent in there signed by Mrs. Hale to send these records, your office records, to any other physician; is that correct?

A. That's right.

Q. I know, Doctor, before you came today you didn't have any hospital records. Mrs. Hale was admitted under your service at the hospital, Punxsutawney, from December 3rd, '96 to December 5th, '96. I would just like, if I may, to ask you a couple questions.

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | ) | *Civil Action-Medical Professional Liability* |
| | ) | Case No. 2005-364-CD |
| vs. | ) | *Consolidated at No. 2005-364-CD* |
| MICHAEL J. KUSH, M.D., et al., Defendants. | ) | JURY TRIAL DEMANDED |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, | ) | *Civil Action - Medical Professional Liability* |
| | ) | Case No. 2006 - 936 CD |
| | ) | *Consolidated at No. 2005-364-CD* |
| vs. | ) | |
| MICHAEL J. KUSH, M.D., et al., Defendants. | ) | JURY TRIAL DEMANDED |

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Motion in Limine to Preclude Testimony of Dr. George Cherian and/or Evidence Regarding Irrelevant and Inadmissible Matters on behalf of Defendant Gary D. Ott, M.D. in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 15th day of August, 2007, to the attorney(s) of record:

| | |
|---|---|
| Harry S. Cohen, Esquire<br>Todd D. Bowlus, Esquire<br>Harry S. Cohen & Associates, PC<br>Two Chatham Center, Suite 985<br>Pittsburgh, PA 15219 | David R. Johnson, Esquire<br>Thomson, Rhodes & Cowie, P.C.<br>1010 Two Chatham Center<br>Pittsburgh, PA 15219 |

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
FREDERICK BATTAGLIA
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
Gary D. Ott, M.D.

8/31/07
FILED
AUG 22 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation.

Defendants.

CIVIL DIVISION

No. 05-364-CD
**CONSOLIDATED WITH**
No. 06-936-CD

Issue No.

JOINDER IN MOTION IN LIMINE TO PRECLUDE TESTIMONY OF DR. GEORGE CHERIAN AND/OR EVIDENCE REGARDING IRRELEVANT AND INADMISSIBLE MATTERS

Code: 007

Filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

Counsel of Record for These Parties:

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

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

(412) 232-3400

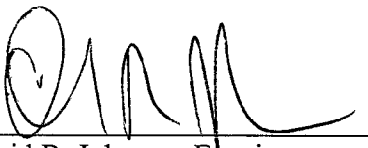
JOINDER IN MOTION IN LIMINE TO PRECLUDE TESTIMONY OF DR. GEORGE CHERIAN AND/OR EVIDENCE REGARDING IRRELEVANT AND INADMISSIBLE MATTERS

NOW COMES DuBois Regional Medical Center, one of the defendants, by its attorneys, Thomson, Rhodes & Cowie, P.C., and files the following joinder.

1. This defendant joins in the motion in limine to preclude testimony of Dr. George Cherian and/or evidence regarding irrelevant and inadmissible matters. Accordingly, defendant incorporates by reference co-defendant's motion and brief and requests the same relief as that sought by the co-defendant.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



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

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within JOINDER IN MOTION IN LIMINE TO PRECLUDE TESTIMONY OF DR. GEORGE CHERIAN AND/OR EVIDENCE REGARDING IRRELEVANT AND INADMISSIBLE MATTERS has been served upon the following counsel of record and same placed in the U.S. Mails on this 20th day of August, 2007:

Harry S. Cohen, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON RHODES & COWIE, P.C.

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

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE as parents and natural guardians of REGANNE HALE, a minor and ASHTYN HALE, a minor,<br>Plaintiffs | * | |
| vs. | * | NO. 05-364-CD |
| GARY D. OTT, an adult individual, YOO, TAI Y., M.D., and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br>Defendants | * | |

**ORDER**

AND NOW, this 20th day of August, 2007, the Court being in receipt of and having reviewed the Motion in Limine to Preclude Testimony of Dr. George Cherian and/or Evidence Regarding Irrelevant and Inadmissible Matters, it is the ORDER of this Court that argument on said Motion be and is hereby scheduled for the 31st day of August, 2007 at 1:30 p.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

FILED 1cc Atty's:
01:33(6)
AUG 22 2007
T. Cherry
S. Johnson & Oliver
Cohen & Bacdus
Blasko & Neely
William A. Shaw
Prothonotary/Clerk of Courts

FILED

AUG 22 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/22/07

____ You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) __X__ Plaintiff(s) Attorney ____ Other

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

CA

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

ANGELA HALE and RANDY A. HALE as parents and natural guardians of REGANNE HALE, a minor and ASHTYN HALE, a minor,
Plaintiffs

vs.

NO. 05-364-CD

GARY D. OTT, an adult individual, YOO, TAI Y., M.D., and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,
Defendants

FILED H. Cohen T. Bowlus
AUG 27 2007 J. Blasko A Neely
William A. Shaw T. Cherry
Prothonotary/Clerk of Courts D. Johnson J. Oliver
GR

**ORDER**

NOW, this 24th day of August, 2007, following pre-trial conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on August 28, 2007 at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is scheduled for Monday, September 17 through and including, Wednesday, September 26, 2007, to commence each day at 9:00 a.m. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield Pennsylvania, before the Honorable John K. Reilly Jr., Senior Judge, Specially Presiding.

BY THE COURT,

FREDRIC J. AMMERMAN
President Judge

DATE: 8-27-2007

____ You are responsible for serving all appropriate parties.

__X__ The Prothonotay's office has provided service to the following parties:

_____ Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other

_____ Defendant(s) _____ Defendant(s) Attorney

_____ Special Instructions:

FILED

AUG 27 2007

William A. Shaw
Prothonotary/Clerk of Courts

FILED
AUG 28 2007
012:29:GK
William A. Shaw
Prothonotary/Clerk of Courts
1 cc to Atty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**PRAECIPE TO DISCONTINUE AS TO LESS THAN ALL PARTIES PURSUANT TO PA.R.C.P. 229**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

August 28, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

**PRAECIPE TO DISCONTINUE AS TO**
**LESS THAN ALL PARTIES PURSUANT TO PA.R.C.P. 229**

TO THE PROTHONOTARY:

Kindly discontinue this action as it relates to Defendant Yoo, Tai, Y., M.D., a Pennsylvania Corporation, pursuant to Pa.R.C.P. 229 and remove its name from the caption.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

8/27/07
Date

By: _____
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

Consented to:

8/27/07
Date

By: _____
John W. Blasko, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
(Counsel for Defendant Gary D. Ott, M.D.)

8/22/07
Date

Consented to:

By: _____
David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
(Counsel for Defendant Dubois Regional Medical Center)

8/20/07
Date

Consented to:

By: _____
Toni M. Cherry, Esquire
Gleason, Cherry & Cherry, LLP
P.O. Box 505
One North Franklin Street
Dubois, PA 15801
(Counsel for Defendant Yoo, Tai, Y., M.D.)

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PRAECIPE TO DISCONTINUE AS TO LESS THAN ALL PARTIES PURSUANT TO PA.R.C.P. 229** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing or hand-delivery of a true and correct copy to the party and address listed below on the 28 day of August 2007:

**Daniel J. Nelson, Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

**Toni M. Cherry, Esquire**
Gleason, Cherry & Cherry, LLP
P.O. Box 505
One North Franklin Street
Dubois, PA 15801

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

| | | |
|---|---|---|
| ANGELA HALE AND RANDY HALE as parents and natural guardians of REGANNE HALE, a minor, and ASHTYN HALE, a minor | : | |
| -vs- | : | No. 05-364-CD |
| GARY D. OTT, an adult individual, and DRMC, a Pennsylvania Corp. | : | |

O R D E R

AND NOW, this 28th day of August, 2007, it is the ORDER of this Court that argument on the Motion in Limine to Preclude Testimony be and is hereby scheduled for 11:00 a.m. on Friday, August 31, 2007, Courtroom No. 1, Clearfield County Courthouse.

BY THE COURT,

Judge J. Cunningham

President Judge

FILED
01:00 PM
AUG 29 2007
William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys:
Cohen & Bowlus
Blasko & Neely
T. Chesney
Johnson & Oliver

FILED

AUG 29 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 8/29/07

___ You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) X Plaintiff(s) Attorney ___ Other

___ Defendant(s) X Defendant(s) Attorney

___ Special Instructions:

FILED
AUG 30 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION IN LIMINE TO PRECLUDE TESTIMONY OF DR. GEORGE CHERIAN**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

August 29, 2007

**JURY TRIAL DEMANDED**

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION IN LIMINE TO PRECLUDE TESTIMONY OF DR. GEORGE CHERIAN**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Todd D. Bowlus, Esquire, and set forth the following response:

***I. Brief Factual Background***

Despite Angela Hale being at an increased risk for preterm labor, the Defendants failed to recognize and properly treat Mrs. Hale's preterm labor, which should have included frequent vaginal exams and tocolytic therapy (drugs used to delay labor). As a result, Mrs. Hale's twins, Reganne and Ashtyn, were born prematurely at 28 weeks gestation and suffer from neurological/cognitive deficits and behavioral problems. Plaintiffs' experts have opined, *inter*

*alia*, that two facts placed Mrs. Hale at an increased risk for preterm labor: (1) twin gestation; and (2) her history of preterm labor in a 1996 pregnancy which was successfully delayed with tocolysis.

In his deposition, Defendant Dr. Ott acknowledged that: (1) a history of preterm labor places patients at an increased risk for subsequent preterm labor; (2) he failed to retrieve Mrs. Hale's treatment records from her prior obstetrician; (3) he retrieves prior treatment records when there may be a significant history; and (4) he knew virtually nothing about Mrs. Hale's previous preterm labor.

On March 29, 2007, Plaintiffs took the deposition of Dr. George Cherian, Mrs. Hale's obstetrician from her 1996 pregnancy. Similar to the pregnancy at question, during the 1996 pregnancy, Mrs. Hale began experiencing the signs and symptoms of impending preterm labor. This occurred at 32 weeks gestation. As a result, Dr. Cherian prescribed tocolytic therapy for Mrs. Hale which, according to Dr. Cherian, controlled the preterm labor and successfully delayed labor from 32 to 37 weeks. Mrs. Hale delivered a perfectly healthy baby from that pregnancy.

Plaintiffs' counsel's questions of Dr. Cherian were approximately 3½ pages long. Dr. Ott's counsel was given ample opportunity to conduct cross-examination; those questions spanned 20 pages.

### *II. Defendants' Motion Must Be Denied As Dr. Cherian's Testimony Is Directly Relevant To The Facts And Expert Opinions Of The Case*

In their Motion, Defendants argue that this 1996 pregnancy is unrelated to the facts of the instant case and/or raises collateral issues; however, this argument is disingenuous at best. Four key issues in this case are: (1) whether Mrs. Hale experienced previous preterm labor, thereby placing her at an increased risk for subsequent preterm labor; (2) whether Dr. Ott was negligent

by failing to ascertain whether Mrs. Hale experienced previous preterm labor; (3) whether tocolysis is effective in delaying preterm labor; and (4) whether Dr. Ott was negligent for failing to order tocolysis for Mrs. Hale to delay this pregnancy.

Dr. Cherian's testimony is relevant to all four issues. Dr. Cherian's deposition testimony firmly establishes that Mrs. Hale experienced preterm labor in 1996, that Dr. Ott failed to request Mrs. Hale's medical records from the 1996 pregnancy, and that Mrs. Hale's previous preterm labor was successfully delayed with the use of tocolysis. Without this testimony, Defendants will undoubtedly deny that Mrs. Hale experienced preterm labor in 1996 or that tocolysis was effective in delaying that pregnancy. In fact, one of the reasons that Plaintiffs were required to depose Dr. Cherian in the first place was because Defense Counsel refused to agree that Mrs. Hale experienced preterm labor in 1996 despite it being clearly documented in Dr. Cherian's records.[1]

Moreover, Plaintiffs' expert obstetricians opine as to the significance of Mrs. Hale's preterm labor in 1996 and how it relates to the allegations of negligence; specifically, that it placed her at an increased risk for preterm labor, that this preterm labor was delayed for approximately five weeks with the use of tocolysis, and that Dr. Ott was negligent for failing to ascertain these facts to assist in his care and treatment of Mrs. Hale.

### *III. Conclusion*

Not only will Dr. Cherian's testimony serve to make both negligence and causation glaring, it is the factual foundation upon which Plaintiffs' experts will testify regarding the

[1] The second reason was because Defense Counsel refused to stipulate to the authenticity of Dr. Cherian's medical records (seemingly their first attempt to prohibit Plaintiffs from introducing this crucial evidence). It should also be noted that it took considerable time and expense to get Dr. Cherian to agree to be deposed.

negligence in this case. Therefore, Plaintiffs respectfully request that this Honorable Court deny Defendants' Motion.

WHEREFORE, Plaintiffs respectfully request that Defendant's Motion be denied.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION IN LIMINE TO PRECLUDE TESTIMONY OF DR. GEORGE CHERIAN** has been served via facsimile and/or first class mail on the 29th day of August 2007 to the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, to wit, this _____ day of August 2007, it is hereby ORDERED, ADJUDGED, and DECREED that Defendants' Motion to Preclude Testimony of Dr. George Cherian is DENIED with prejudice.

BY THE COURT:

_____

J.

FILED NO CC
AUG 30 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**PLAINTIFFS' MOTION FOR CLARIFICATION OF COURT ORDER DATED AUGUST 10, 2007 / MOTION TO PRECLUDE EVIDENCE**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

August 29, 2007

**JURY TRIAL DEMANDED**

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>GARY D. OTT, MD *ET AL,*<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD<br>***Consolidated at Case No.: 2005-364-CD*** |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>GARY D. OTT, MD *ET AL,*<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD<br>***Consolidated at Case No.: 2005-364-CD*** |

**PLAINTIFFS' MOTION FOR CLARIFICATION OF**
**COURT ORDER DATED AUGUST 10, 2007 / MOTION TO PRECLUDE EVIDENCE**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale and Ashtyn Hale, minors, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion:

1. This bifurcated case is set to commence trial on September 17, 2007. The first trial will relate only to whether the Defendants deviated from the standard of care causing a premature labor.

2. On August 10, 2007, this Court heard oral argument on Plaintiffs' Motion In Limine to Limit Expert Testimony. The basis of Plaintiffs' Motion was to request the Court limit Dr. Ott's expert testimony. A copy of Plaintiffs' Motion is attached as Exhibit "A".

3. On August 10, 2007, this Honorable Court entered an Order, which *inter alia*, granted Plaintiffs' Motion and limited the number of expert witnesses that Dr. Ott may present to two experts. A copy of the August 10, 2007 Court Order is attached as Exhibit "B".

4. On August 24, 2007, during the Pre-Trial Conference, for the first time, Counsel for Dr. Ott, expressed his intent to also have a placental pathologist defense expert testify.

5. The notion that experts other than obstetricians testify is contrary to previous representations made by Mr. Blasko; specifically, in July 2007, during a phone conversation between Todd Bowlus, co-counsel for Plaintiffs, and Counsel for Dr. Ott, it was agreed that only obstetricians would be testifying.[1]

6. This understanding was referenced in paragraph three of Plaintiffs' Motion. The official Court record of the Motion's oral argument will also undoubtedly reflect this understanding that it would be obstetricians only testifying.

7. Additionally, Dr. Ott's presentation of a placental pathologist should be precluded because Plaintiffs were not given ample time to have an expert of their own review the slides and submit a report. The deadline for Plaintiffs to submit expert reports was March 30, 2007. Dr. Ott provided the expert report of his placental pathologist on June 28, 2007. In turn, Plaintiffs then requested the placental pathology slides from Dubois Regional Hospital ("DRMC") on July 12, 2007; DRMC did not provide the slides to Plaintiff until August 10, 2007, well after the deadline to submit a report.

[1] This does not include the nursing experts that both Plaintiffs and Dubois Regional Medical Center will present.

8. What is even more important to note is that Plaintiffs could not anticipate that Dr. Ott would be producing an expert report from a placental pathologist. This is because Plaintiffs never authorized DRMC to release the slides to Dr. Ott, nor did Dr. Ott ever request the slides in discovery. Had Dr. Ott and/or DRMC followed the Rules of Court and/or state law, Plaintiffs would have been aware that Dr. Ott was requesting the slides from DRMC and would have had time to have an expert pathologist submit a report on their behalf.

9. This issue was never raised previously due to the agreement that this trial would involve testimony of obstetricians only and because expert deadlines were generally extended for the second phase, if necessary, of the bifurcated trial.

WHEREFORE, Plaintiffs move this Honorable Court for an Order to clarify its August 10, 2007 and/or preclude Dr. Ott from presenting testimony of a placental pathologist.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR CLARIFICATION OF COURT ORDER DATED AUGUST 10, 2007 / MOTION TO PRECLUDE EVIDENCE** has been served on the 29th day of August 2007 to the following via facsimile and/or U.S. Mail:

**Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Exhibit A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' MOTION IN LIMINE TO LIMIT EXPERT TESTIMONY**

Filed on Behalf of Plaintiffs

FILED
10:38
JUL 25 2007
COPY
William A. Shaw
Prothonotary/Clerk of Courts

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

July 25, 2007

ALL-STATE LEGAL®
PLAINTIFF'S EXHIBIT
A

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; ET AL. | : | |
| Defendants. | : | |

**PLAINTIFFS' MOTION IN LIMINE TO LIMIT EXPERT TESTIMONY**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion:

1. This bifurcated case is set to commence trial on September 17, 2007.

2. In this case, Plaintiffs allege that the Defendant obstetrician and Defendant nursing staff breached the standard of care by failing to recognize and treat mother-Plaintiff's preterm labor, thereby allowing the premature delivery of the minor-Plaintiffs at 28 weeks gestation.

3. The first trial will relate only to whether the defendants deviated from the standard of care "causing" a premature labor; and all parties acknowledge the medical issues of the first trial will relate only to obstetrics and nursing.

4. Plaintiffs have produced expert reports from **three (3) obstetricians and one (1) nurse** to comment on the Defendant obstetrician and the Defendant nursing staff. (Plaintiffs' reports are attached collectively hereto as Exhibit "A").

5. The Defendant obstetrician, Dr. Ott, produced expert reports from **four (4) different obstetricians**. (Defendant obstetrician's reports are attached hereto collectively as Exhibit "B").

6. The Defendant hospital produced expert reports from **one (1) obstetrician and one (1) nurse**. (Defendant hospital's reports are attached hereto collectively as Exhibit "C").

7. The Pennsylvania Rules of Evidence provide that evidence may be excluded if it is cumulative in nature. See Pa.R.E. Rule 403

8. To avoid cumulative experts and in the interest of judicial economy, each party should be limited to one expert witness on each issue: The Plaintiffs and Dr. Ott should each be limited to one expert obstetrician on the obstetrical negligence issue and the Plaintiffs and Dubois Hospital should each be limited to one expert nurse on the nursing negligence issue.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order limiting the amount of experts each party shall use and also order that each party shall designate

in writing which expert they intend to use at trial prior to the Pre-Trial Conference.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD ET AL,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD<br>***Consolidated at Case No.: 2005-364-CD*** |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; ET AL.<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD<br>***Consolidated at Case No.: 2005-364-CD*** |

**ORDER OF COURT**

AND NOW, to-wit, this ___ day of _____ 2007, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion in Limine to Limit Expert Testimony is GRANTED.

1. The Plaintiffs are limited to the expert testimony of one obstetrician and one nurse;
2. Defendant Dr. Ott is limited to the expert testimony of one obstetrician;
3. Dubois Regional Medical Center is limited to the expert testimony of one nurse; and
4. Each party shall designate, in writing, which experts they will use for trial prior to the Pre-Trial Conference.

BY THE COURT:

_____,J.

[redacted]

Exhibit B

[redacted]

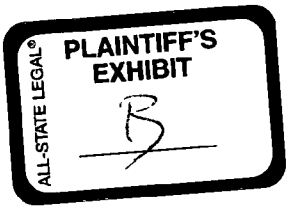
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**
**CIVIL DIVISION**

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE as parents and natural guardians of REGANNE HALE, a minor and ASHTYN HALE, a minor,<br>Plaintiffs | * | |
| vs. | * | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult individual, GARY D. OTT, an adult individual, YOO, TAI Y., M.D., and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br>Defendants | * | |

**ORDER**

NOW, this 10th day of August, 2007, following argument on the Motion in Limine to Limit Expert Testimony and Motion in Limine to Preclude Irrelevant Evidence both filed on behalf of the Plaintiff and Motion for Summary Judgment filed on behalf of Defendant Michael J. Kush, M.D., it is the ORDER of this Court as follows:

1. Upon agreement of counsel for the Plaintiff, the Motion for Summary Judgment filed on behalf of Michael J. Kush, M.D. is hereby GRANTED;
2. Michael J. Kush, M.D. is hereby removed as a party Defendant in the case;
3. Plaintiff's Motion in Limine to Preclude Irrelevant Evidence is granted to the extent that the Defense shall be precluded at time of trial from raising the issue that Dr. Michael J. Kush was a party Defendant who was thereafter removed with the consent of the Plaintiff and that the Plaintiff had previously requested the Court to dismiss, without prejudice, the civil action relating to minor Plaintiff Ashtyn Hale.



4. The Plaintiffs' Motion in Limine directed to Defendant Gary D. Ott, M.D. in regard to limiting the number of expert witnesses is hereby granted in that the Defendant Gary D. Ott, M.D. has agreed to limit the number of expert witnesses he will present at time of trial to two experts instead of four experts. The Court notes that this ruling does not apply to Defendant DuBois Regional Medical Center. Plaintiff and Dr. Ott agree that the Judge presiding at time of jury trial may further rule on requests by either or both parties to limit and/or exclude expert testimony.

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.

AUG 13 2007

Attest. William L. Ammerman
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

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|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2006-936 CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, this ____ day of _____ 2007, it is hereby it is hereby ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion is GRANTED. Dr. Ott is precluded from offering expert testimony from a placental pathologist.

BY THE COURT:

_____,J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |
| Defendants. | : | |

FILED 2cc Atty's Cohen & Bowlus 9/4/07
SEP 04 2007
William A. Shaw Faxed by CA 9/4/07
Prothonotary/Clerk of Courts

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; ET AL. | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, this 4 day of Sept. 2007, oral argument on Plaintiffs' Motion for Clarification of Court Order Dated August 10, 2007/Motion to Preclude Evidence is scheduled for the 10th day of September 2007 in Clearfield County Courthouse, Courtroom 1 at 9:30 A.m.

BY THE COURT:

_____,J.

FILED

SEP 04 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/4/07

X You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | *Consolidated at Case No.: 2005-364-CD* |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |
| Defendants. | : | |

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|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | *Consolidated at Case No.: 2005-364-CD* |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; ET AL. | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, this 4 day of Sept. 2007, oral argument on Plaintiffs' Motion for Clarification of Court Order Dated August 10, 2007/Motion to Preclude Evidence is scheduled for the 10th day of September 2007 in Clearfield County Courthouse, Courtroom 1 at 9:30 A.m.

BY THE COURT:

_____,J.

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

SEP 04 2007

Attest. William L. Shaw Prothonotary/ Clerk of Courts

FAXED 9/4/07

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |
| Defendants. | : | |

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|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; ET AL. | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, this 30th day of August 2007, oral argument on Plaintiffs' Motion for Clarification of Court Order Dated August 10, 2007/Motion to Preclude Evidence is scheduled for the 31st day of August 2007 in Clearfield County Courthouse, Courtroom 1 at 11:00 a.m.

BY THE COURT:

Fredric J. Ammerman ,J.

FILED 1cc
09:40 BSP Atty Bowles
SEP 04 2007
GK
William A. Shaw
Prothonotary/Clerk of Courts

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | *Civil Action-Medical Professional Liability Action*<br>Case No. 2005-364 CD<br>*Consolidated at No. 2005-364-CD*<br><br>JURY TRIAL DEMANDED |

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SEP 05 2007
William A. Shaw
Prothonotary/Clerk of Courts

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|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | Case No. 2006-936 CD<br>*Consolidated at No. 2005-364-CD*<br>*Civil Action-Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED<br><br>Type of Pleading:<br>Answer to Plaintiffs' Motion for Clarification of Court Order of 8/10/07/ Motion to Preclude Evidence<br><br>Filed on Behalf of Defendant<br>***Gary D. Ott, M.D.***<br><br>Counsel of Record for This Party<br>***John W. Blasko, Esquire***<br>Pa. Supreme Court I.D. #6787<br>McQuaide, Blasko, Fleming & Faulkner, Inc.<br>811 University Drive<br>State College, PA 16801<br>(814) 238-4926<br>Fax: (814) 238-9624<br><br>Counsel for Adverse Party Plaintiffs<br>***Harry S. Cohen, Esquire***<br>***Todd D. Bowlus, Esquire*** |

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | Case No. 2006 - 936 CD<br><br>*Civil Action - Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED |

NOTICE TO PLEAD

TO: Plaintiffs

YOU ARE HEREBY notified to plead to the within Answer with New Matter within twenty (20) days from the date of service hereof or a default judgment may be entered against you.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorney for Defendant
Gary D. Ott, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: September 5, 2007

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | Case No. 2006 - 936 CD<br><br>*Civil Action - Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED |

***ANSWER OF DEFENDANT GARY D. OTT, M.D. TO PLAINTIFFS' MOTION FOR CLARIFICATION OF COURT ORDER DATED AUGUST 10, 2007/MOTION TO PRECLUDE EVIDENCE***

1. Paragraph 1 of the Motion is admitted to the extent that a bifurcated trial is to commence on September 17, 2007. The remainder of the paragraph as stated is denied In response, the following is averred:

[a] On April 18, 2007, in response to Plaintiffs' Motion for Extension of Time or Continuance, the Defendant filed an Answer and New Matter requesting bifurcation therein stating:

[i] "16. Bifurcation in this medical malpractice trial is appropriate in furtherance of judicial expediency, the convenience of the Court and parties, and to avoid prejudice to the Defendants. **The liability phase of the case would be limited to the period of treatment and hospitalization of the Plaintiff Angela Hale from the period of November 9, 2002 through November 13, 2002.** Thereafter, all medical care and treatment would relate to damages, in that, Ashtyn and Reganne were transferred to other hospitals and subsequently treated by other health care providers."

[ii] "17. **The factual issues of liability are not intertwined with the issues of damages in this case, and, the majority of witnesses could be separated and be unrelated to the damage portion of the case.** The following records deal solely with liability and are irrelevant to damages: (1) Office records of Dr. Ott; (2) Office records of Dr. Kush; (3) DRMC records of November 9, 2002; and, (4) DRMC records of November 10 to 13, 2002. All other records produced in this case would relate to damage issues."

. . .

[b] The Defendant requested and the Plaintiffs agreed to a Court Order that the trial be bifurcated separating the issues of liability from damages.

[i] On May 11, 2007, the Court entered the following Order inter alia:

"3. The parties have agreed that they will proceed to trial on September 17, 2007 and that the matter be bifurcated. **The jury trial scheduled to commence on said date shall be relative issues of alleged negligence and causation only.** Any legal determination relative to damages shall be done, if necessary, at a later proceeding."

Clearly, the Court stated the issues would be liability and causation. The questions for submission to the jury would be along the following lines:

[a] Were the Defendants negligent?

[b] If you find the Defendants negligent, was their negligence a substantial factor in bringing about the harm?

Stated another way, the specific issues in this case for the jury would be:

[a] Whether the Defendants were negligent in diagnosing and treating Mrs. Hale's pre-term labor?

[b] If so, was the Defendants' negligence a substantial factor in bringing about the premature birth of the twins?

2. It is admitted that an argument was heard on Plaintiffs' Motion In Limine to Limit Expert Testimony on August 10, 2007. The remainder of the allegations as to the basis of the Motion is denied. The Plaintiffs' Motion was to restrict Dr. Ott's **four different obstetricians experts** from testifying on the basis that under Pennsylvania Rules of Evidence the testimony of the **four obstetricians** was cumulative in nature. See Paragraph 7 of Plaintiffs' Motion in Limine to Limit Expert Testimony, attached as Exhibit "A" to Plaintiffs' instant Motion. The Plaintiffs' Motion was specifically directed to the limitation of the **number of obstetricians** that each party was to call, not all experts. Indeed, in Paragraph 8 of the Motion in Limine to Limit Expert Testimony, Plaintiffs stated:

> "The Plaintiffs and Dr. Ott should each be limited to **one expert obstetrician on the obstetrical negligence** issue . . . ." [Exhibit "A" to Plaintiffs' Motion]

**There was no Motion filed or before the Court to limit Defendant's expert, pathologist, who is not an obstetrician.**

3. It is admitted that the Court entered an Order on August 10, 2007, however, it is denied that Dr. Ott was prohibited from calling an expert pathologist as alleged by Plaintiffs. The Court stated that Dr. Ott was limited to two experts instead of four experts, which meant **obstetricians, not a pathologist**. This was in response to the Plaintiffs' Motion which clearly

pointed out that Dr. Ott had **four different obstetricians**. See Paragraph 5 of Plaintiffs' Motion in Limine to Limit Expert Testimony attached as Exhibit "A" to Plaintiffs' instant Motion There was no mention of Dr. Ott's expert pathologist who will not be testifying as to the standard of care, but rather only as to the interpretation of the pathology slides. Accordingly, Plaintiffs' representation that all of Dr. Ott's expert witnesses would be limited to two is misleading.

4. Paragraph 4 is denied. On June 28, 2007 by federal express, counsel for Defendant Ott served on Plaintiffs' counsel the report of Geoffrey Altshuler, M.D. dated March 30, 2007 and April 30, 2007, together with his CV, a copy of the letter being attached hereto and marked as Exhibit "I." Dr. Altshuler is not an obstetrician but rather an expert pathologist. Accordingly, Plaintiffs' representation that counsel for Dr. Ott expressed the intent for the first time at the Pre-Trial Conference to call Dr. Altshuler is inaccurate.

5. Paragraph 5 is denied. At no time during the course of the proceeding of this case did counsel for Dr. Ott represent to Todd Bowlus, co-counsel for the Plaintiffs or agree with him that only obstetricians would be testifying at trial. Counsel for Dr. Ott in his conversation with Mr. Bowlus indicated that he would not be calling Dr. Scher, a pediatric neurologist who had prepared a report which was provided to Plaintiffs' counsel on June 24, 2007. As a result of this conversation and representation by defense counsel, Dr. Scher's report was not attached to Defendant's Pre-Trial Memorandum filed with this Court as a witness to be called. Dr. Altshuler was listed as a witness and his report was attached to the Pre-Trial Memorandum. At the same time, Mr. Bowlus inquired as to whether Dr. Lyndon Hill, Magee Women's Hospital, an obstetrician, would be called and counsel for Dr. Ott responded that it had not yet been decided. However, since the argument of August 10, 2007, it was decided not to call Dr. Hill as an

obstetrician. Accordingly, Plaintiffs' representation in Paragraph 5 of its Motion is absolutely incorrect.

6. Paragraph 6 is denied. Paragraph 3 of Plaintiffs' Motion in Limine to Limit Expert Testimony, Exhibit "A" to Plaintiffs' instant Motion, states that the first trial will relate only to "whether the Defendants **deviated from the standard of care "causing**" a premature labor." Plaintiffs ignore that an essential element of liability as hereinafter set forth in a cause of action of medical malpractice liability is causation. The Plaintiffs are trying to place one inquiry before the jury by combining the two jury questions of whether there was a breach of the standard of care, (i.e. failure to prevent pre-term labor), and, if so, was the breach a substantial factor or legal cause of the harm (the premature birth).

7. Paragraph 7 is denied as being nonsensical. As indicated at jury selection, the Plaintiffs' counsel holds his firm out to the public as being experts in handling medical malpractice cases. (See Plaintiffs' counsel's website materials, attached hereto as Exhibit "II.") In this case, Plaintiffs' counsel filed the initial lawsuit and Complaint on March 16, 2005 for the first twin. Presumably, Plaintiffs' counsel, as being an experienced medical malpractice lawyer as represented to the public, would review the facts of the case, assemble a summary and list of medical care providers, hospitalizations, dates of treatment, and, acquire and procure all the pertinent and relevant medical records for review by the experts which Plaintiffs represent in their advertising is the procedure they follow. In any medical malpractice case involving birth injuries, it is essential and basic for any expert review to acquire as part of the records the pathological slides of the mother's placenta. In this case, presumably Plaintiffs' counsel acquired the DRMC records of Angela Hale for November 10 through November 13, 2002 which records included a pathological report on the mother's placenta and cord, which report as part of its

records refers specifically to the specimens of her placenta of both twins, as well as the cord, a copy of the pathology report is attached hereto and marked Exhibit "III." The pathology report prepared by Dr. Gregory Suslow on November 14, 2002 states the records including "representative sections are submitted in cassettes as follows: A1 and A2, Twin A placenta, membranes and cord; A3 and A4, Twin B placenta, membranes and cord; A5 fused membranes." Clearly any experienced Plaintiffs' malpractice attorney would consider whether these specimens as part of the record should be obtained and reviewed by their respective experts. Plaintiffs' counsel evidently exercised his judgment not to do so, but rather rely on Dr. Suslow's report.

By Order dated October 27, 2006 as amended by Order dated November 1, 2006, the Court established that the Plaintiffs produce their liability experts on or before March 31, 2007, and, the Defendants were to produce their expert reports on or before June 30, 2007. At no time did the Plaintiffs object to the scheduling of these deadlines nor did the Plaintiffs at any time request that the Order be modified to provide a provision for rebuttal reports.

The Plaintiffs' allegation that they recently decided to request pathology slides is a matter within their own professional judgment. Prior to filing this action, on May 6, 2004, Plaintiffs' counsel requested the medical records of the DuBois Regional Medical Center for Angela Hale. A copy of the counsel's letter is attached hereto marked Exhibit "IV." The Plaintiffs' counsel forwarded an authorization signed by Mrs. Hale dated May 6, 2004 which indicates that Plaintiffs' counsel wanted all reports, **including the pathology report**, a copy of the authorization is attached hereto and marked Exhibit "V." Accordingly, from this correspondence and authorization, the Plaintiffs had requested and were aware as experienced malpractice lawyers the importance of acquiring all records, including the pathology materials included in

Mrs. Hale's records. The Plaintiffs' counsel's request was made over three years ago prior to the dates that the expert reports were due in this case.

8. Paragraph 8 is a statement of Plaintiffs' position. The Plaintiffs have the pathology report of Dr. Gregory Suslow, the pathologist at DRMC who analyzed the pathological slides and prepared his report on Mrs. Hale's placenta on November 14,2002. The Plaintiffs, as experienced malpractice trial lawyers, should be aware that a placental pathologist would always be involved in baby cases. The placental slides were part of the medical records as indicated on the attached pathology report (Exhibit "III"), and, were provided by DRMC at the request of Defendants' counsel. Plaintiffs' counsel is in effect stating that they decided not to acquire the pathology slides and/or report, and, now that a report on the interpretation of the pathology slides has been given by the Defendant Ott, through his pathologist, Dr. Altshuler, Plaintiffs are attempting to shift the blame on defense counsel. Evidently, Plaintiffs' counsel made a judgment to rely on Dr. Suslow's report, and, as a result he should be bound by the decision.

9. Paragraph 9 is denied. The Plaintiffs have had the report of Defendant's pathology expert, Dr. Altshuler, since June 28, 2007, and, at no time until the present Motion have Plaintiffs raised any issue. Further, this Court by Order dated July 27, 2007 ordered that all "Motions and Petitions shall be filed by no later than August 16, 2007, together with an appropriate Brief."

The Plaintiffs failed to file such a Motion within the time limitations of the Court Order, even though they had Defendant's expert pathologist report for over two months..

## *NEW MATTER*

10. This Court by Order dated May 11, 2007 in providing bifurcation clearly pointed out the following:

> "The jury trial scheduled to commence on said date shall be relative issues of alleged **negligence and causation** only. Any legal determination relative to damages shall be done if necessary, at a later proceeding."

11. In order to set forth a prima facie case of malpractice, Plaintiffs must plead and prove the following four elements:

[a] a duty owed by the physician to the patient;

[b] a breach of the duty from the physician to the patient;

[c] that the breach of duty was the proximate cause or substantial factor in bringing about the harm suffered by the patient; and

[d] damages suffered by the patient that were the direct result of the harm.

Mitzelfelt v. Kamarian, 526 Pa. 54, 584 A.2d 888, 891 (1990) and Gregorio v. Zeluck, 451, Pa. Super. 154, 678 A.2d 810, 813 (1996). The first three elements go to the issues of negligence.

12. In accordance with the foregoing law, the questions to be presented to the jury are as follows:

[a] Was Dr. Ott negligent?

[b] If so, was Dr. Ott's negligence a substantial factor in bringing about the harm?

[c] Being fact specific to this case, the inquires would be [i] whether Dr. Ott failed to comply with the standard of care in diagnosing and treating pre-term labor, and, [ii] if so, did Dr. Ott's failure to treat or diagnose the pre-term labor cause the premature birth?

[d] The Defendant's expert, Dr. Geoffrey Altshuler is not an expert on the obstetric standard of care. Dr. Altshuler is a board certified pathologist who reviewed the tissue slides of the placenta, and determined the mother's placenta had an underlying pathology problem which reduced uteroplacental flow to the placenta.

[e] Based on Dr. Altshuler's interpretation of the slides, and his report, the Defendant's obstetrician and maternal/fetal experts, in their reports on the standard of care and causation relied on Dr. Altshuler's interpretation that there was a decrease in uteroplacental flow which was a disease process which caused the onset of premature birth which would not be affected by the medication which Dr. Ott prescribed or any failure by him to comply with a standard to prevent premature labor. The pre-term labor could not be stopped by Dr. Ott because of the disease process shown in the pathology slides as interpreted by Dr. Altshuler. This relates directly to the cause of the pre-term labor and premature birth which is the second question which the jury will be requested to answer, i.e., whether Dr. Ott's negligence, if any, was a substantial factor or legal cause of bringing about the premature births. Defendant Ott would be severely prejudiced by the exclusion of Dr. Altshuler's report.

[f] Plaintiffs' counsel attempts to overlook the fact that liability must be established through negligence and causation. The issue of damages would not be before the jury, and whether Dr. Altshuler's report does not address damage.

[g] The Plaintiffs filed this present Motion after the deadline set by the Court which has or will result in prejudice to Dr. Ott, in that his pathologist expert, Dr. Altshuler, is from Oklahoma City, Oklahoma. The Court has scheduled the argument on September 10, 2007, a week before trial; that travel arrangements for Dr. Altshuler for appearance at trial are frustrated because of Plaintiffs' Motion; that as a result of the Motion and its late scheduling, it will jeopardize providing for Dr. Altshuler's orderly appearance as a witness at time of trial depending on the Court's ruling; and that the Plaintiffs are aware that to exclude Dr. Altshuler's testimony would prejudice Defendant Ott's obstetrician experts' testimony and opinions, thereby, precluding Dr. Ott's defense of this case.

[h] The Plaintiffs by this instant Motion, as well as their other Motion to Limit Expert Testimony is an attempt to control and disrupt the defense in the presentation of their case, and, accordingly, the motion should be denied.

WHEREFORE, it is requested that Plaintiffs' Motion be dismissed as being filed untimely; that Dr. Ott's pathology expert be permitted to testify in accordance with his report on the interpretation of the placental slides, and, that in conformity with the Court's Order of May 11, 2006, the jury would consider "issues of alleged negligence and causation, i.e., [i] whether the Defendants were negligent in diagnosing and treating pre-term labor, and, [ii] if so, was the Defendants' negligence a substantial factor or legal cause of bringing about the premature birth.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

Dated: Sept. 5, 2007

By: _____

JOHN W. BLASKO
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
Gary D. Ott, M.D.

EXHIBIT "I"

**MCQUAIDE BLASKO** ATTORNEYS AT LAW

**811 University Drive, State College, Pennsylvania 16801-6699** **(814) 238-4926** **FAX (814) 234-5620**
**Additional offices in Hershey and Hollidaysburg** **www.mqblaw.com**

June 28, 2007

***Via Federal Express***
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

**In Re:** ***Hale vs. Ott, et al***

Gentlemen:

Enclosed please find our expert reports and CVs in the above-captioned matter.

[1] Report of James N. Martin, M.D. dated June 2, 2007 and CV;
[2] Report of Julian N. Robinson, M.D. dated June 14, 2007 and CV;
[3] Reports of Geoffrey Altshuler, M.D. dated March 30, 2007 and April 30, 2007 and CV;
[4] Report of Lyndon M. Hill, M.D. dated June 8, 2007 and CV;
[5] Report of Deborah Sommer, M.D. dated October 20, 2006 and CV.

Very truly yours,

McQUAIDE, BLASKO

By: JOHN W. BLASKO

JWB/nls
cc: David R. Johnson, Esquire [***Via Federal Express***]
[w/enc.]

MCQUAIDE, BLASKO, FLEMING & FAULKNER, INC.

**State College Office:** John W. Blasko R. Mark Faulkner David M. Weixel Steven S. Hurvitz James M. Horne Wendell V. Courtney Darryl R. Slimak Mark Righter Daniel E. Bright Paul J. Tomczuk Janine C. Gismondi John A. Snyder April C. Simpson Allen P. Neely Pamela A. Ruest Katherine V. Oliver Katherine M. Allen Wayne L. Mowery, Jr. Chena L. Glenn-Hart Livinia N. Jones Cristin R. Long Matthew T. Rogers Frederick R. Battaglia Anthony A. Simon Dominick J. Muracco

**Hershey Office:** Grant H. Fleming Maureen A. Gallagher Michael J. Mohr Jonathan B. Stepanian

**Hollidaysburg Office:** Thomas M. Reese J. Benjamin Yeager Sean M. Burke Michael P. Routch

John G. Love (1893-1966) Roy Wilkinson, Jr. (1915-1995) Delbert J. McQuaide (1936-1997)

EXHIBIT "II"

# Harry S. Cohen & Associates

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- David J. Lozier
- Todd D. Bowlus
- Therese M. Naimark, R.N., BSN

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Harry S. Cohen

## Harry S. Cohen



Harry Cohen has been obtaining substantial verdicts and settlements for his clients in the Pittsburgh and surrounding areas for two decades. A graduate of Northwestern University and the University of Pittsburgh School of Law, Mr. Cohen's earliest medical malpractice concentration was in defending physicians and hospitals until 1986 when he confined his practice to the representation of patients. Since then, Mr. Cohen has litigated virtually every aspect of medical malpractice, having recovered scores of millions of dollars for his clients in birth injury cases alone, his primary focus.

Mr. Cohen obtained one of the largest medical malpractice settlements ever in Allegheny County (Pittsburgh), the largest medical malpractice verdict ever in Beaver County, Pennsylvania, one of the largest ever birth injury medical malpractice verdicts in Morgantown, West Virginia and one of the largest medical malpractice verdicts ever in Armstrong County. In the appellate courts Mr. Cohen has helped forge important law favorable to patients' rights, including a landmark case establishing a patient's right to sue an HMO for medical malpractice.

Mr. Cohen is a frequent lecturer to other trial lawyers in medical malpractice and an author on medical malpractice topics. He has been selected by his peers for inclusion in Best Lawyers in America and as a Pennsylvania Super Lawyer. He has an AV (highest) rating from Martindale-Hubbell and he is certified by the National Board of Trial

Advocacy and The Million Dollar Advocates Forum. Mr. Cohen is a member of the Allegheny County Academy of Trial Lawyers, the American and Pennsylvania Trial Lawyers Associations and the National, State and Local Bar Associations.

Mr. Cohen and his wife Cathy reside with their two sons in O'Hara Township, PA. He is a Board Member and Vice President of Adat Shalom Synagogue, and active in various charitable endeavors and local youth sports.

## Admitted to the Bar

**Admitted to the Bar**

- 1979 – Pennsylvania
- 1980 – Ohio
- 2002 – West Virginia

## Education

**Education**

- Northwestern University (B.A., 1975)
- The University of Pittsburgh School of Law (J.D., 1979)

## Memberships/Affiliations

**Memberships/Affiliations**

- Allegheny County Bar Association
- Pennsylvania Bar Association
- Western Pennsylvania Trial Lawyers
- American Trial Lawyers Association
- American Bar Association
- Academy of Trial Lawyers of Allegheny County
- National Board of Trial Advocacy
- Best Lawyers in America
- Pennsylvania Super Lawyers
- Million Dollar Advocates Forum
- AV (highest) Martindale-Hubbell Rating

## Contact Information

**Contact Information**

- Tel: (412) 281-3000
- Fax: (412) 232-6688
- Email: hcohen@medmal1.com

About Us
Douglas L. Price

© 2006, Harry S. Cohen & Associates

- Contact Us
- Disclaimer

Harry S. Cohen & Associates, P.C.
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Tel: (412) 281-3000

design by smallTransport

EXHIBIT "III"

a

Dubois Regional Medical Center
Thu Nov 14, 2002 09:32 am
Surgical Case Number Report

Copy CHART



| | | | |
|---|---|---|---|
| Patient: | HALE,ANGELA | Age: 26Y | Sex: F |
| Unit#/Acct#: | D000417389/D0231400208 | Case#: | S02-6230 |
| Location: | DIS | Accn#: | 1681897 |
| Att Phys-Serv: | OTT,GARY D - *OBSTETRICS | Completed: | 11/14/02 0932 |
| Ordering Phys: | OTT,GARY D | Received: | 11/11/02 1501 |
| Order Dx: | NORMAL DELIVERY | Collected: | 11/11/02 1500 |

********** SURGICAL PATHOLOGY ORDER **********

Specimen(s): Placenta-Twins

A. Placenta-Twins

Surgeon/Physician: OTT

Specimen: PLACENTA TWIN A, PLACENTA TWIN B

Pre-op Diag: NONE GIVEN

Post-op Diag: NONE GIVEN

History: NONE GIVEN

GROSS:

Specimen labeled "twin placenta" is received in formalin. It consists of a monochorionic diamniotic twin placenta. The twin A is designated by a clamped cord and the twin B by a sutured cord.
The placenta measures 17.0 x 14.0 x 3.0 cm. The twin A umbilical cord measures 19.5 cm in length by up to 1.5 cm across and on cut section reveals three blood vessels. The twin B umbilical cord measures 16.0 cm in length by up to 1.4 cm across and on cut section also reveals three blood vessels. The fetal membranes are purple-gray, semi-transparent. The cotyledons on the maternal surface appear intact and on serial sectioning reveal a homogenous, spongy, dark red appearance.
Representative sections are submitted in cassettes as follows: A1 and A2 twin A placenta, membranes and cord; A3 and A4 twin B placenta, membranes and cord; A5 fused membranes.

Gross By: Dr. Gregory Suslow M.D.

AFTER MICROSCOPIC EXAMINATION:

DX:

Monochorionic, diamniotic slightly hypomature twin placenta.

Bilateral trivascular umbilical cords.



LABORATORY
Jose Costa M.D. Medical Director
Gregory Suslow M. D.

45

| | | | |
|---|---|---|---|
| Patient: | HALE,ANGELA | Age: 26Y | Sex: F |
| Unit#/Acct#: | D000417389/D0231400208 | Case#: | S02-6230 |
| Location: | DIS | Accn#: | 1681897 |
| Att Phys-Serv: | OTT,GARY D - *OBSTETRICS | Completed: | 11/14/02 0932 |
| Ordering Phys: | OTT,GARY D | Received: | 11/11/02 1501 |
| Order Dx: | NORMAL DELIVERY | Collected: | 11/11/02 1500 |

********** SURGICAL PATHOLOGY ORDER **********
(Continued)

No evidence of acute chorioamnionitis or funisitis.

Read By: Dr. Gregory Suslow M.D.

End of Report - 11/14/02 09:32am



LABORATORY
Jose Costa M.D. Medical Director
Gregory Suslow M. D.

46

Harry S.
Cohen
&
Associates, P.C.
LAW OFFICES

RECEIVED
MAY 12 2004

To PA. 5/12/04 PK 5/12/04

need Strips

May 6, 2004

66091
62
prelim fax 6/22/04 $76.16

417389/231406208 DE 11/3/02 (SG) Complete

OPE 231300146 11/9/02 (OPE) (6) Complete

Dubois Regional Medical Center
ATTN: Medical Records Correspondence
P.O. Box 447
Dubois, PA 15801

RE: Angela Hale
Date of Birth: 8/9/1976
Social Security No.: 177-62-1839
Date of treatment: November 10, 2002

Dear Sir/Madam:

Please be advised that our firm has been retained to represent the interest of Angela Hale. Mrs. Hale gave birth to twins on November 10, 2002 at your facility.

At this time we are requesting the a copy of the following record:

a) The complete 11/9/02 admission of Angela Hale, including Fetal Monitoring strips and Ultra Sound reports.

b) The complete 11/10/02 admission of Angela Hale, including Fetal Monitoring strips and Ultra Sound reports.

Enclosed please find an authorization for release of protected health information executed by Angela Hale for the release of these records to our office. If pre-payment is required please contact me so that I may remit a check as soon as possible.

Thank you for your attention to this matter.

Yours very truly

HARRY S. COHEN & ASSOCIATES

Denise Johnson

DENISE JOHNSON, PARALEGAL

/dej
enclosure

Two Chatham Center • Suite 985 • Pittsburgh, PA 15219 • Tel: (412) 281-3000 • Fax: (412) 232-6688
E-mail: hcohen@medmal1.com • http://www.medmal1.com

EXHIBIT "V"

Harry S. Cohen & Associates
LAW OFFICES

# AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

I, Angela Hale authorize DRMC MFM to release information from the record(s) of:

Patient Name: Angela Hale

Date of Birth: 8-9-1976 Social Security No.: 177-62-1839

Treatment date(s): 1-02 to 12-02

2. Information to be released: ALL RECORDS IN YOUR POSSESSION ✓

| | | | |
|---|---|---|---|
| OUTPATIENT | ✓ | EMERGENCY ROOM RECORD | ✓ |
| SUMMARY SHEET | ✓ | DISCHARGE SUMMARY | ✓ |
| HISTORY & PHYSICAL | ✓ | CONSULTATIONS | ✓ |
| PROGRESS REPORT | ✓ | DOCTORS' ORDERS | ✓ |
| OPERATIVE REPORT | ✓ | NURSES' NOTES | ✓ |
| DIAGNOSTIC REPORTS: X-RAYS, LAB, EKG., ECG.., PATHOLOGY | | | ✓ |
| OTHER: Reports | | | |

3. Information is to be released to: **HARRY S. COHEN & ASSOCIATES**
**985 TWO CHATHAM CENTER**
**PITTSBURGH, PA 15219**

4. The purpose of disclosure: Litigation

5. I understand that this consent is to include disclosure of:

- ☐ Alcohol and/or drug abuse record _____(initials)
- ☐ Sexually transmitted disease information _____(initials)
- ☐ Psychiatric records _____(initials)
- ☐ HIV/AIDS information _____(initials)

6. A photocopy of this authorization is to be considered as valid as the original

7. I understand that the information used or disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and may no longer be protected by Federal Law.

8. I understand that this authorization is subject to revocation at any time. A photocopy or facsimile of this authorization will be considered valid unless otherwise specified. I also understand and agree that this authorization will terminate as set forth above unless I revoke this authorization in writing. I understand that recipients may redisclose information which I have authorized them to receive.

SIGNATURE: X Angela M. Hale DATE: 5-6-04

OR NAME: Angela M. Hale

Relationship to patient of personal/legal representative signing for Patient: _____

Two Chatham Center • Suite 985 • Pittsburgh, PA 15219 • Tel: (412) 281-3000 • Fax: (412) 232-6688
E-mail: info@medmal1.com • http://www.medmal1.com

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | ) | *Civil Action-Medical Professional Liability* |
| | ) | Case No. 2005-364-CD |
| vs. | ) | *Consolidated at No. 2005-364-CD* |
| MICHAEL J. KUSH, M.D., et al., Defendants. | ) | JURY TRIAL DEMANDED |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, | ) | *Civil Action - Medical Professional Liability* |
| | ) | Case No. 2006 - 936 CD |
| | ) | *Consolidated at No. 2005-364-CD* |
| vs. | ) | |
| MICHAEL J. KUSH, M.D., et al., Defendants. | ) | JURY TRIAL DEMANDED |

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Answer of Defendant Gary D. Ott, M.D. to Plaintiffs' Motion for Clarification of Court Order dated August 10, 2007/Motion to Preclude Evidence in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 5th day of Sept., 2007, to the attorney(s) of record:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

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

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
Gary D. Ott, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**CERTIFICATE OF SERVICE OF COURT ORDER DATED SEPTEMBER 4, 2007 RE: HEARING DATE FOR PLAINTIFFS' MOTION FOR CLARIFICATION OF COURT ORDER/MOTION TO PRECLUDE EVIDENCE**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

September 6, 2007

**JURY TRIAL DEMANDED**

FILED
m/12:30 61 NO CC
SEP 10 2007
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

**CERTIFICATE OF SERVICE OF COURT ORDER DATED SEPTEMBER 4, 2007 RE: HEARING DATE FOR PLAINTIFFS' MOTION FOR CLARIFICATION OF COURT ORDER/MOTION TO PRECLUDE EVIDENCE**

I hereby certify that a true and correct copy of the foregoing **ORDER OF COURT DATED SEPTEMBER 4, 2007 RE: HEARING DATE FOR PLAINTIFFS' MOTION FOR CLARIFICATION OF COURT ORDER/MOTION TO PRECLUDE EVIDENCE** has been served on the 5th day of September 2007 to the following via facsimile:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By:_____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED
SEP 13 2007
0/10:30
William A. Shaw
Prothonotary/Clerk of Courts

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor | : | |
| -vs- | : | No. 05-364-CD |
| GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation | : | |
| AND | | |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor | : | |
| -vs- | : | No. 06-936-CD |
| GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation | : | |

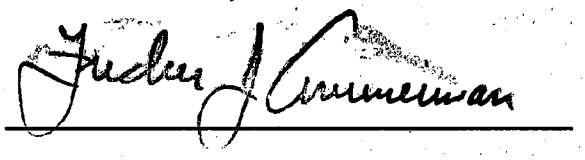
O R D E R

AND NOW, this 10th day of September, 2007, following argument on Plaintiffs' Motion for Clarification of Court Order dated August 10, 2007, and Motion to Preclude Evidence, it is the ORDER of this Court that the said Motions be and are hereby denied.

The Court notes that the provisions of the Court's Order of August 10, 2007, specifically Paragraph 4

which limits the Plaintiff to two (2) experts as opposed to four (4) experts, applies to obstetricians only. Paragraph 4 of said Order of August 10, 2007, shall not be construed as preventing the Defendant Dr. Ott from calling Dr. Geoffrey Altshuler as an expert witness at time of trial.

BY THE COURT,



President Judge

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County Courthouse**

# Fax

| | | | |
|---|---|---|---|
| **To:** | David R. Johnson, Esq. and Jeanette E. Oliver, Esq. | **From:** | William A. Shaw |
| **Fax:** | 412-232-3498 | **Date:** | 9/13/07 |
| **Phone:** | | **Pages:** | 4 |
| **Re:** | | **CC:** | |

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

**•Comments:**

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County Courthouse**

# Fax

**To:** John W. Blasko, Esq. and Allen P. Neely, Esq. **From:** William A. Shaw

**Fax:** 814-238-9624 **Date:** 9/13/07

**Phone:** **Pages:** 4

**Re:** **CC:**

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**•Comments:**

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County Courthouse**

# Fax

| | | | |
|---|---|---|---|
| **To:** | Harry S. Cohen, Esq. and Todd D. Bowlus, Esq. | **From:** | William A. Shaw |
| **Fax:** | 412-232-6688 | **Date:** | 9/13/07 |
| **Phone:** | | **Pages:** | 4 |
| **Re:** | | **CC:** | |

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**•Comments:**

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

FILED
SEP 13 2007
0/10:30/
William A. Shaw
Prothonotary/Clerk of Courts

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | : | |
| v. | : | No. 2005-364-CD |
| | : | Consolidated at No. 2005-364-CD |
| GARY D. OTT, M.D. ET AL., Defendants | : | |

Fax a Copy to Attys Cohen Blasko & Johnson

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, | : | |
| v. | : | No. 2006-936-CD |
| | : | Consolidated at No. 2005-364-CD |
| GARY D. OTT, M.D. ET AL., Defendants | : | |

ORDER

NOW, this 13th day of September, 2007, following argument and review of the briefs, it is HEREBY ORDERED that the Defendant's Motion to Preclude Testimony of Dr. George Cherian is DENIED. Plaintiff will be permitted to introduce evidence from Dr. Cherian's testimony only as it pertains to Angela Hale's previously experiencing preterm labor in 1996 and for no other purpose.

**BY THE COURT:**

**FREDRIC J. AMMERMAN**
President Judge

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County Courthouse**

# Fax

| | | | |
|---|---|---|---|
| **To:** | Harry S. Cohen, Esq. and Todd D. Bowlus, Esq. | **From:** | William A. Shaw |
| **Fax:** | 412-232-6688 | **Date:** | 9/13/07 |
| **Phone:** | | **Pages:** | 4 |
| **Re:** | | **CC:** | |

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**•Comments:**

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County Courthouse**

# Fax

**To:** John W. Blasko, Esq. and Allen P. Neely, Esq. **From:** William A. Shaw

**Fax:** 814-238-9624 **Date:** 9/13/07

**Phone:** **Pages:** 4

**Re:** **CC:**

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

**•Comments:**

Prothonotary
PO Box 549
Clearfield, PA 16830
Phone: 814-765-2641, Ext. 1330
Fax: 814-765-7659

**Clearfield County Courthouse**

# Fax

| | | | |
|---|---|---|---|
| **To:** | David R. Johnson, Esq. and Jeanette E. Oliver, Esq. | **From:** | William A. Shaw |
| **Fax:** | 412-232-3498 | **Date:** | 9/13/07 |
| **Phone:** | | **Pages:** | 4 |
| **Re:** | | **CC:** | |

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

**•Comments:**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation.

Defendants.

CIVIL DIVISION

No. 05-364-CD
**CONSOLIDATED WITH**
No. 06-936-CD

Issue No.

PRAECIPE TO ENTER JUDGMENT

Code: 007

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

Counsel of Record for This Party:

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

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

(412) 232-3400

FILED Atty pd. 20.00
OCT 09 2007 Notice to Attys Cohen and Blasko
William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE TO ENTER JUDGMENT

TO: PROTHONOTARY

Please enter judgment in favor of DuBois Regional Medical Center, one of the defendants, and against plaintiffs on the jury's verdict entered on September 24, 2007.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

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

**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 5th day of Oct., 2007:

Harry S. Cohen, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON, RHODES & COWIE, P.C.

David Johnson

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

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br>Defendants. | ) CIVIL DIVISION<br>)<br>) No. 05-364-CD<br>) **CONSOLIDATED WITH**<br>) No. 06-936-CD |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation.<br>Defendants. | |

NOTICE OF ORDER, DECREE OR JUDGMENT

TO: ( X ) Plaintiff ( ) Defendant ( ) Garnishee ( ) Additional Defendant

You are hereby notified that the following Order, Decree, or Judgment has been entered against you on October 9, 2007

( ) Decree Nisi in Equity.

( ) Final Decree in Equity.

( X ) Judgment of ( ) Confession ( X ) Verdict
( ) Default ( ) Non-Suit
( ) Non-Pros ( ) Arbitration Award

( ) Judgment is in the amount of $_____ 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
Thomson, Rhodes & Cowie, P.C.
1010 Two Chatham Center
Pittsburgh, PA 15219

PHONE: (412) 232-3400

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

FILED
SEP 17 2007
0/8.50/
William A. Shaw
Prothonotary/Clerk of Courts
No Cert Copies

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | *Civil Action-Medical Professional Liability Action*<br>Case No. 2005-364 CD<br>*Consolidated at No. 2005-364-CD*<br><br>JURY TRIAL DEMANDED |

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|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | Case No. 2006-936 CD<br>*Consolidated at No. 2005-364-CD*<br>*Civil Action-Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED<br><br>Type of Pleading:<br>Motion to Strike Plaintiffs' Untimely Expert Report and/or Preclude Inappropriate Expert Testimony<br><br>Filed on Behalf of Defendant<br>***Gary D. Ott, M.D.***<br><br>Counsel of Record for This Party<br>***John W. Blasko, Esquire***<br>Pa. Supreme Court I.D. #6787<br>McQuaide, Blasko, Fleming & Faulkner, Inc.<br>811 University Drive<br>State College, PA 16801<br>(814) 238-4926<br>Fax: (814) 238-9624<br><br>Counsel for Adverse Party Plaintiffs<br>***Harry S. Cohen, Esquire***<br>***Todd D. Bowlus, Esquire*** |

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

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | Case No. 2006 - 936 CD<br><br>*Civil Action - Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED |

***DEFENDANT GARY D. OTT, M.D. MOTION TO STRIKE PLAINTIFFS' UNTIMELY EXPERT REPORT AND/OR PRECLUDE INAPPROPRIATE EXPERT TESTIMONY***

AND NOW, comes Defendant Gary D. Ott, M.D. by and through his attorneys McQuaide, Blasko, Fleming & Faulkner, Inc. and avers the following:

1. This is a medical malpractice action alleging negligence concerning the management of Plaintiff-wife's pregnancy on or about November 9 and 10, 2002. Plaintiffs maintain that Defendant Ott should have administered medication to prevent preterm labor on November 9, 2002 and, again when Plaintiff-wife was admitted on November 10, 2002. This

case was bifurcated by Order of the Court dated May 11, 2007 and is currently scheduled for trial during the week of September 17, 2007 before the Honorable John K. Reilly, Jr., (S.L.). (A copy of the Court's Order of 5/11/07 is attached hereto as Exhibit "A.")

2. Pursuant to the Court's Order dated October 27, 2006, the deadline for the production of Plaintiffs' expert reports was set for no later than March 31, 200[7]. (A copy of the Court's Order 10/27/06 is attached hereto as Exhibit "B.")

3. Subsequent thereto, Plaintiffs filed a Motion for Extension of Time to File Expert Reports regarding two (2) damages experts that Plaintiffs indicated had evaluated the minor twins. By Order dated May 11, 2007, the Court granted Plaintiffs' Motion for Extension of Time to File Expert Reports "relative **only** to damage experts." The Court further that ordered with "regard to any experts on the issues of **negligence or causation**, the Court's prior Case Management Order will continue to be in effect." (Exhibit "A", Id.)

4. On June 28, 2007 by federal express, counsel for Defendant Ott served on Plaintiffs' counsel the reports of Geoffrey Altshuler, M.D. dated March 30, 2007 and April 30, 2007, together with his CV, a copy of the letter being attached hereto and marked as Exhibit "C.") Thus, there can be no doubt that Plaintiffs have been aware of Defendant Ott's intent to call Dr. Altshuler as a witness since at least as early as June 28, 2007. Any argument to the contrary must be rejected this Court.

5. Pursuant to the Court's Order dated July 27, 2007, a Pre-Trial Conference was scheduled for August 24, 2007 before the Honorable Fredric J. Ammerman. (A copy of the Court's Order of 7/27/07 is attached hereto as Exhibit "D.")

6. In advance of the above Pre-trial conference, the parties were instructed via Memorandum from the Court dated July 9, 2007 to submit their respective Pre-Trial Statements

one week prior to the date of the Pre-Trial Conference pursuant to Local Rule 212.4.(e)(see Court Memo 7/9/07 attached hereto as Exhibit "E", including Pre-Trial Memorandum Instruction Form attached thereto; see also Clearfield County Local Rules of Civil Procedure, Rule 212.4. Pre-Trial Conference.)

7. Local Rule 212.4 provides as follows:

> "(e) One week before the date set for the pre-trial conference each party shall submit to the Court and other counsel a pre-trial statement containing:
>
> . . .
>
> (3) A list of the names and addresses of all persons who may be called as witnesses, classifying them as liability and[or] damage witnesses
>
> (4) Medical reports of any doctor who treated, examined or was consulted in connection with the injuries complained of, and who may be called as a witness.
>
> (5) The reports of any expert whose opinion will be offered in evidence at the time of trial. Such report shall include the findings and conclusions of the expert."

(Clearfield County Local Rule 212.4(e)(3) -(5).

8. Accordingly, Defendant Ott's pathologist, Dr. Altshuler, was **listed** as a witness and his report was attached to Defendant Ott's Pre-Trial Memorandum. (A copy of Defendant Ott's Pre-Trial Memorandum dated August 15, 2007 is attached hereto as Exhibit "F.")

9. In turn, Plaintiffs produced timely expert reports on liability and attached same to their Pre-Trial Statement and Plaintiffs' First Supplemental Pre-Trial Statement for the Pre-Trial Conference held on August 24, 2007. (See Plaintiffs' Pre-Trial Statement and Plaintiffs' First Supplemental Pre-Trial Statement attached hereto as Exhibit "G.")

10. At no time did the Plaintiffs object to the scheduling of these deadlines nor did the Plaintiffs at any time request that the Order be modified to provide a provision for rebuttal reports. (See generally Record).

11. Further, this Court by separate Order dated July 27, 2007 ordered that all "Motions and Petitions shall be filed no later than August 16, 2007, together with an appropriate Brief. (A copy of said Order is attached hereto and marked Exhibit "H.")

12. As such, the Plaintiffs elected not to file such a Motion within the time limitations of the Court Order, even though they had Defendant Ott's expert pathologist report for almost 2 months. In fact, no such Motion has been filed to date.

13. Rather, on September 11, 2007, Defendant received a report of Dr. Sandra E. Reznik, who had not previously been identified by Plaintiffs in their Pre-Trial Statement or of record as an expert witness in this matter. (A copy of said report dated 9/9/07 is attached hereto as Exhibit "I.") Specifically, within subsection B of Section III of Plaintiffs' Pre-Trial Statement, Plaintiffs did **not** identify or reference Dr. Sandra E. Reznik as an expert to be presented at trial, nor was Dr. Reznik identified in Plaintiffs' First Supplemental Pre-Trial Statement. (See Exhibit "G")

14. Although Reznik's untimely report is dated September 9, 2007, the Plaintiffs did not provide a copy of the report to any of the parties until via facsimile at **4:59 p.m. on September 11, 2007**. This was despite argument before the Court that took place on September 10, 2007 regarding Plaintiffs' Motion for Clarification of Court Order dated August 10, 2007/Motion to Preclude Evidence, where, again, Plaintiffs did not raise any issue regarding the above deadlines (albeit long since passed). As the Court is aware, said Motion argued on the 10th sought to preclude Defendant Ott from presenting its pathologist expert, Dr. Geoffrey Altshuler,

who addressed the cause of the pre-term labor and premature birth, i.e. whether Dr. Ott's negligence, if any, was a substantial factor or legal cause of bringing about the premature births.

15. In this case, Plaintiffs' counsel filed the initial lawsuit and Complaint on March 16, 2005 for the first twin. In any medical malpractice case involving birth injuries, it is essential and basic for any expert review to acquire as part of the records the pathological slides of the mother's placenta. In this case, presumably Plaintiffs' counsel acquired the DRMC records of Angela Hale for November 10 through November 13, 2002, which records included a pathological report on the mother's placenta and cord, which report as part of its records refers specifically to the specimens of her placenta of both twins, as well as the cord. (A copy of the pathology report dated November 14, 2002 is attached hereto and marked as Exhibit "J.")

16. Indeed, prior to filing this action, on May 6, 2004, Plaintiffs' counsel requested the medical records of DRMC for Angela Hale. (A copy of Plaintiffs' counsel's letter is attached hereto as Exhibit "K.")

17. The Plaintiffs' followed with an authorization signed by Mrs. Hale dated May 6, 2004 which indicates that Plaintiffs' counsel wanted all reports, **including the pathology report**. (A copy of said authorization is attached hereto as Exhibit "L.") Thus, the Plaintiffs' counsel's request was made over 3 years ago prior to the dates the expert reports were due in this case.

18. Although it is anticipated that Plaintiffs will complain that they did not have the pathology slides for review by an expert to rebut Dr. Altshuler's report, the pathology report prepared by Dr. Suslow, DRMC pathologist, on November 14, 2002 states that the records include "representative sections are submitted in cassettes as follows; A1 and A2, TA placenta, membranes and cord; A3 and A4, TB placenta, membranes and cord; A5 fused membranes." Clearly any experienced Plaintiffs' malpractice attorney such as the instant counsel would

consider whether these specimens as part of the record should be obtained and reviewed by their respective experts. Plaintiffs' counsel evidently exercised his judgment not to do so, but rather relied on Dr. Suslow's report.

19. In this regard, it is apparent that Plaintiffs' litigation plan included presenting testimony from the DRMC pathologist, Dr. Gregory Suslow, **in that Dr. Suslow was identified as the 19th fact witness in Plaintiffs' Pre-Trial Statement**. (See subsection A, No. 19 of Section III of Plaintiffs' Pre-Trial Statement, Exhibit "G.") Moreover, Dr. Reznik expressly stated in her report that her "observations **are in complete agreement with those of Dr. Gregory Suslow**, the Dubois Regional Medical Center pathologist who signed out Angela Hale's slides originally." (See Exhibit "I, 2nd page.") As such, Plaintiffs' counsel's judgment to rely on Dr. Suslow should not be undone on the eve of trial.

20. Although defense counsel does not normally assert a Court Ordered deadline as a basis for dismissal of an untimely expert report, in this case Plaintiffs' untimely expert report has disrupted and interfered with the defense in its preparation of the case.

21. With respect to Orders of Court that govern the conduct and limits of discovery, as well as corresponding violations thereof, Pa.R.C.P. 4019(a)(1) provides for sanctions if "a party fails to serves answers, sufficient answers or objections to written interrogatories under Rule 4005" or "a party or person **otherwise fails to make discovery or to obey an order of court respecting discovery**." Pa.R.C.P. 4019(a)(1)(i)(viii) (emphasis supplied). Under Rule 4019, the Court may make an Order "refusing to allow the disobedient party to support or oppose designated claims or defenses, or **prohibiting him from introducing in evidence designated documents, things or testimony**, or from introducing testimony of physical or mental condition." Pa.R.C.P. 4019 (c)(2) (emphasis supplied).

22. Defendant Ott respectfully submits that an Order precluding Plaintiffs from submitting any untimely expert testimony and/or report[s] in support of their claims is clearly warranted herein. Rule 4019 authorizes the imposition of sanctions for failure to comply with discovery orders. As such, when a discovery sanction is imposed, the sanction must be appropriately compared to the violation of the discovery rules. See Jahanshahi, supra. In this regard, the majority of decisions involving discovery violation issues concern circumstances where the sanction was outright dismissal or evidentiary preclusion resulting in dismissal. See, e.g., Sahutsky v. Mychak, Geckle & Welker, P.C., 900 A.2d 866 (Pa. Super. 2006)(affirming trial court's dismissal where trial court did not find plaintiffs' excuse for disregard of court's discovery order to be reasonable or legitimate); Philadelphia Contributionship Ins. Co. v. Shapiro, 798 A.2d 781 (Pa. Super. 2002)(affirming trial court's dismissal of claims of law firm and its entities against insurer as a sanction for their discovery violations); Stewart v. Rossi, 681 A.2d 214, 217 (1996) (holding that heightened review is proper "since the dismissal of an action is the most severe sanction which a trial court may impose, the court must carefully balance the equities of the particular case and 'dismiss only where the violation of the discovery rules is willful and the opposing party has been prejudiced.'"); Croydon Plastics Co., Inc. v. Lower Bucks Cooling & Heating, 698 A.2d 625, 629 (Pa. Super. 1997)(discussing balancing of equities that have emerged in dismissal cases as "a necessary consideration, not a necessary prerequisite), appeal denied 553 Pa. 689, 717 A.2d 1028.

23. As review of the above cases reveals, even in cases where the evidentiary preclusion resulted in dismissal, the appellate courts have regularly imposed such drastic sanctions. See e.g. id. This must be **contrasted** to the instant matter where Plaintiffs have already produced timely expert reports, and, as a result, preclusion of the untimely Reznik report

would **not** result in dismissal of Plaintiffs' action. As such, the fact that preclusion will not result in dismissal of the instant action makes it all the more compelling that Plaintiffs must be precluded from submitting the untimely Reznik expert report.

24. And, Plaintiffs have no valid argument that they were unable to provide a pathologist report in a timely manner, particularly where they have been on notice of Defendant Ott's intent to present his own expert pathologist since June 28, 2007 (as also listed in Defendant Ott's Pre-trial Statement), not to mention that Plaintiffs identified DRMC pathologist Dr. Suslow in their Pre-trial Statement as a fact witness for presentation of their case. Further, Plaintiffs' counsel was aware since at least May 6, 2004 (Exhibit L) that Dr. Suslow's report, including the tissue slides were part of the records which Plaintiffs requested from the hospital. Where the sanction is not tantamount to dismissal of the action based on a party's inability to present expert testimony, preclusion of an untimely expert report is warranted. See Jahanshahi v. Centura Development Company, Inc., 816 A.2d 1179 (Pa. Super. 2003).

25. Indeed, Plaintiffs' counsel's agreement with the foregoing deadline for the production of expert reports is apparent where Plaintiffs have already complied with said deadline, having produced timely expert reports on liability and included same in their Pre-Trial Statement. As a matter of course, the discovery and expert report deadlines have long since passed and Plaintiff must not be permitted to rewrite the record regarding an issue of their own manufacture that improperly and unjustifiably prejudices the defense.

26. Further, it is within this Court's discretion to enforce Local Rules by precluding witnesses who are not listed in a party's pre-trial statement. See Gilbert v. Otterson 379 Pa.Super. 481, 550 A.2d 550, 555 (Pa. Super. 1988). In the case of Miller v. Brass Rail Tavern, Inc., 541 Pa. 474, 664 A.2d 525, 532 (note 5) (Pa. 1995), the Supreme Court addressed this very

issue, in the context of an unlisted trial expert. The Court referred to a prior Supreme Court opinion, that of Feingold v. Southeastern Pennsylvania Transportation Authority, 512 Pa. 567, 517 A.2d 1270 (1986), in providing an outline of the basic considerations a trial court should review:

> "(1) the prejudice or surprise in fact of the party against whom the excluded witnesses would have testified, (2) the ability of that party to cure the prejudice, (3) the extent to which waiver of the rule against calling unlisted witnesses would disrupt the orderly and efficient trial of the case or of other cases in the court, and (4) bad faith of [sic] willfulness in failing to comply with the court's order. (Feingold) at 574, 517 A.2d at 1273 (quoting Feingold v. SEPTA, 339 Pa.Super. 15, 21, 488 A.2d 284, 287 (1985))."

Id. The Court directed that a trial court should weigh these various factors in determining whether preclusion is appropriate. In this case, the defense should be afforded the protections of the Local Rule requiring disclosure of trial witnesses.

27. The eleventh hour filing of said expert report by the Plaintiffs has and/or will result in prejudice to Defendant Ott, in multiple respects. Here, prejudice to the defense is manifest in that the untimely expert report has been provided for the first time just six days (4:59 p.m. September 11, 2007) before the trial is scheduled to begin. Not only has the discovery period ended, but the uncertainty and ambiguity both with regard the scheduling and presentation of expert testimony is significant. This Court should not countenance Plaintiffs' attempt to undermine a fair presentation of the defense with surprise tactics. Defendant Ott justifiably relied on the experts identified by Plaintiffs in their Pre-Trial Statement for purposes of preparing for trial and cannot be expected to cure such prejudice on the eve of trial.

28. Further, Plaintiffs have taken advantage of the opportunity to assert new and improper allegations concerning the standard of care aspect of this matter. As such, Dr. Reznik has opined that but for the "delayed" care and treatment provided by the Defendants, "both twins

would not have suffered such grave consequences, including such severe injury to the central nervous system." (See Exhibit "I" attached hereto.)

29. As noted above, the Defendant requested and the Plaintiffs agreed to a Court Order that the trial be bifurcated separating the issues of liability from damages. On May 11, 2007, the Court entered the following Order, inter alia:

> "3. The parties have agreed that they will proceed to trial on September 17, 2007, and that the matter be bifurcated. The jury trial scheduled to commence on said date shall be relative issues of alleged negligence and causation only. Any legal determination relative to damages shall be done, if necessary, at a later proceeding."

(See Exhibit "A" attached hereto.)

30. Clearly, the Court stated the issues would be liability and causation, not damages. Thus, Reznik's opinion of "grave consequences, including such severe injury to the central nervous system" has no place in the trial of this action. Furthermore, Dr. Reznik also improperly sets forth a standard of care opinion when she states that but for the "delayed" treatment provided to Plaintiff-wife, the "twins would not have suffered such grave consequences." (See Exhibit "I".) As a result, any evidence and/or testimony by Dr. Reznik as to the care and treatment provided to Mrs. hale and/or the outcomes for the twins must be prohibited at trial.

31. The Plaintiffs' bad faith is obvious and significant. In this medical malpractice action, there could be no question regarding the necessity of providing expert report[s] based upon the nature of the allegations set forth within Plaintiffs' Complaint. Likewise, there could be no question that Plaintiffs have been provided more than sufficient opportunity to conduct the necessary investigations and produce the expert report[s] that are required to permit this case to proceed, and, moreover, had already done so at the time of the Pre-Trial Conference on August

24, 2007. And, the negligence asserted by Plaintiffs has certainly not changed since this Court's Order setting discovery and expert report deadlines.

32. Plaintiffs did not request an extension of time (other than that granted by the Court with regard to the separate issue of damages) or raised by motion any valid extenuating circumstances that have precluded Plaintiffs from producing the required expert testimony in support of their claims, nor would same have been proper given the generous nature of the aforementioned deadline and Plaintiffs' opportunity to request modification of said order and/or file the appropriate motion to bring the issue before the Court in a timely manner in accordance with the Rules of Civil Procedure and Clearfield County's Local Rule 212.4. Plaintiffs' must be prohibited from transforming their failures in these regards into a weapon against the defense.

33. Simply stated, Plaintiffs have not only failed, without any justifiable excuse, to abide by this Court's Order governing production of expert reports, but also failed to comply with the Court's rules governing pre-trial conferences and the parties' pre-trial statements, thus mandating the preclusion of the untimely report of Dr. Reznik submitted on Plaintiffs' behalf, as a matter of law. The Plaintiffs' attempt to thwart and disrupt the defense in the presentation of their case should not be countenance by the Court, and, accordingly, the Plaintiffs be precluded the utilizing the expert report of Dr. Sandra Reznik, dated September 9, 2007, and from presenting any testimony in accordance therewith.

WHEREFORE, Defendant Gary D. Ott, M.D., respectfully requests that this Honorable Court enter an Order precluding Plaintiffs from the introduction into evidence of Sandra E. Reznik, M.D.'s untimely expert report dated September 9, 2007 and from presenting any testimony based thereon.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

Dated: Sept 14, 2007

By: _____
JOHN W. BLASKO
FREDERICK BATTAGLIA
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
Gary D. Ott, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor | : | |
| VS. | : | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation | : | |

O R D E R

NOW this 11th day of May, 2007, following argument and discussion as will appear of record this date, it is the ORDER of this Court as follows:

1. The Plaintiffs' Motion for Extension of Time to File Expert Reports is hereby granted relative only to damage experts. In regard to any experts on the issues of negligence or causation, the Court's prior case management Order will continue to be in effect.

2. The Plaintiffs' Motion to Dimiss Case 2006-936-CD without prejudice is hereby denied as is any request for continuance of the previously scheduled jury trial and the case of both minor Plaintiffs will proceed.

3. The parties have agreed that they will proceed to trial on September 17, 2007, and that the matter be

bifurcated. The jury trial scheduled to commence on said date shall be relative issues of alleged negligence and causation only. Any legal determination relative to damages shall be done, if necessary, at a later proceeding.

BY THE COURT,

/S/ Fredric J Ammerman

President Judge

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

MAY 14 2007

Attest. Prothonotary/ Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor | : | |
| VS. | : | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult ind; GARY D. OTT, M.D., an adult ind; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation | : | |

O R D E R

AND NOW, this 27th day of October, 2006, relative the Plaintiffs' and Defendants' Motions to Compel Expert Reports, wit the parties being in agreement for the entry of a case management order, it is the ORDER of this Court as follows:

1. Plaintiffs shall produce their liability expert reports on behalf of Reganne Hale and Ashtyn Hale on or before March 31, 2006;

2. The Defendants shall produce their expert reports on or before June 30, 2006;

3. The case shall be placed on the Civil Trial List for the Fall 2006 Term of Court;

4. Call of the Civil List shall be held on July 26, 2007, at 11:00 a.m;

5. Pretrial Conference shall be held at a time to be determined on the 17th day of August, 2007, at a time to be

determined;

6. Jury Selection shall be held on 28th day of August, 2007, at 9:00 a.m;

7. Jury Trial of eight (8) days in length shall be scheduled at some time between September and December 2007.

BY THE COURT,

/s/ Fredric J. Ammerman

President Judge

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

OCT 31 2006

Attest.

Prothonotary/
Clerk of Courts

**McQUAIDE BLASKO** ATTORNEYS AT LAW

**811 University Drive, State College, Pennsylvania 16801-6699** **(814) 238-4926** **FAX (814) 234-5620**
**Additional offices in Hershey and Hollidaysburg** **www.mqblaw.com**

June 28, 2007

***Via Federal Express***
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

**In Re:** ***Hale vs. Ott, et al***

Gentlemen:

Enclosed please find our expert reports and CVs in the above-captioned matter.

[1] Report of James N. Martin, M.D. dated June 2, 2007 and CV;
[2] Report of Julian N. Robinson, M.D. dated June 14, 2007 and CV;
[3] Reports of Geoffrey Altshuler, M.D. dated March 30, 2007 and April 30, 2007 and CV;
[4] Report of Lyndon M. Hill, M.D. dated June 8, 2007 and CV;
[5] Report of Deborah Sommer, M.D. dated October 20, 2006 and CV.

Very truly yours,

McQUAIDE, BLASKO

By: JOHN W. BLASKO

JWB/nls
cc: David R. Johnson, Esquire [***Via Federal Express***]
[w/enc.]

McQUAIDE, BLASKO, FLEMING & FAULKNER, INC.

State College Office: John W. Blasko R. Mark Faulkner David M. Weixel Steven S. Hurvitz James M. Horne Wendell V. Courtney Darryl R. Slimak Mark Righter Daniel E. Bright Paul J. Tomczuk Janine C. Gismondi John A. Snyder April C. Simpson Allen P. Neely Pamela A. Ruest Katherine V. Oliver Katherine M. Allen Wayne L. Mowery, Jr. Chena L. Glenn-Hart Livinia N. Jones Cristin R. Long Matthew T. Rogers Frederick R. Battaglia Anthony A. Simon Dominick J. Muracco

Hershey Office: Grant H. Fleming Maureen A. Gallagher Michael J. Mohr Jonathan B. Stepanian

Hollidaysburg Office: Thomas M. Reese J. Benjamin Yeager Sean M. Burke Michael P. Routch

John G. Love (1893-1966) Roy Wilkinson, Jr. (1915-1995) Delbert J. McQuaide (1936-1997)

[redacted]

Exhibit D

[redacted]

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE as parents and natural guardians of REGANNE HALE, a minor and ASHTYN HALE, a minor,<br>Plaintiffs | * | |
| vs. | * | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult individual, GARY D. OTT, an adult individual, YOO, TAI Y., M.D., and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br>Defendants | * | |

**ORDER**

AND NOW, this 27th day of July, 2007, it is the ORDER of the Court that a Pre-Trial Conference in the above matter shall be held on the **24th day of August, 2007, in Chambers at 9:30 o'clock a.m.**

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.

JUL 27 2007

Attest. William L. Ammerman
Prothonotary/
Clerk of Courts

Office of Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
814-765-2641

# Memo

To: Counsel

From: Ronda J. Wisor, Deputy Court Administrator

CC: Daniel Nelson, Court Administrator

Date: 7/9/07

Re: 2007 Fall Civil Trial List

---

Enclosed you will find a copy of the Civil Trial Lists for the *Fall* 2007 Term. Civil Call will be held on **Thursday, July 26, 2007,** at 11:00 A.M. in Court Room No. 1. All attorneys who have a case on the list must be present at Call.

Pre-Trial Conferences will be held on **Friday, August 24, 2007** for both Judges and again on **Monday, August 27th** for Judge Cherry. The time for Pre-Trial Conferences will be selected at the Civil Call. Trial dates will be set at the Pre-trial conference with term commencing September through December.

Pursuant to Local Rule 212.4e, your Pre-Trial Statement must be submitted one week prior to the date of the Pre-Trial Conference and should be mailed or delivered to me with copy to opposing counsel. For your convenience, a Pre-Trial Memorandum Instruction Form is also enclosed.

Jury Selection will be held on **Tuesday, August 28, 2007,** beginning at 9:00 A.M. in Court Room No. 1 for both Judge Ammerman and Judge Cherry.

The next term of Civil Court will be the *Winter* 2008 List. This list closes on Friday, November 30, 2007 with Pre-Trial Conferences and Jury Selection to be held in January 2008. (dates to be announced)

If you have any questions, please feel free to call me at 814-765-2641, Ext. 1300.
Thank you.

**FORM OF PRE-TRIAL MEMORANDUM**
**FOR CLEARFIELD COUNTY**

The Court will expect the following in the nature of a Pre-Trial Memorandum* one week prior to the date of the Pre-Trial Conference.

1. A brief factual statement of the claim or defense. (This shall include all material facts to be proven by competent evidence.)

2. A list of all exhibits to be offered in evidence.

(a). A copy of all reports containing findings or conclusions of any physician who has treated, examined or has been consulted in connection with the injuries complained of, and whom a party expects to call as a witness at the trial of the case.

(b). A copy of all reports containing the substance of the facts, findings, opinions and a summary of the grounds or reasons for each opinion of any expert whom a party expects to call as a witness at trial.

3. Names and addresses of all witnesses expected to be called. Said witnesses shall be classified as liability, medical or damage witnesses.

4. A statement of the legal theory upon which the right of recovery or defense is predicted, which shall include citation of the authorities relief upon.

5. A brief description of the damages claimed and the basis therefor. There should be included a brief statement of:

(a). The principal injury or injuries sustained.
(b). Hospitalization and convalescence.
(c). Present disability.
(d). A summary of the special monetary damages.
(Include a detailed statement of loss of earnings to date and a detailed statement as to loss of future impairment of earning capacity, total medical expenses, property damages, and miscellaneous expenses.)

6. Any extraordinary evidentiary problems shall be set forth and briefed together with authorities.

7. A list of stipulations which the opposition reasonably can be expected to agree to for the purpose of avoiding the necessity of proof of matters as to which there is no basic dispute.

8. All special Points for Charge which the party wishes the court to charge on, together with authority therefor.

9. Estimated time for trial.

Counsel must be prepared to fix specific dates for trial at the Pre-Trial Conference.

***PLEASE NOTE: The original Pre-Trial Memorandum should be sent directly to the COURT ADMINISTRATOR'S OFFICE, with copies forwarded to opposing counsel.**

(c) directing that a further status conference be held within ninety (90) days.

Adopted April 13, 1987, effective June 15, 1987. Amended Nov. 9, 1994, effective January 1, 1995.

## RULE 212.2. PRAECIPE FOR TRIAL

(a) Either party may file a praecipe to list the case for trial upon filing the following certificate:

(1) that no motions are outstanding and that discovery has been completed and the case is ready for trial; or

(2) that no motions are outstanding and that an order of the Court has been entered limiting the discovery to a period ending more than thirty (30) days prior to the filing of the praecipe; and

(3) whether the case is to be heard jury or non-jury; and

(4) that notice of the praecipe has been given to the attorney or attorneys representing the other parties.

(b) Any party objecting to the case being listed for trial shall file his motion to strike the case from the trial list within seven (7) days after receiving notice of the praecipe from the other party. Such motion shall:

(1) set forth whether the other party has complied with subsection (a) of this rule;

(2) set forth whether the action has been listed for trial previously; and

(3) set forth the basis why the case should be stricken from the trial list;

(c) In the event the Court strikes the action for any reason other than the failure to comply with subsections (a)(1) or (2) of this Rule, the action shall be listed by the Court Administrator on the next list without further action by the parties. In the event the Court strikes the action from the trial list for failure to comply with subsection (a)(1) or (2) of this rule, the case will not be listed unless one of the parties files a praecipe for trial.

Adopted April 13, 1987, effective June 15, 1987. Amended Nov. 9, 1994, effective January 1, 1995.

## RULE 212.3. CALL OF THE TRIAL LIST

The trial list shall be called on a date fixed by the Court which shall be at least twenty (20) days from date of the close of trial list and at least two weeks prior to the scheduling of pre-trial conferences.

Adopted April 13, 1987, effective June 15, 1987. Amended Nov. 9, 1994, effective January 1, 1995.

## RULE 212.4. PRE-TRIAL CONFERENCE

(a) For purposes of this rule, "pre-trial" shall mean a type of conference described in Pa.R.C.P. No. 212.

(b) Except as otherwise ordered by the Court, pre-trial conferences shall be held at times directed by the Court upon the call of each trial list consistent with Rule 212.3. Pre-trial conferences are extended to all actions, whether jury or non-jury, not subject to arbitration under Rule 1301.

(c) Any application for continuance of the conference shall be addressed to the Court Administrator.

(d) Counsel attending the pre-trial conference must have complete authority to stipulate on all items of evidence and admissions and must have full settlement authority. If counsel does not have authority then the person or corporation having the actual interest in the case, whether as a party, as an insurance carrier or otherwise, shall be personally present at the pre-trial conference.

(e) One week before the date set for the pre-trial conference each party shall submit to the Court and other counsel a pre-trial statement containing:

(1) A narrative statement of the facts that will be offered by oral or documentary evidence at trial, and a statement of any unusual questions of evidence anticipated with respect to proof of such facts.

(2) A statement of any unusual question of law anticipated with respect to the issues in the case. All such questions shall be presented with a statement of authority supporting the position taken with respect to such unusual questions of law.

(3) A list of names and addresses of all persons who may be called as witnesses, classifying them as liability and/or damage witnesses.

(4) Medical reports of any doctor who treated, examined or was consulted in connection with the injuries complained of, and who may be called as a witness.

(5) The reports of any expert whose opinion will be offered in evidence at the time of trial. Such report shall include the findings and conclusions of the expert.

(6) A list of all items of special damages which the party intends to prove, including medical bills, property damage bills (or estimates if there are no bills) and loss of earnings. Claims for loss of earnings shall set forth the names of employers, dates of absences and rates of pay. If the party is self-employed, information which forms the basis for the loss of income attributable to the injuries shall be supplied.

(7) A list of all exhibits which the party may use at trial.

(8) A copy of any photographs, plan or plot proposed to be introduced into evidence.

(9) An estimate of the length of time which will be required to try the case.

(10) A list of proposed stipulations or special arguments which would simplify the trial of the case.

(f) Once a pre-trial conference has been held, a party shall not have the right to call any witness where the witness was not listed in the pre-trial statement, to call an expert witness where the report was not appended to the pre-trial statement or to present any exhibit, photograph, plot or plan not listed or appended in the pre-trial statement unless application is made to the Court setting forth the reasons the witness, the report, the exhibit, photograph, plot or plan was not listed or appended to the pre-trial statement and, after argument, the Court, in the exercise of its discretion, permits the use of said witness, report, exhibit, photograph, plot or plan at trial. Once the trial commences, no witness, exhibit, photograph, plot or plan shall be used by either party, except as rebuttal, unless they were listed in the pretrial statement or their use has been authorized by special leave of court.

(g) The Court shall enter an order at the conclusion of the pre-trial conference setting forth the time of the selection of the jury, the day certain for the commencement of the trial, and any stipulations or any special agreements as to the case agreed upon by the parties.

Adopted April 13, 1987, effective June 15, 1987. Amended Nov. 9, 1994, effective January 1, 1995.

## RULE 212.5. SETTLEMENT CONFERENCE

(a) In any action, the Court, on written application of any party, may list the case for a settlement conference if the following requirements are met:

(1) Praecipes for trial have been filed with the Prothonotary.

(2) All preliminary motions have been resolved.

(3) All counsel involved in the case agree to the submission of the case.

(4) All counsel agree there is a reasonable chance of settlement.

(5) All discovery has been completed.

(b) The name of the insurance carrier must be disclosed and a representative of the insurance carrier must be present at the settlement conference with unlimited authority.

(c) The Plaintiffs and Defendants, if there is no insurance, in all cases listed must be present at the settlement conference.

(d) In order to expedite the preparation of the settlement conference list, counsel are required to submit the following information:

(1) Caption of case, term and number.

(2) Companion case, if any; and number.

(3) Date praecipe for trial was filed.

(4) Names of all counsel involved in the case.

(5) Names of insurance carriers.

(6) Names of insurance company representatives who attend conference.

(7) Policy limits of applicable insurance, if any.

(e) Counsel shall submit a memorandum to the judge before whom the case is scheduled at least ten (10) days prior to the scheduled conference. The memorandum is to be submitted on forms available in the Court Administrator's office and is to include current medical reports on behalf of both plaintiff and defendant.

(f) The Court Administrator shall maintain a list of those cases ready for settlement conference on the basis of the written application made under these rules, said list to be maintained on a chronological priority basis in the order of receipt of application.

(g)(1) Counsel shall be notified at least fifteen (15) days in advance of settlement conference of the scheduling thereof.

(2) Settlement conference memoranda shall include, but no be limited to a statement of facts, damages, stipulations desired, witnesses, negotiations and any unusual law.

(3) Failure to file a memorandum in accordance with these rules and/or failure to promptly attend the settlement conference may be deemed to be contempt of Court and subject to such sanctions as the Court may impose.

(h)(1) The settlement conference judge may request part of the time alone with each attorney in order to discuss strengths and weaknesses of each side of the case.

(2) The settlement conference judge shall retain jurisdiction over the case for settlement purposes until the time of pre-trial. After the settlement conference, written responses to the judge's recommendation for settlement must be forwarded to him within a period of time designated by the judge, which response shall include the highest offer of the defendant(s) and the lowest demand by the plaintiff(s) along with the reasons for such responses.

(3) Such further attempts to settle the case as the settlement conference judge deems appropriate shall be instituted by said judge after the completion of the requirements of (h)(1) and (2) of this Rule, including but not limited to additional settlement conferences.

(i) Where the case has been assigned to one judge for trial, the other judge or a judge specially assigned shall be assigned as the settlement conference judge.

Adopted April 13, 1987, effective June 15, 1987. Amended Nov. 9, 1994, effective January 1, 1995.

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | *Civil Action-Medical Professional Liability Action*<br>Case No. 2005-364 CD<br>*Consolidated at No. 2005-364-CD*<br><br>JURY TRIAL DEMANDED |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | Case No. 2006-936 CD<br>*Consolidated at No. 2005-364-CD*<br>*Civil Action-Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED<br><br>Type of Pleading:<br>PRE-TRIAL MEMORANDUM<br><br>Filed on Behalf of Defendant<br>***Gary D. Ott, M.D.***<br><br>Counsel of Record for This Party<br>***John W. Blasko, Esquire***<br>Pa. Supreme Court I.D. #6787<br>McQuaide, Blasko, Fleming & Faulkner, Inc.<br>811 University Drive<br>State College, PA 16801<br>(814) 238-4926<br>Fax: (814) 238-9624<br><br>Counsel for Adverse Party Plaintiffs<br>***Harry S. Cohen, Esquire***<br>***Todd D. Bowlus, Esquire*** |

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

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|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |

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|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | Case No. 2006 - 936 CD<br><br>*Civil Action - Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED |

**PRETRIAL MEMORANDUM OF DEFENDANT GARY D. OTT, M.D.**

## I. *PRELIMINARY STATEMENT*

This is a medical malpractice action which was bifurcated by Order of the Court May 11, 2007.

## II. *NARRATIVE*

Plaintiff-wife was first seen by Dr. Ott on June 13, 2002. She had given a history of a miscarriage at 4 weeks gestation, a molar pregnancy at 3½ months, and, a vaginal delivery in

1996 of a full term child during which she alleged there was a diagnosis of preterm labor. Her estimated date of delivery was February 3, 2003.

Dr. Ott followed her monthly through October 31, 2003. On August 22, 2002 as part of the routine prenatal laboratory testing she had an elevated maternal serum alpha-fetoprotein ("AFP") which may indicate that a pregnancy is at increased risk for certain defects. Because of the elevated AFP she was referred to Dr. Kush, a maternal-fetal specialist who, as a result of a sonogram on September 10, 2002, determined there was a twin gestation appropriately growing. Dr. Kush saw her on October 9th and November 6, 2002, and, each time concluded the babies were properly growing.

At 28 weeks on November 9, 2002 at approximately 12:00 p.m., Plaintiff-wife went to DRMC's Obstetric Outpatient Department where she was seen by Dr. Ott. Dr. Ott did a vaginal examination and found the cervix was 3 cm. long, medium firm-high posterior which means there were no changes in the cervix. The length of the cervix indicated there was no true labor. Fetal monitoring was applied, and, the babies had appropriate heart rates. She remained in the Department for observation, and, at 3:14 p.m., another vaginal exam revealed was no change in the cervix, no bloody show or leakage of fluid. As a result, she was discharged to home with instructions to be confined to bed rest, and, call Dr. Ott if there was any vaginal bleeding, her water broke, if she had any contractions, if she had severe abdominal pain, there were decreased fetal movements, any difficulty in urinating, any pressure or burning on urination.

She did not call Dr. Ott the remainder of November 9th or during the daytime of November 10th. On November 10th at approximately 4:45 p.m. she returned to DRMC complaining of increased frequency and irregular crampy pelvic pain. At 5:30 p.m. a cervical exam was performed, and, it was noted that there were no changes from the prior day. Again, the

cervix was closed with adequate length meaning there was no movement of the babies towards birth. At 6:05 p.m. Dr. Ott was notified and the nurse advised him of her exam assessment. Dr. Ott ordered Terbutaline to treat the symptomatic contractions in an attempt to reduce her pain and provide comfort. Terbutaline relaxes the uterine muscles, and, the effect is to reduce pain. At approximately 7:37 p.m. it was noted that there were no contractions recorded on the external monitor.

At 8:00 p.m. Dr. Ott was notified that Plaintiff-wife was having contractions every three to four minutes with pain, and, that she had requested pain medication. Dr. Ott came to the hospital at 8:14 p.m. and decided to admit her for observation since she complained of intense contractions. A vaginal exam by Dr. Ott at 8:20 p.m. revealed that her cervix had now dilated 3-4 cm. As a result, he ordered magnesium sulfate which is called a tocolytic medication which is supposed to relax the muscles of the uterus, thereby preventing labor and delivery.

At 9:17 p.m. Plaintiff-wife complained of rectal pressure, and, Dr. Ott's cervical exam revealed the cervix had dilated 7 cm. despite the aggressive efforts of administering the medication to stop the labor. Accordingly, Dr. Ott recommended a primary cesarean section. The NICU was notified. A viable female infant Baby "A" weighing 1,136 grams, and, a viable female Baby "B" weighing 1,228 grams were delivered.

Both babies remained hospitalized over the next couple of months as a result of conditions related to their premature birth.

The Plaintiffs maintain that Dr. Ott should have administered medication to prevent preterm labor on November 9th, and, again when Plaintiff-wife was admitted on November 10th. However, the standard of care is that such medication is not administered unless there is a diagnosis of preterm labor. This diagnosis can only be made if there are changes in the cervix

(meaning that it dilates), and, there are regular contractions. Once this occurred, Dr. Ott immediately administered medications in an attempt to prevent preterm labor. The medications were not effective.

## III. *WITNESSES*

Some or all of the following witnesses are expected to be called:

1. Plaintiffs

2. Gary D. Ott, M.D., Defendant

3. Michael Kush, M.D.
922 Chestnut Avenue
DuBois, PA 15801

4. Kathryn Raybuck, R.N. (liability)
DRMC
DuBois, PA 15801

5. Desiree Fremer, R.N. (liability)
DRMC
DuBois, PA 15801

6. Karen Nelson, R.N. (liability)
DRMC
DuBois, PA 15801

7. Sean Welsh, R.N. (liability)
DRMC
DuBois, PA 15801

8. Marjorie Raybuck [Liability]
DRMC
DuBois, PA 15801

9. Denise Zermell [Liability]
DRMC
DuBois, PA 15801

10. Judy Wixiens [Liability]
DRMC
DuBois, PA 15801

11. R. George Cherian, M.D.
803 West Mahoning Street
Punxsutawney, PA 15767

12. James Nello Martin, Jr., M.D.
2101 Eastover Drive
Jackson, MS 39211
[Expert Report dated June 2, 2007 and Curriculum Vitae attached]

13. Julian N. Robinson, M.D.
Brigham & Women's Hospital
75 Francis Street
Boston, MA 02115
[Expert Reports dated June 14 and July 14, 2007 and Curriculum Vitae attached]

14. Deborah L. Sommer, M.D.
Magee Women's Hospital
Pittsburgh, PA
[Expert Report dated October 20, 2006 and Curriculum Vitae attached]

15. Lyndon M. Hill, M.D.
Magee-Women's Hospital
300 Halkert Street
Pittsburgh, PA 15213
[Expert Report dated June 8, 2007 and Curriculum Vitae attached]

16. Geoffrey Altshuler, M.D.
721 NW. 15th Street
Oklahoma City, OK 73103
[Expert Reports dated March 30 and April 30, 2007 and Curriculum Vitae attached]

Defendant Dr. Ott reserves the right to amend this list and call any and all witnesses listed in any of the parties' Pretrial Memoranda filed in this case.

## IV. *EXHIBITS*

The following exhibits may be used:

1. Gary D. Ott, M.D. office records

2. Michael Kush, M.D. office records

3. DRMC hospital records for admissions of November 9 and 10, 2003

4. R. George Cherian, M.D. office records

5. Punxsutawney Hospital records of December 3-5, 1996 and December 8-30, 1996

6. Deposition transcripts of Plaintiffs, Gary D. Ott, M.D., Michael Kush, M.D., Kathryn Raybuck, R.N., and, Desiree Fremer, R.N.

7. Reports and curriculum vitae of Dr. Martin, Dr. Robinson, Dr. Sommer, Dr. Hill, Dr. Altshuler

8. Curriculum vitae of Gary D. Ott, M.D.

9. Policies of DRMC

10. Models, anatomical drawings and diagrams, illustrations, power points, enlargements, and slides

11. Pathology slides of Reganne and Ashtyn

## V. *LEGAL THEORY*

Dr. Ott performed appropriately within the complex standards of care in treating Mrs. Hale, a high risk patient because of the twin gestation. She was appropriately observed, examined, and administered tocolytic agents after preterm labor was diagnosed.

## VI. *DAMAGES*

Since the case is being bifurcated, there will be no evidence of damages.

## VII. *STIPULATIONS*

We would stipulate to the authenticity of all medical records without the necessity of calling a medical librarian.

## VIII. *POINTS FOR CHARGE*

The Points for Charge, together with the Jury Verdict, will be submitted.

IX. ***ESTIMATED TIME FOR TRIAL***

It is anticipated that the trial will be approximately six days.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
GARY D. OTT, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: August 15, 2007

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**PLAINTIFFS' PRETRIAL STATEMENT**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

August 15, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>GARY D. OTT, MD *ET AL,*<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD<br>***Consolidated at Case No.: 2005-364-CD*** |

| | | |
|---|---|---|
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## PLAINTIFFS' PRETRIAL STATEMENT

AND NOW, come the Plaintiffs, Randy Hale and Angela Hale, parents and natural guardians of Reganne Hale and Ashtyn Hale, minors, by and through their attorneys of record, Harry S. Cohen & Associates, PC, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Pretrial Statement:

## I. BRIEF SUMMARY

The Defendants failed to recognize and properly treat Angela Hale's preterm labor, which should have included frequent vaginal exams and tocolytic therapy, thereby allowing her twins to be born prematurely at 28 weeks gestation. This negligence occurred despite the

Defendants' knowledge that Mrs. Hale was at a high risk for preterm labor. As a direct result, the twin girls suffer from neurological/cognitive deficits and behavioral problems.

## II. NARRATIVE

In 2002, Angela Hale, a 26-year old married mother of one, became pregnant with twins. Her obstetrician was Defendant Gary D. Ott, M.D.

Although Angela had an estimated due date of February 1, 2003, she was at a high risk for preterm labor. First, she had a history of preterm labor in a prior pregnancy (which was successfully delayed by her previous obstetrician from 32 weeks to 36 weeks with the use of tocolysis).[1] Second, she was pregnant with twins, which carries a high risk of preterm labor in and of itself.

At 28 weeks gestation, on November 9, 2002, Angela developed a light brownish-red vaginal discharge, so she went to Defendant Dubois Regional Medical Center ("DRMC"). Failing to appreciate Angela's high risk for preterm labor, Dr. Ott simply performed a vaginal exam, determined that Angela was not dilated, and discharged her to home after two hours. Dr. Ott should have admitted Angela for further observation and started her on tocolysis (medications used to suppress premature labor) and bethamethasone (a steroid used accelerate fetal lung maturity).

The following morning, on November 10, 2002, Angela felt like she was having contractions, so she called Labor and Delivery at DRMC. As instructed, Angela arrived at DRMC with her husband, Randy, around 2:00 p.m. complaining of contractions, diarrhea, and back pain - similar to what she experienced as preterm labor in her prior pregnancy. At 5:30 p.m., an obstetrical nurse performed a vaginal exam and determined that Angela was not dilated;

[1] In addition to Dr. Ott's negligence discussed *infra*, Dr. Ott was negligent in failing to request records from Angela's previous pregnancy to apprise him of Angela's history of preterm labor that was successfully delayed with tocolysis.

although, the monitor indicated that Angela was experiencing contractions. At 6:00 p.m., Dr. Ott was called and he ordered a small dose of Terbutaline (a tocolytic agent), for what he claimed was only for pain relief. At 8:00 pm, the obstetrical nurse again called Dr. Ott, who finally decided to come to DRMC. Upon his arrival, and more than 3-hours since the original vaginal exam, Dr. Ott performed a second vaginal exam, which revealed the cervix to be 4 cm dilated, too late to stop the labor. At 10:08 p.m., Reganne Hale was delivered in vertex presentation. At 10:09 p.m., Ashtyn Hale was delivered without difficulty. Since this premature delivery occurred at just 28 weeks gestation, the twins are severely impaired as a result of prematurity.

Both children, now almost 5-years old, suffer from neurological/cognitive deficits and behavioral problems caused by prematurity.

The trial of this matter has been bifurcated. This first trial is to determine whether the Defendants deviated from the standard of care and if their deviation caused the twins to be born prematurely. The second trial, at a later date, will be to determine damages.

**A. Gary D. Ott, M.D.**

Dr. Ott breached the standard of care on November 9, 2002, by failing to admit Angela and start her on tocolysis and bethamethasone. Dr. Ott's failure to order extended observation of Angela on this date and order tocolytics and corticosteroids contributed to the unfortunate outcome.

On November 10, 2002, it was also a breach in the standard of care for Dr. Ott to delay ordering a therapeutic dose of tocolytic agents to delay the delivery of the twins. Dr. Ott's note written after the delivery - that he ordered terbutaline for pain management - makes no sense. Furthermore, it was no excuse for Dr. Ott to merely assume that he would hear from the nurses when Angela began preterm labor. There was apparent improper communication with nurses

about assessing preterm contractions and the frequency of vaginal exams in a patient at risk for preterm labor.

At a minimum, the delay in tocolysis increased the risk that preterm delivery would occur. Steroids ideally should be given 24-48 hours prior to the anticipated delivery to be most effective. Bethamethasone was administered about 3 hours prior to delivery.

**B. DMRC Nursing Staff**

The nursing staff deviated from the standard of care when Angela again presented on November 10, 2002 with complaints of contractions. The nursing staff failed to promptly evaluate Angela and failed to promptly notify Dr. Ott of Mrs. Hale's symptoms. Additionally, the failure of the nursing staff to conduct more frequent vaginal exams and reassess cervical status, after the initial exam at 1730, was a deviation in the standard of care, especially given Mrs. Hale's ongoing complaints of pain and contractions.

## III. WITNESSES

At the trial of this case, Plaintiffs may call any or all of the following witnesses:

### A. AS TO LIABILITY AND DAMAGES

1. Randy Hale
   211 East Weber Avenue
   Dubois, PA 15801

2. Angela Hale
   211 East Weber Avenue
   Dubois, PA 15801

3. Kaylee Hale
   211 East Weber Avenue
   Dubois, PA 15801

4. Gary D. Ott, M.D.
   635 B. Maple Avenue
   Dubois, PA 15801.

5. D. Green, L.P.N.
635 B. Maple Avenue
Dubois, PA 15801

6. Michael J. Kush, M.D.
145 Hospital Drive, Suite 106
Dubois, PA 15801

7. Representative and/or Records Custodian of:
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

8. Terri Aikens, L.P.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

9. Stephen Regec, M.D.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

10. Karen Nelson, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

11. Elizabeth Wolfgang-Rugh, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

12. Marjorie Raybuck, R.N.C.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

13. Jean Roseman, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

14. Desiree Smith, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

15. Kathryn Raybuck, R.N.C.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

16. Shawn Welsh, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

17. Denise Kugler, R.N.C.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

18. Lisa Rorabaugh, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

19. Gregory Suslow, M.D.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

20. Colleen Russell, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

21. Victoria Prenape, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

22. Jessica Howe, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

23. Melissa Stunack, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

24. Lisa Bitz, R.N.C.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

25. Trudy Hollowell, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

26. Marge R. Shaffer, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

27. Karl Wong, M.D.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

28. Kathy Mulhouse, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

29. S. Snyder, R.N.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

30. Robert J. Boron, M.D.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

31. Tracey Drexler, P.T.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

32. Dr. Smith
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

33. George M. Kosco, M.D.
Dubois Regional Medical Center
100 Hospital Drive
Dubois, PA 15801

34. Robin Ellenberger, R.N.
Dubois Regional Medical Center
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58. Joseph McAndrew, MD
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59. Patricia Murphy
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60. Roberta Zatsick, LPN
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67. Manuel P. Meza, M.D.
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99. Kamal Khalaf, M.D.
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100. Wendy Deemer
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109. Carol A. Rehermann, PA-C
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110. W. John Siar, MD
Gateway Area Medical Associates, Inc.
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111. Richard E. Grout, MD
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112. Dr. John Dubois
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113. Dr. Thomas W. Smith
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115. Dave Riski
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116. Ronald M. Lingle, Psychologist
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117. Rebecca L. Carrier, BS
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118. Representative and/or Records Custodian of:
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Dubois, PA 15801

119. Representative and/or Records Custodian of:
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Pittsburgh, PA 15219

120. Representative and/or Records Custodian of:
Pennsylvania Cytology Services
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Parkway Building, Suite 1700
Monroeville, PA 15146

121. Representative and/or Records Custodian of:
The Office of Dr. Jennifer Winebergzeitler
22 Wells Drive
Reynoldsville, PA 15851

122. Any persons listed in Defendants Pre-Trial Statements.

## B. EXPERTS

1. Robert Atlas, M.D.
Center for Advanced Fetal Medicine
Mercy Medical Center
301 St. Paul Place
Baltimore, MD 21202

*(Dr. Atlas' report is attached hereto as "Exhibit A".)*

2. Curtis L. Cetrulo, M.D.
Maternal Fetal Medicine, P.C.
Po Box 755
Hingham, MA 02043-0755

*(Dr. Cetrulo's report is attached hereto as "Exhibit B".)*

3. Mark A. Epstein, M.D.
Director, Miami Children's Hospital
Dan Marino Medical Center
2900 South Commerce Parkway
Weston, FL 33331

*(Dr. Epstein's report is attached hereto as "Exhibit C".)*

4. Patricia D. Fedorka, Ph.D., R.N.C.
1529 Stauton Drive
Moon Township, PA 15108

*(Dr. Fedorka's report is attached hereto as "Exhibit D".)*

5. Robert McDowell, Jr.,
4821 Fort Sumner Drive
Bethesda, MD 20816

*(Dr. McDowell's report is attached hereto as "Exhibit E".)*

6. Bennett Walstatter, M.D., F.A.C.O.G.
4437 Oak Arbor Court
Grand Rapids, MI 49525

*(Dr. Walstatter's report is attached hereto as "Exhibit F".)*

## IV. EXHIBITS

1. Medical records;
2. Blow-ups of medical records, school records, and correspondence;
3. Timeline or calendar;
4. Standard life tables;
5. Anatomical drawings/animations;
6. Any pleading, discovery document, or deposition produced in this case; and
7. Plaintiffs reserve the right to supplement this exhibit list.

## V. SPECIAL DAMAGES

Because this case has been bifurcated and this trial is to determine liability only, Plaintiffs will not be claiming special damages at this trial.

## VI. STATUS OF NEGOTIATIONS

There have been no settlement negotiations between the parties.

## VI. ESTIMATED LENGTH OF TRIAL

On behalf of the Plaintiffs, it is expected that trial would take approximately 4-5 days.

## VII. RESERVATIONS

Plaintiffs reserve the right to call rebuttal and impeachment witnesses. Plaintiffs also reserve the right to file Motions in Limine in response to the Defendants' Pretrial Statements, expert reports, and/or discovery. Plaintiffs also reserve the right to amend this Pretrial

Statement.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
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CENTER FOR ADVANCED FETAL CARE
@ MERCY MEDICAL CENTER

Center for Women's Health & Medicine AT MERCY

August 20, 2006

Harry Cohen and Associates
Harry Cohen, Esquire
Two Chatham Center, Suite 985
Pittsburgh, PA. 15219

**Maternal-Fetal Medicine**
Robert Atlas, M.D.
Jerome N Kopelman, M.D.
Christopher Harman, M.D.
Michelle Kush, M.D.
Ahmet Baschat, M.D.
Carl Weiner, M.D.

**Prenatal Genetics**
Jessica Scott, MGC

RE: Angela Hale

Dear Attorney Cohen,

I have had the opportunity to review the above case for you and am ready to give my opinion regarding the care of Angela Hale. In giving my opinion I have reviewed the following medical records provided to me:

1. Prenatal records- Dr. Gary Ott
2. Dubois Regional Medical Center Admission of 11/09/02
   a. Fetal monitor tracing
3. Dubois Regional Medical Center Admission of 11/10/02
   a. Fetal monitor tracing
4. Office Records of Dr. George R Cherian, OB/GYN (1996 pregnancy)
5. Office records of DRMC- MFM- Dr. Michael Kush
6. Punxsutawney Area Hospital Records- 1996 (previous Pregnancy
7. Admission Dubois Regional Medical Center (limited records)
   Birth admission for Reganne Hale 11/10/02
8. Admission Dubois Regional Medical Center (limited records)
   Birth admission for Ashyln Hale 11/10/02
9. Children's Hospital of Pittsburgh- (Reganne) D/C summaries

The following summarizes the care provided to Angela Hale. She is a 26 year old G4 P1021 who was noted to have a monchorionic Diamniotic twin gestation. Her past medical history is significant for irregular heart rate. Her past obstetrical history is significant a spontaneous abortion in 1995, full term infant in 1996 of a 6 pound 7 ounce female. That pregnancy was complicated by preterm labor. She went into preterm labor at 32 weeks gestation (1/90%) and was on tocolytics (terbutaline) until 36 weeks. She had a molar pregnancy in 1999.

This pregnancy was complicated by an abnormal triple screen with an elevated MSAFP of 2.46 MOM. An ultrasound revealed a twin gestation. The patient had

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an infected tooth at 23 weeks gestation. Ultrasound exams were noted to be within normal limits with concordant fetal growth.

The patient presented to the labor and delivery unit on 11/09/02 with the complaint of contractions and pressure. She also complained of brown vaginal discharge. She was noted to be contracting every 3-5 minutes irregular with some irritability noted. Her cervical exam was noted to be closed and 3 cm long medium consistency. She was discharged to home.

She represented the following day with the same complaints along with back pain. She was again evaluated by the nurse and noted to be again long and closed by exam at 17:30. She continued to have complaints of back pain and groin pain. The patient was given a single dose of IV terbutaline and then an oral dose of terbutaline to treat symptomatic uterine contractions only. Dr. Ott then saw the patient three hours later and noted the patient to be 3-4 cm dilated, 90% effaced and 0 station. He immediately began IV tocolysis with Magnesium Sulfate. He also gave the patient betamethasone therapy. Angela was then reevaluated several hours later and was noted to be progressing to 7 cm dilated.

Dr. Ott therefore opted to deliver Angela via LCT C/S due to twin B being breech. He delivered Twin A with Apgars of 8, 9 weight 1136 gm. Twin B was delivered via breech extraction with Apgars of 4, 7 and a weight of 1228 gm.

Twin A had significant complications from Prematurity especially Necrotizing Enterocolitus and a Grade III Intraventricular Hemorrhage. She necessitated transfer to Children's Hospital of Pittsburgh.

Impression

In assessing the care provided to Angela Hale, I have several areas of concern.

1. On 11/9/02 the patient was assessed by Dr. Ott and the nurses. In their assessment, there is no indication that they assessed the uterine activity properly. They only state initially that there are irregular contractions noted. In my assessment there were contractions much more frequent then that.

In patients who are contracting preterm, these pregnancies are at marked increased risk of Prematurity. What puts this patient at much higher risk are two factors, the twin gestation and her history of preterm labor in her previous successful pregnancy.

Dr. Ott needed to assess the patient further. He needed to offer the patient a fetal Fibronectin, Transvaginal ultrasound of the cervix as this can predict preterm birth well.

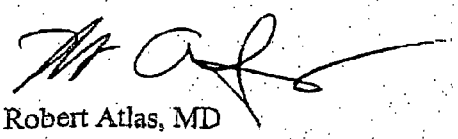
They also should have considered keeping the patient for a longer period of time to assess the patient further for preterm labor. Also, with the patient contracting with the twin gestation, corticosteroids should have been administered at this time since the patient is at risk of PTB.

2. On 11/10/02 the patient presented with the same complaints of preterm labor. The initial exam was noted to be the same (closed/3 cm), however, in three hours the exam markedly changed. I question the initial exam by the nurse and most likely was inaccurate.

Overall, I am concerned with the quality of care provided by Dr. Ott and Dubois Regional Medical Center as it appears that this patient presented in plenty of time to have the preterm labor abated. I believe within a medical degree of certainly, that the care provided to Angela Hale deviated from the standard of care.

All of my opinions are to a degree of medical certainty. If you have any questions, please do not hesitate to contact my office.

Sincerely,



Robert Atlas, MD
Chairman, Department of OB/GYN
Mercy Medical Center

Maternal Fetal Medicine, P.C.
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July 13, 2006

Todd D. Bowlus, Esq.
Harry S. Cohen & Associates
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

**Re: Angela Hale vs. Dubois Hospital**

Dear Mr. Bowlus:

I have reviewed the following medical records:

1. Dubois Regional Medical Center Admission of 11/9/02;
   a. Fetal Strips;
2. Dubois Regional Medical Center Admission of 11/10/02;
   a. Fetal Strips;
3. Office Records of Dr. George R. Cherian, OB/Gyn;
4. Office Records of DRMC Maternal Fetal Medicine;
5. Punxsutawney Area Hospital Records - 1996
   (limited records of previous pregnancy);
6. Admission Dubois Regional Medical Center (limited records)
   Birth Admission for Reganne Hale 11/10/02;
7. Admission Dubois Regional Medical Center (limited records)
   Birth Admission for Ashtyn Hale 11/10/02; and
8. Children's Hospital – Limited records of Reganne.

Additionally, I have reviewed the following:

1. Deposition transcript of Gary D. Ott, MD;
2. Deposition transcript of Michael J. Kush, MD;
3. Deposition transcript of Kathyrn Raybuck, RN; and
4. Deposition transcript of Desiree Smith, RN.

In 2002, Angela Hale, age 26, was married with a 6-year old daughter and lived in Dubois, Pennsylvania. She had a history of a miscarriage at 4 weeks gestation in 1995 and in 1996 she had threatened preterm labor which was stopped at 8 months gestation



with tocolytics. Her obstetrician at that time was Dr. George Cherian.

In 2002, Mrs. Hale became pregnant with twins. Her OB was Dr. Gary Ott. Her EDC was 2/3/03.

On 11/9/02, Mrs. Hale developed a "light brownish-red vaginal discharge." She went Dubois Regional Medical Center ("DRMC") and Dr. Ott performed an exam. It was determined that she was not dilated and she remained at DRMC for about 2 hours. She was then discharged home.

On 11/10/02, Mrs. Hale arrived at DRMC with her husband at around 2:00 pm complaining of contractions, diarrhea, and back pain. On admission the nurse performed a vaginal exam and determined that Mrs. Hale's exam had not changed since 11/9/02. At about 7 or 8 pm Dr. Ott arrived at DRMC and reviewed the fetal monitor strips and saw the contractions. Dr. Ott then performed a vaginal exam that demonstrated that Mrs. Hale was dilated 4 ½ centimeters. She was given bethamethasone and magnesium sulfate for tocolysis which was unsuccessful.

Between 8-9 pm, Mrs. Hale was dilated around 7 ½ centimeters. Dr. Ott then decided to perform a cesarean section. The twins were 28 weeks gestation.

On 11/10/02, at 10:08 pm baby A, Reganne, was delivered in vertex presentation. At 10:09 pm baby B, Ashtyn, was delivered. Ashtyn was double footling breech presentation.

Reganne had a Grade I IVH, required intubation, had retinopathy of prematurity, reflux, and bronchopulmonary dysplasia. Both Reganne and Ashtyn remained in the NICU at DRMC. On 12/1/02, Reganne was transferred to Children's Hospital in Pittsburgh. Reganne at that time had possible NEC (later thought to be a staph infection in her colon). Her Grade I IVH developed into a Grade III IVH and she also developed hydrocephalus that required shunting. Reganne remained at CHP until discharged home on 12/24/02. Ashtyn was discharged to home on 1/11/03.

Dr. Ott deviated from the standard of care in the following respects:

On November 9, 2002, when Mrs. Hale presented to DRMC with complaints of a red/brown discharge and contractions on the monitor, even if her cervix was unchanged, Mrs. Hale should have been admitted and started on tocolysis and bethamethasone. Dr. Ott's failure to order extended observation of Mrs. Hale on this date and order tocolytics and corticosteroids contributed to the unfortunate outcome.

On November 10, 2002, it was also a breach in the standard of care for Dr. Ott to delay in ordering a therapeutic dose of tocolytic agents to delay the delivery of the twins. Dr. Ott's note written after the delivery - that he ordered terbutaline for pain management - makes no sense. Terbutaline may be administered under these circumstances to stop contractions to stop premature labor; however, it must be administered with supervision in proper doses. This was not done by Dr. Ott's phone order. It was no excuse for Dr.

Ott to merely assume that he would hear from the nurses when Mrs. Hale began preterm labor. There was apparent improper communication with nurses about assessing preterm contractions and the frequency of vaginal exams in a patient at risk for preterm labor.

At a minimum, the delay in tocolysis increased the risk that preterm delivery would occur. Steroids ideally should be given 24-48 hours prior to the anticipated delivery to be most effective. Bethamethasone was administered about 3 hours prior to delivery. Reganne suffered a Grade I progressing to a Grade III IVH. Bethamethasone is helpful in preventing IVH and promoting lung maturity in preterm babies.

As for the nursing staff at DRMC, they deviated from the standard of care when Mrs. Hale again presented to DRMC on November 10, 2002 with complaints of contractions. The nursing staff failed to promptly evaluate Mrs. Hale and failed to promptly notify Dr. Ott of Mrs. Hale's symptoms. Additionally, the failure of the nursing staff to conduct more frequent vaginal exams and reassess cervical status, after the initial exam at 1730, was a deviation in the standard of care, especially given Mrs. Hale's ongoing complaints of pain and contractions. The nursing staff also failed to promptly administer tocolysis and bethamethasone.

In summary, Dr. Ott and the nursing staff at DRMC deviated from acceptable standards of care. These deviations increased the risk that preterm delivery would occur.

Sincerely,

Curtis L. Cetrulo, M.D.
Professor of Obstetrics and Gynecology
Tufts University School of Medicine

CLC/msg

MIAMI CHILDREN'S HOSPITAL
**Dan Marino Center**
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**Mark A. Epstein, M.D.**
**Medical Director**

July 1, 2006

Harry S. Cohen, Esquire
Harry S. Cohen & Associates, P.C.
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

**Re: Reganne Hale (DOB: 11/10/02)**
**Case No: 2005-364-CD**

Dear Mr. Cohen:

At your request, I had the opportunity to review the following medical records regarding this case:

1. Dubois Regional Medical Center, admission of 11/09/02 (fetal strips).
2. Dubois Regional Medical Center, admission of 11/10/02 (fetal strips)
3. Office records of DMMC Maternal Fetal Medicine.
4. Admission Dubois Regional Medical Center (limited records) – birth admission for Reganne Hale.
5. Admission Dubois Regional Medical Center (limited records) – birth admission for Ashtyn Hale.
6. Children's Hospital – limited records of Reganne Hale.
7. Children's Hospital of Pittsburgh Child Development Clinic (Reganne): (a) psychological evaluation (08/26/05) (b) medical neurology evaluation (04/24/95); (c) Indiana Linkage Clinic, progress note (02/25/04); (d) Children's Hospital (Reganne), inpatient discharge summary (12/24/02).
8. Dubois Regional Medical Center – office notes of Dr. Xu.
9. Brookeville Behavioral Health Records of Reganne Hale.
10. Brookeville Behavioral Health Records for Ashtyn Hale.

Reganne was an 1136 gram product of a twin gestation born by primary Cesarean section to a then 26-year-old $G_4$ $P_{1021}$ mother with an EDC of 02/03/03. Reganne was twin A, born at approximately 28 weeks gestation. Mrs. Hale had presented to Dubois Regional

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Medical Center on 11/09/02 complaining of a brownish discharge and pressure in her lower abdomen. Fetal monitoring strips were reassuring for both twins and she was eventually discharged home. She presented to the hospital the following day with increased frequency of irregular, crampy, pelvic pain. At approximately 17:30 a nurse performed a vaginal examination and found the cervix to be closed with adequate length. The fetal heart strips were reassuring and Mrs. Hale was given a dose of both subcutaneous terbutaline and oral terbutaline. Approximately three hours later Dr. Ott arrived and performed a vaginal examination and found that the cervix was 3-4 cm dilated, 90% effaced, with the presenting fetus at 0 station. Orders were given at approximately 20:20 to start magnesium sulfate and IM steroids.

At approximately 21:09 Dr. Ott wrote that Mrs. Hale was having persistent, painful, uterine contractions and that twin B was in the breech position. By 21:17 the cervix was found to have dilated 7 cm despite efforts at tocolysis and, therefore, a primary Cesarean section took place.

Past obstetrical history was significant for a miscarriage in 1995, a molar pregnancy in 1999, and a full term pregnancy in 1996 that was complicated by premature labor, successfully stopped with tocolysis.

Reganne was born with Apgar scores of 8 at 1 minute and 9 at 5 minutes from the vertex position. Ashtyn was born with Apgar scores of 4 and 7, respectively, in a footling breech position. Subsequent placental pathology demonstrated no evidence of acute chorioamnionitis or funisitis.

Reganne had a stormy neonatal course. Her diagnoses included prematurity, respiratory distress syndrome, PDA closed with Indocin, neonatal jaundice, intraventricular hemorrhage, and necrotizing enterocolitis.

At birth Reganne was intubated and received Survanta and required dopamine for blood pressure support. She remained on mechanical ventilation until 11/27/02 when she was weaned to CPAP. During her hospitalization at Dubois Regional Medical Center, she had three head ultrasounds: The first on 11/11/02 was interpreted as within normal limits. On 11/15/02 the head ultrasound demonstrated a left choroid plexus hemorrhage with slight asymmetry of the ventricles. A repeat head ultrasound on 11/26/02 was without any change. Her head circumference at birth was 26 cm.

On 11/30/02, Reganne developed abdominal distension, redness of the right lower quadrant abdominal wall and bloody stools, indicative of necrotizing enterocolitis. She was reintubated and given antibiotics. She was then transferred to Children's Hospital of Pittsburgh where she remained hospitalized from 12/01/02 until 12/24/02.

Upon admission to Children's Hospital of Pittsburgh, the previous Grade I IVH progressed to a Grade III IVH which was noted on a head ultrasound of 12/06/02. The head ultrasound was found to be unchanged on 12/16/02. A repeat head ultrasound on 12/20/02 demonstrated a new finding of cystic periventricular leukomalacia bilaterally in the left frontal and right frontal parietal regions.

At the time of discharge, Reganne's neurological examination was significant for a head circumference of 30 cm. Her tone was noted to be slightly decreased, with only a fair grasp and suck.

Reganne was evaluated by Mary Louise Russell, M.D., at Children's Hospital of Pittsburgh Indiana Linkage Clinic on 02/25/04. At that time, Dr. Russell indicated that Reganne was noted to have delays in her motor function. She was not crawling and tended to throw herself back when she was sitting. She did not have a pincer grasp and would not put blocks into a container. Developmental history obtained suggested that she lifted her head in a prone position at 7-8 months of age, rolled from back to stomach at 6-7 months of age, and could stand with assistance at 11 months of age. She sat independently at 12 months of age. A neurological examination was abnormal due to increased resistance to passive stretch of her right ankle plantar flexor muscles. She also tended to maintain her thumbs in an adducted position within her palms. She was diagnosed with spastic diplegia, a form of cerebral palsy.

A neurological evaluation performed by Dr. Shu-Guang Xu on 09/22/03 demonstrated mild, unbalanced muscle tone in her trunk. A repeat neurological evaluation on 09/22/03 demonstrated increased tone bilaterally, especially in the distal portion of her lower extremities. Her deep tendon reflexes were also brisk. These physical signs were suggestive of cerebral palsy.

Reganne subsequently developed atypical behaviors such as biting, flapping hands, head banging, difficulty with sleep, oral stimulations such as licking inanimate objects, inability to feed herself, masturbation, fixations, mood swings, impulsive behaviors, and limited ability to communicate. Base upon the results of a psychological evaluation performed at Children's Hospital of Pittsburgh, Reganne was diagnosed with pervasive developmental disorder – not otherwise specified, and mental retardation, severity undetermined. A repeat psychological evaluation performed through the Brookeville Behavioral Health System on 01/05/06 came to the following conclusions: "Reganne Hale is a 3-year, 2-month old twin little girl who presents with multiple developmental, neurological, physical, and birth-related issues. She already has been diagnosed with pervasive developmental disorder, which is further complicated by her physical and neurological problems and the possibility of sub-average intellectual abilities."

It is well-established in the medical literature that the incidence of intraventricular hemorrhage correlates with both increasing degrees of prematurity and decreasing birth

weight. The pathogenesis of intraventricular hemorrhage is believed to be related to a number of factors including fluctuating cerebral blood flow in the vulnerable germinal matrix microvessels, leading to rupture. The cause of fluctuations in both systemic and cerebral circulations is related primarily to the mechanics of mechanical ventilation. Elevations of arterial blood pressure and fluctuating cerebral venous pressure also contribute to the pathogenesis of IVH which can be caused by episodes of systemic hypotension/hypertension, tracheal suctioning, and rapid volume expansion as can occur with blood transfusions.

The mechanisms of brain injury in infants with IVH include hypoxic-ischemic injury, thought to be responsible for periventricular leukomalacia, destruction of glial precursors in the germinal matrix which has a deleterious effect on subsequent brain myelination, as well as destruction of periventricular white matter which has a deleterious effect on subsequent cortical organization. Studies have demonstrated a significant reduction in cortical volume in infants who have suffered intraventricular hemorrhage in the neonatal period.

It is my medical opinion, as a board certified child neurologist, that Reganne Hale's present neurological condition, including cerebral palsy and cognitive deficits, is a direct result of the intraventricular hemorrhage and periventricular leukomalacia suffered as a result of her being born extremely premature at 28 weeks gestation. This brain injury is permanent in nature with no reasonable expectation for improvement. Had the birth of Reganne been delayed with the use of tocolysis to allow for further brain development and had steroid administration been allowed more time for fetal lung maturation, there would have been an ever increasing chance that Reganne would have been born without the development of intraventricular hemorrhage and its neurological sequelae.

I reserve the right to amend this report should further medical information become available to me.

Sincerely yours,

Mark A. Epstein, M.D.
Board Certified Child Neurologist
MAE/rs

2900 South Commerce Parkway ♥ Weston, FL 33331 ♥ (954) 385-6223 ♥ fax: (954) 385-6283

*Patricia D. Fedorka, Ph.D., R.N.C.*
*Legal Nurse Consultant*

1529 Staunton Drive
Moon Township, PA 15108
Tax ID 192-42-5879

Phone (412) 264 - 7165
Fax (home) (412) 262 - 2516
E-mail Fedorka@rmu.edu

Mr. Harry S. Cohen & Associates, P.C.
Mr. Todd Bowlus
Two Chatham Center
Suite 985
Pittsburgh, PA 15219

May 1, 2006

Re: Hale

Dear Mr. Bowlus:

I have reviewed the following documents:

1. Office records of DMMC Maternal Fetal Medicine for Angela Hale
2. Punxsatawney Area Hospital records from 1996 for Angela Hale
3. Office records of Dr. George Cherian for Angela Hale, 1996
4. Dubois Regional Medical Center inpatient records for Angela Hale from 11/9/02 and 11/10/02, including fetal monitor tracings
5. Dubois regional Medical Center inpatient records for Reganne Hale
6. Dubois Regional Medical center inpatient records for Ashtyn Hale
7. Timeline of events 11/9/02-11/10/02
8. Deposition transcript of Dr. Gary Ott
9. Deposition transcript of Kathryn Raybuck, R.N.
10. Deposition transcript of Desiree Smith (Fremer), R.N.

In 2002, Angela Hale was a 26 year-old, married gravida 4, para 1 with an LMP of 4/28/02 and an EDD of 2/3/03. She had a history of a miscarriage at 4 weeks gestation in 1995, a vaginal delivery of a 6 pound, 7 ounce female at 38 weeks after treatment for preterm labor in 1996 and a molar pregnancy in 1999. She began prenatal care with Dr. Gary Ott on 6/13/02 at 6 weeks gestation. Height was 5 feet, 3 inches. Pre-pregnant weight was 190 pounds and weight at delivery was 214 pounds, for a total pregnancy weight gain of 24 pounds. Her past medical history included an irregular heartbeat. According to the 9/10/02 medical records of Dr. Michael Kush, maternal-fetal medicine, Angela also had a history of a heart murmur and was on medications for any dental work. Documented blood pressures during pregnancy ranged from 104-160/70-100. There were no complete prenatal records from Dr. Ott's office included in the records reviewed, only the copy included in Dr. Kush's records, which includes prenatal visits up to 16 weeks

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gestation only. Documented prenatal labs included: blood type A negative, antibody screen negative, rubella immune, RPR non-reactive, hepatitis negative, H&H on 8/22/02 – 11.8 & 34.0. She had no reported history of drug, alcohol or tobacco use. Medications during pregnancy included prenatal vitamins, iron and folic acid. She had an elevated MAFP on 8/22/02 and was then referred to Dr. Kush, Maternal Fetal Medicine at Dubois Regional Medical Center for a Level II ultrasound.

On 9/11/02, at 19 weeks gestation by dates, Angela was seen by Dr. Kush. An ultrasound revealed a monochorionic/diamniotic twin gestation with appropriate growth for gestation. Both babies were female. On 10/14/02, Dr. Kush performed another U/S at 23 weeks gestation. Baby A was at that time breech with normal amniotic fluid and a heart rate of 153. Weight was in the 43rd percentile. Baby B was cephalic with a normal amniotic fluid volume and a heart rate of 158. Weight was in the 40th percentile. Angela's blood pressure at that visit was 160/84. Documentation states there was no c/o headache or nausea and vomiting. On 11/6/02, at 27 weeks gestation, sonar showed Baby A in the cephalic position with normal amniotic fluid volume, a heart rate of 164 and weight in the 33rd percentile. Baby B was in the cephalic position with normal amniotic fluid volume and a heart rate of 147. Weight was in the 34th percentile. Blood pressures on that visit were 152/100 and 130/88, repeated 15 minutes later. No edema or headache. There were no urine proteins documented at the maternal fetal medicine visits and no records of visits from Dr. Ott were included in the records reviewed.

At 1200 on 11/9/02, at 28 weeks gestation, Angela was seen at Dubois Regional Medical Center to r/o preterm labor. She complained of a brownish discharge and pressure in the lower abdomen. Dr. Ott was notified at 1215. A urinalysis was ordered which showed 3+ bacteria and negative protein. Results were called to Dr. Ott and a urine culture was obtained. (No results or documentation of treatment found in records reviewed.) NST was done and documented by a note of Dr. Ott's as reassuring. The RN documented "Small" variable decelerations for both babies. Irregular contractions were documented. SVE per Dr. Ott's note was closed/3 cm. long/medium firm/high/posterior. She was discharged at 1535 with instructions for bedrest with bathroom privileges and pelvic rest. She was to be seen by Dr. Ott on 11/12/02.

On 11/10/02 at 1645, Angela was again seen at Dubois Regional Medical Center complaint of every 5-minute contractions. External fetal monitoring (EFM) showed irregular contractions, mild to palpation. Angela was complaining of back pain and was "very fussy" according to the nurse's documentation. Fetal heart rate (FHR) of Baby A was 160-170 and Baby B, in the 150's.

At 1730, a SVE showed no change since the exam of 11/9/02. Dr. Ott was notified at 1805. At 1805, Terbutaline, sub-q and p.o. were given. Dr. Ott's H&P note states that the medications were given to treat symptomatic uterine contractions only." "The patient was given the medication in an attempt to bring comfort only as there was no indication for tocolysis given the absence of cervical change. At 1823, no contractions were seen on the monitor. At 1840, Angela continued to c/o back and groin discomfort. No contractions were seen on the monitor. At 2000, she requested pain medication. FHR of Baby A was

in the 110's-120's with average LTV and of Baby B was 150's-160's with avg. LTV and accelerations. Angela c/o q 3-4 minute contractions, evident on the monitor strip and documented on the nurse's notes at 2014. The RN did no further vaginal exams after 1730. Dr. Ott was called and arrived at 2014. A SVE by Dr. Ott at 2020 showed 3-4 cm dilation. IV fluids and a bolus of magnesium sulfate was started at 2028. Another dose of Terbutaline was also given sub-q. Angela was admitted as an inpatient.

An ultrasound showed Baby A in a vertex presentation and Baby B in a double footling breech presentation. Admission vital signs were 98.2, 120, 22, and 113/67. Dr. Ott's progress note of 2109 documented the patient having persistent painful contractions. If not able to stop contractions with tocolysis, C/S secondary to breech presentation (of Baby B). There are no further RN notes regarding the labor status or assessments. Notes were included on the fetal monitor tracings. At 2100, Betamethasone was given. Cervix was 6 cm. per Dr. Ott at 2116. Magnesium sulfate was discontinued at 2117. The EFM was turned off at 2140 and Angela was prepped for a C/Section. Before removal of the EFM, Baby A's FHR was in the 120's-130's and Baby B's, which had been tracing intermittently, was documented as audible in the 150's-160's.

A C/Section was performed under spinal anesthesia. NICU staff was present. Baby A, Reganne, was delivered at 2208 with Apgars of 7 & 8. Birthweight was 1136 grams. Intubated and received Survanta. She also received Dopamine and Indomethacin for a patent ductus arteriosus. She also developed a small left choroid plexus hemorrhage and necrotizing enterocolitis. She was transferred to Children's Hospital of Pittsburgh on 12/1/02.

Baby B, Ashtyn, was delivered at 2209 with Apgars of 4 and 7. Birth weight was 1228 grams. She was also treated with Survanta and a ventilator. Other complications included Stage I retinopathy of prematurity, reflux and bronchopulmonary dysplasia. She was discharged on 1/11/03.

Failures in nursing standards of care:

1. Failure to assess for preterm labor:

In the presence of a patient's complaint of ongoing back, pelvic and groin pain, even in the absence of noticeable contractions on the EFM, the nurse should have considered the possibility of cervical change and notified Dr. Ott and repeated the cervical exam. No evaluation of the cervix was done from the initial exam at 1730 until Dr. Ott's exam at 2020. This did not meet standards of care for a preterm patient whom was already at high risk for preterm labor due to her past history of preterm labor and her present twin gestation.

Preterm labor contractions are not of the same characteristics as term labor contractions. Preterm labor can present as backache or pain, pelvic pressure or groin pressure or pain

etc. An external toco may not pick up these contractions or it is possible that that the toco needed adjusted. There is no documented attempt by the nurse to palpate for contractions. This also did not meet standards of care for a preterm patient with a twin gestation and history of preterm labor in a previous pregnancy.

The only way to definitively diagnose labor, or the cessation of labor, is to evaluate for further cervical changes, especially with the patient's complaint of ongoing pain. The only way to determine effectiveness of the terbutaline was to re-assess the cervical status. This was not done and is below the standard of nursing care. Mrs. Hale stated that her symptoms upon presenting to the hospital on 11/10/02 were similar to what she experienced with her previous preterm labor

In conclusion, I can state within a reasonable degree of nursing certainty, that the care received by Mrs. Hale and her infants fell below the accepted standards of nursing practice and contributed to the outcome of the infants.

I reserve the right to amend or supplement this report in the light of additional discovery.

Sincerely,

Patricia D. Fedorka, Ph.D., RNC

Patricia D. Fedorka, Ph.D.,R.N.C.

**Robert L. McDowell, Jr., M.D.**
4821 Fort Sumner Drive
Bethesda, Md. 20816
301-980-6872
rlmcd66@aol.com

June 6, 2006

Todd D. Bowlus, Esq.
Harry S. Cohen and Associates, P.C.
Two Chatham Center
Suite 985
Pittsburgh, PA 15219

Re: Reganne and Ashtyn Hale

Dear Mr. Bowlus:

At your request, I have reviewed the medical care delivered to the above noted twin infants and their mother including:

1. Medical records of Angela Hale from Dubois Regional Medical Center admission of 11/9/02 including fetal monitoring strips
2. Medical records of Angela Hale from Dubois Regional Medical Center admission of 11/10/02 including fetal monitoring strips
3. Office records of Angela Hale from DRMC Maternal Fetal Medicine
4. A selection of neonatal records of Reganne Hale from Dubois Regional Medical Center including birth records
5. A selection of neonatal records of Ashtyn Hale from Dubois Regional Medical Center including birth records
6. A selection of medical records of Reganne Hale from The Children's Hospital of Pittsburgh from 12/1/02-12/24/02 including discharge summary
7. Outpatient medical records of Reganne Hale from The Children's Hospital of Pittsburgh including the Child Development Clinic, the Neurology Service, and Indiana Linkage Clinic,
8. Records of Reganne and Ashtyn Hale from Brookville Behavioral Health from 8/31/05 to 1/26/06

My review of these materials, with emphasis on the medical records, along with my education, training and experience of twenty-five years in the practice of pediatrics and neonatology, form the basis of my opinions in this matter. Although I have reviewed materials related to the care of both twins, my focus in this report is the medical care in the newborn period and follow-up care post discharge of twin A, Reganne Hale. All of my opinions in this matter are held to a reasonable degree of medical certainty. If further



materials are supplied for my review that alter my current opinions, I will supplement this report accordingly.

In brief summary, Ms. Hale, then age 26 years, pregnant with twins in her 28th week of pregnancy, was admitted to the DRMC labor and delivery floor on November 9, 2002 because of a concern of possible preterm labor. She had experienced preterm labor requiring tocolysis at approximately eight months gestation with her prior pregnancy. With this pregnancy, after a brief stay, she was discharged home following a nursing evaluation which revealed no cervical dilatation and mild irregular contractions.

The following morning, November 10, 2002, she returned to the same hospital with the same concern of possible preterm labor. An initial nursing assessment concluded mild irregular contractions and no cervical change from November 9, 2002. She was observed through that day and by approximately 8 P.M., when examined by Dr. Ott for the first time that day, was found to have 4.5 cm. cervical dilation and contractions present on her fetal monitoring strips. She was treated with Terbutaline and Magnesium Sulfate and Betamethasone was administered but she continued to progress in labor. By 9 P.M. cervical dilation had reached 7.5 cm. and delivery was felt to be imminent. As tocolysis was clearly unsuccessful, a plan was made to move forward with a caesarean section delivery as one of the twins was in a double footling breech presentation.

At delivery (10:08 P.M. on November 10, 2002), Baby A (Reganne) weighed 1136 grams and had Apgar scores of 8 and 9 at one and five minutes of age respectively. Her growth parameters revealed that she was appropriately grown for her gestational age of 28 weeks. Despite appropriate intervention with artificial surfactant and intubation with mechanical ventilation, she went on to develop severe Hyaline Membrane Disease requiring a prolonged course of mechanical ventilation and oxygen therapy. Initially, she required pressor support for hypotension and hypovolemia which resolved in her first twenty four hours. Her respiratory management was complicated by the development of a Patent Ductus Arteriosus which required medical management with Indomethacin. She required antibiotic treatment for presumed sepsis. She required phototherapy for Jaundice of Prematurity. She subsequently developed a grade I chorid plexus brain hemorrhage which eventually progressed to a Grade III intraventicular hemorrhage when her course became further complicated with the development of Necrotizing Enterocolitis, necessitating transfer to Children's Hospital of Pittsburgh on December 1, 2002 for definitive management.

While at Children's Hospital, she developed communicating hydrocephalus due to her intraventicular hemorrhage, was treated for coagulase negative staphylococcal sepsis and responded well to medical (non-surgical) management of her Necrotizing Enterocolitis. She developed Chronic Lung Disease, a sequela of her severe Hyaline membrane Disease requiring continuing oxygen therapy. Her final head sonogram on December 20, 2002 revealed resolving Grade III intraventricular hemorrhage, stable hydrocephalus but,

additionally, the ominous development of cystic periventricular leukomalacia. She was finally discharged back to DRMC on December 24, 2002.

Her final course at DRMC was relatively uneventful. She was successfully weaned from oxygen therapy for her Chronic Lung Disease over time. She was diagnosed with mild Retinopathy of Prematurity which eventually spontaneously resolved. She was started on caffeine as a respiratory stimulant because of increased periodic breathing on a sleep apnea screening. She was finally discharged home on January 11, 2003.

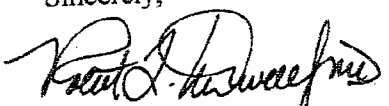
Subsequent pediatric, neurologic, developmental and rehabilitative follow-up have documented the evolution of the chronic, permanent disability of cerebral palsy, specifically spastic diplegia, the most common neurologic sequela of premature birth, intraventricular hemorrhage and periventricular leukomalacia. She, further, has demonstrated progressive development of global developmental delay and mental retardation involving both cognitive milestones and, most severely, language development. Behaviorally, she has developed mannerisms consistent with Pervasive Developmental Disorder, a clinical spectrum of social and language dysfunction which fits broadly in the category of the Autism Spectrum Disorders. Her current neurologic and developmental difficulties are permanent and severely handicapping and, although some improvement can be expected with appropriate intervention, she will be severely handicapped from these sequelae of her neonatal brain injury (intraventricular hemorrhage and periventricular leukomalacia) for life. Her particular pattern of developmental disabilities involving cognitive, language, motor and social-adaptive functioning is particularly devastating relative to longterm adult functioning and social adaption.

Based on my review of the medical records listed on the first page of this report, and my training, education and experience of twenty-five years in the practice of pediatrics and neonatology, it is my opinion, held to a reasonable degree of medical certainty, that this infant's severe current neurological and developmental dysfunction (mental retardation, cerebral palsy and pervasive developmental disorder) are the result of the significant brain injuries this child received in the newborn period while at DRMC. Her intraventricular hemorrhage and its associated brain injury and her periventricular leukomalacia are the most common brain injuries associated with premature birth and are virtually universally devastating to eventual cognitive, motor and social functioning. Review of her prenatal records and neonatal medical records fails to reveal any other reasonable explanation of this infant's brain injury such as genetic, metabolic, infectious or structural disorders. Subsequent neurologic consultations, developmental evaluations and neuroradiographic studies have failed to identify any other plausible etiology for her current disabling handicaps other than her neonatal brain injuries.

Therefore, it is my opinion, within a reasonable degree of medical certainty, that the current developmental handicaps this child manifests are permanent and due to the brain injuries this child suffered as a result of her premature birth and its complications.

All of my opinions stated above are held to a reasonable degree of medical certainty. If I can answer other questions, please do not hesitate to call.

Sincerely,



Robert L. McDowell, Jr., M.D.

*Bennett S. Walstatter, MD, FACOG*
*4437 Oak Arbor Ct*
*Grand Rapids, MI 49525*
*616 754- 2944*
*bwalstatter@umha.org*

July 10, 2006

Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

Dear Mr. Cohen:

I have received all of the records that you sent to me regarding Angela Hale. It is my opinion that there were several breaches in the standard of care:

1. Dr. Ott failed to obtain previous medical records or ascertain whether or not Ms. Hale had actually experienced premature labor. He also failed to ascertain whether or not she had successfully been tocolysed during her previous pregnancy.

2. Dr. Ott failed to diligently observe Ms. Hale for premature labor during her hospitalization of November 10, 2002. Although the patient was contracting, he failed to have the patient re-evaluated for cervical dilation over a 3-hour period. The standard of care would be to have the patient re-evaluated no more than 1 hour from her previous exam.

3. Ms. Hale was given terbutaline for symptomatic relief. The contractions stopped but they restarted. At this time, the standard of care would require cervical evaluation. This would be due to the time factor and the presence of contractions.

4. The nurses failed to meet the standard of care by not appropriately assessing the patient for premature labor. The time between exams was far too great, and by the time premature labor was recognized it was too late to stop the labor.

It is my opinion that Dr. Ott's treatment of this high-risk, twin pregnancy was below the standard of care and led to the poor outcome of this pregnancy.

Very truly yours,

Bennett S. Walstatter, M.D.

Bennett S. Walstatter, MD
F.A.C.O.G



## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PLAINTIFFS' PRETRIAL STATEMENT** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing of a true and correct copy to the party and address listed below on the 15th day of August 2007:

**Daniel J. Nelson, Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**PLAINTIFFS' FIRST SUPPLEMENTAL PRE-TRIAL STATEMENT**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

August 17, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>GARY D. OTT, MD *ET AL,*<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD<br>***Consolidated at Case No.: 2005-364-CD*** |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>GARY D. OTT, MD *ET AL,*<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD<br>***Consolidated at Case No.: 2005-364-CD*** |

**PLAINTIFFS' FIRST SUPPLEMENTAL PRETRIAL STATEMENT**

AND NOW, come the Plaintiffs, Randy Hale and Angela Hale, parents and natural guardians of Reganne Hale and Ashtyn Hale, minors, by and through their attorneys of record, Harry S. Cohen & Associates, PC, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following First Supplemental Pretrial Statement:

## I. WITNESSES

At the trial of this case, Plaintiffs may call any or all of the following witnesses:

### B. EXPERTS

1. Curtis L. Cetrulo, M.D.
   Maternal Fetal Medicine, P.C.
   Po Box 755
   Hingham, MA 02043-0755

*(Dr. Cetrulo's supplemental report is attached hereto as "Exhibit A".)*

All other portions of Plaintiffs' Pre-Trial Statement are to remain in full force and effect.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

Maternal Fetal Medicine, P.C
CURTIS L. CETRULO, M.D.
OBSTETRICS & GYNECOLOGY
P.O. Box 755
Hingham, MA 02043-0755
Tel. (781) 749-6233 Fax (781) 740-2709

August 13, 2007

Todd D. Bowlus, Esq.
Harry S. Cohen & Associates
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

Re: Angela Hale and Randy A. Hale, parents and natural guardians of Reganne Hale, a minor, v. Michael J. Kush, M.D., and adult individual; Gary D. Ott, M.D., and adult individual; Yoo, Tai, Y., M.D. a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation

All of the opinions given in my report dated July 13, 2006 are given within a reasonable degree of medical certainty.

Sincerely,

C T Cetrulo MD



## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PLAINTIFFS' FIRST SUPPLEMENTAL PRETRIAL STATEMENT** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing of a true and correct copy to the party and address listed below on the 17th day of August 2007:

**Daniel J. Nelson, Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

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Exhibit H

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE as parents and natural guardians of REGANNE HALE, a minor and ASHTYN HALE, a minor,<br>Plaintiffs | * | |
| vs. | * | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult individual, GARY D. OTT, an adult individual, YOO, TAI Y., M.D., and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br>Defendants | * | |

**ORDER**

AND NOW, this 27th day of July, 2007, it is the ORDER of the Court that any party filing any Motion or Petition of any type including but not limited to those regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same by no later than August 16, 2007. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than ten (10 days prior to trial.)

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.

JUL 30 2007

Attest. Prothonotary/ Clerk of Courts

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Exhibit I

09-11-07 P05:14 IN

LAW OFFICES OF HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Phone: 412-281-3000
Fax: 412-232-6688

**Harry S. Cohen & Associates, PC**

From the desk of:

Sherry Pugliano
*Paralegal to Douglas L. Price, Esquire and Todd D. Bowlus, Esquire*

# Fax

| | | | |
|---|---|---|---|
| **To:** | John Blasko, Esquire | **From:** | Todd D. Bowlus, Esquire |
| **cc:** | David Johnson, Esquire | | |
| **Fax:** | 814.234.5620<br>412.232.3498 | **Date:** | September 11, 2007 |
| **Phone:** | | **Pages:** | 8 (with cover page) |
| **RE:** | Hale v. Ott, et al. | | |

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

**•Comments:**

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Sandra E. Rezuik, M.D., Ph.D.
7 Dante Street
Larchmont, NY 10538-1608

September 9, 2007

Therese Naimark
Harry S. Cohen & Associates, P.C.
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

**Re: Angela Hale**

Dear Ms.Naimark:

Thank you for sending me materials related to the case captioned above for review. I have reviewed all the materials you have sent me, including Ms. Hale's placental pathology slides, the Dubois Regional Medical Center pathology report dated 11/14/02 and both of Dr. Geoffrey Altshuler's reports, dated March 30, 2007 and April 30, 2007, respectively. As you know, I first performed a "cold read" of the pathology slides, meaning I examined them without looking at any of the other materials that you sent me. Only after completing the "cold read" did I review Dr. Altshuler's reports. The opinions I formed from the "cold read" of the slides have not changed.

I received six microscopic slides for review, labeled S02-6230 II A1-A6 Slides S02-6230 II A1 and A2 contain tissue collected from the Twin A portion of the fused placenta; slides S02-6230 II A3 and A4 contain tissue from the Twin B portion of the fused disk and slide S02-6230 II A5 contains the dividing membranes.

From the histology of the "fused membranes" in slide S02-6230 AII A5, it is apparent that this is a monochorionic diamnionic placenta and that the twins are identical. There is no significant histopathology involving these dividing membranes or either of the individual twin's fetal membranes apparent in the slides. Specifically, there is no chorioamnionitis, which is typically seen in the presence of ascending bacterial infection, and there are no changes in the amnionic epithelium, which are usually seen as a result of either meconium exposure or oligohydramnios.

There are two tri-vascular umbilical cords, both of which appear normal. Specifically there is no evidence of acute funisitis, which is associated with either bacterial infection or umbilical cord trauma, and there is no evidence of umbilical cord thrombosis or compression.

The villous parenchyma from both the Twin A and the Twin B portions of the disk contains no significant histopathologic change. Specifically, there is no evidence of



infarct, intervilllous thrombus, increased syncytial knotting, Tenney-Parker change, villous hypoplasia or significantly increased perivillous fibrin deposition, all of which would be typical if clinically significant placental malperfusion were present. There is also no evidence of placental abruption, chronic villitis or significant fetal vasculopathy.

My observations are in complete agreement with those of Dr. Gregory Suslow, the Dubois Regional Medical Center pathologist who signed out Angela Hale's slides originally. I respectfully disagree, however, with some of Dr. Geoffrey Altshuler's conclusions. In his original report, dated March 30, 2007, Dr. Altshuler implies that there is evidence of reduced uteroplacental blood flow. In his second report, dated April 30, 2007, he provides a time estimate for the decreased uteroplacental blood flow of at least two and a half days. He supports these conclusions by referring to the presence of obliterative vasculopathy present in villous blood vessels. Reduced uteroplacental blood flow for as long as two and a half days, however, typically leads to the changes I have mentioned above, i.e. infarcts, intervillous thrombi, significantly increased pervillous fibrin deposition and reactive amnionic epithelium, none of which is present in the slides received. Furthermore, uteroplacental blood flow usually refers to the flow of blood in the maternal spiral arteries that empty into the intervillous space. Dr. Altshuler, however, does not describe any pathology involving those vessels, but refers to changes in the fetal villous blood vessels. Significant fetal vasculopathy would lead to impaired blood flow through the feto-placental vascular circuit and to villous fibrosis, which are also not found in this case.

In his first report, Dr. Altshuler states that nucleated red cells (NRBCs) are present in the fetal vasculature. In his second report, he implies that the number of NRBCs in this case indicates that uteroplacental blood flow was decreased for many hours. The number of NRBCs in these slides is not significantly increased. Furthermore, recent studies have found that the presence of increased numbers of NRBCs is not a reliable marker for fetal stress.

In summary, I find that there is no clinically significant pathology in any part of twin placenta. I opine, to within a reasonable degree of medical certainty, that had Ms. Hale's delivery been delayed, both twins would not have suffered such grave consequences, including such severe injury to the central nervous system.

Again, thank you for allowing me to review this very interesting, but tragic case. I will be available if any additional assistance is needed.

Best regards,

Sandra E. Reznik, M.D., Ph.D.

ALL-STATE LEGAL SUPPLY CO., 1-800-222-0510 ED11 RECYCLED



Exhibit J

Patient: HALE,ANGELA
Unit#/Acct#: D000417389/D0231400208
Location: DIS
Att Phys-Serv: OTT,GARY D - *OBSTETRICS
Ordering Phys: OTT,GARY D
Order Dx: NORMAL DELIVERY

Age: 26Y Sex: F
Case#: S02-6230
Accn#: 1681897
Completed: 11/14/02 0932
Received: 11/11/02 1501
Collected: 11/11/02 1500

********** SURGICAL PATHOLOGY ORDER **********

Specimen(s): Placenta-Twins

A. Placenta-Twins

Surgeon/Physician: OTT

Specimen: PLACENTA TWIN A, PLACENTA TWIN B

Pre-op Diag: NONE GIVEN

Post-op Diag: NONE GIVEN

History: NONE GIVEN

GROSS:

Specimen labeled "twin placenta" is received in formalin. It consists of a monochorionic diamniotic twin placenta. The twin A is designated by a clamped cord and the twin B by a sutured cord. The placenta measures 17.0 x 14.0 x 3.0 cm. The twin A umbilical cord measures 19.5 cm in length by up to 1.5 cm across and on cut section reveals three blood vessels. The twin B umbilical cord measures 16.0 cm in length by up to 1.4 cm across and on cut section also reveals three blood vessels. The fetal membranes are purple-gray, semi-transparent. The cotyledons on the maternal surface appear intact and on serial sectioning reveal a homogenous, spongy, dark red appearance. Representative sections are submitted in cassettes as follows: A1 and A2 twin A placenta, membranes and cord; A3 and A4 twin B placenta, membranes and cord; A5 fused membranes.

Gross By: Dr. Gregory Suslow M.D.

AFTER MICROSCOPIC EXAMINATION:

DX:

Monochorionic, diamniotic slightly hypomature twin placenta.

Bilateral trivascular umbilical cords.



LABORATORY
Jose Costa M.D. Medical Director
Gregory Suslow M. D.

4E

| | | | |
|---|---|---|---|
| Patient: | HALE,ANGELA | Age: 26Y | Sex: F |
| Unit#/Acct#: | D000417389/D0231400208 | Case#: | S02-6230 |
| Location: | DIS | Accn#: | 1681897 |
| Att Phys-Serv: | OTT,GARY D - *OBSTETRICS | Completed: | 11/14/02 0932 |
| Ordering Phys: | OTT,GARY D | Received: | 11/11/02 1501 |
| Order Dx: | NORMAL DELIVERY | Collected: | 11/11/02 1500 |

********** SURGICAL PATHOLOGY ORDER **********
(Continued)

No evidence of acute chorioamnionitis or funisitis.

Read By: Dr. Gregory Suslow M.D.

End of Report - 11/14/02 09:32am



LABORATORY
Jose Costa M.D. Medical Director
Gregory Suslow M. D.

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Harry S.
Cohen
&
Associates, P.C.
LAW OFFICES

MAY 12 2004

need Strips

May 6, 2004

66091
62
prelim from 6/22/04 $176.11

417389 | 231400208 DE 11/3/02 (SG)
Complete

OPE 231300146 11/9/02 (OPE) (6)
Complete

Dubois Regional Medical Center
ATTN: Medical Records Correspondence
P.O. Box 447
Dubois, PA 15801

RE: Angela Hale
Date of Birth: 8/9/1976
Social Security No.: 177-62-1839
Date of treatment: November 10, 2002

Dear Sir/Madam:

Please be advised that our firm has been retained to represent the interest of Angela Hale. Mrs. Hale gave birth to twins on November 10, 2002 at your facility.

At this time we are requesting the a copy of the following record:

a) The complete 11/9/02 admission of Angela Hale, including Fetal Monitoring strips and Ultra Sound reports.

b) The complete 11/10/02 admission of Angela Hale, including Fetal Monitoring strips and Ultra Sound reports.

Enclosed please find an authorization for release of protected health information executed by Angela Hale for the release of these records to our office. If pre-payment is required please contact me so that I may remit a check as soon as possible.

Thank you for your attention to this matter.

Yours very truly

HARRY S. COHEN & ASSOCIATES

Denise Johnson

DENISE JOHNSON, PARALEGAL

/dej
enclosure

Two Chatham Center • Suite 985 • Pittsburgh, PA 15219 • Tel: (412) 281-3000 • Fax: (412) 232-5688
E-mail: hcohen@medmal1.com • http://www.medmal1.com

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Exhibit L

Harry S. Cohen & Associates
LAW OFFICES

# AUTHORIZATION FOR RELEASE OF PROTECTED HEALTH INFORMATION

I, Angela Hale authorize DRMC MFM to release information from the record(s) of:

Patient Name: Angela Hale

Date of Birth: 8-9-1976 Social Security No.: 177-62-1839

Treatment date(s): 1-02 to 12-02

2. Information to be released: ALL RECORDS IN YOUR POSSESSION ✓

| | | | |
|---|---|---|---|
| OUTPATIENT | ✓ | EMERGENCY ROOM RECORD | ✓ |
| SUMMARY SHEET | ✓ | DISCHARGE SUMMARY | ✓ |
| HISTORY & PHYSICAL | ✓ | CONSULTATIONS | ✓ |
| PROGRESS REPORT | ✓ | DOCTORS' ORDERS | ✓ |
| OPERATIVE REPORT | ✓ | NURSES' NOTES | ✓ |
| DIAGNOSTIC REPORTS: X-RAYS, LAB, EKG., ECG.., PATHOLOGY | | | ✓ |

OTHER: REPORTS

3. Information is to be released to: HARRY S. COHEN & ASSOCIATES
985 TWO CHATHAM CENTER
PITTSBURGH, PA 15219

4. The purpose of disclosure: Litigation

5. I understand that this consent is to include disclosure of:

- ☐ Alcohol and/or drug abuse record _____(initials)
- ☐ Sexually transmitted disease information _____(initials)
- ☐ Psychiatric records _____(initials)
- ☐ HIV/AIDS information _____(initials)

6. A photocopy of this authorization is to be considered as valid as the original

7. I understand that the information used or disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and may no longer be protected by Federal Law.

8. I understand that this authorization is subject to revocation at any time. A photocopy or facsimile of this authorization will be considered valid unless otherwise specified. I also understand and agree that this authorization will terminate as set forth above unless I revoke this authorization in writing. I understand that recipients may redisclose information which I have authorized them to receive.

SIGNATURE: ✓ Angela M. Hale DATE: 5-6-04

PR NAME: Angela M Hale

Relationship to patient of personal/legal representative signing for Patient: _____

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**PLAINTIFFS' SUGGESTED JURY CHARGE**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED 2cc AHy Bowlus
0/8:45cm
SEP 21 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

**PLAINTIFFS' SUGGESTED JURY CHARGE**

AND NOW, come the Plaintiffs, Randy Hale and Angela Hale, parents and natural guardians of Reganne Hale and Ashtyn Hale, minors, by and through their attorneys of record, Harry S. Cohen & Associates, PC, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Suggested Jury Charge:

1. **ISSUES IN THE CASE,** *Pa.S.S.J.I.* 3.00

The Plaintiffs claim that Reganne and Ashtyn Hale were injured and sustained damage as a result of the negligent conduct of the Defendants. The Plaintiffs have the burden of proving their claims. The defendant denies the Plaintiffs' claims

Based upon the evidence presented at this trial, the only issues for you to decide in accordance with the law as I will give it to you, are:

First: Were the defendants negligent?

Second: Did the defendants' negligence increase the risk of harm for Reganne and Ashtyn Hale?

ACCEPTED_____ REJECTED_____ MODIFIED_____

2. **NEGLIGENCE,** *Pa. S.S.J.I.* 3.01

The legal term negligence, otherwise known as carelessness, is the absence of ordinary care which a reasonably prudent person would exercise in the circumstances here presented. Negligent conduct may consist either of an act or an omission to act when there is a duty to do so. In other words, negligence is the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, in light of all the surrounding circumstances established by the evidence in this case. It is for you to determine how a reasonably careful person would act in those circumstances.

ACCEPTED_____ REJECTED_____ MODIFIED_____

3. **MEDICAL MALPRACTICE—BURDEN OF PROOF,** *Pa. S.S.J.I. 11.03*

In civil cases the plaintiffs have the burden of proving their claims.

The plaintiffs must prove their claims by a legal standard called "a preponderance of the evidence." Preponderance of the evidence means the claim is more likely true than not.

If, after considering all the evidence, you find the plaintiffs' claims are more likely true than not, you must find for the plaintiffs.

Think about an ordinary balance scale with a pan on each side to hold objects. Imagine using the scale as you deliberate in the jury room. Place all the evidence favorable to the plaintiffs in one pan. Place all the evidence favorable to the defendants in the other. If the scales tip, even slightly, to the plaintiffs' side, then you must find for the plaintiffs. If, however, the scales tip even slightly on the defendants' side, or if the two sides of the scale balance, then you must find for the defendants.

In this case, the plaintiffs have the burden of proving the following claims:

1. the defendants were negligent; and

2. the defendants' negligence increased the risk of harm to Reganne and Ashtyn Hale?

ACCEPTED_____ REJECTED_____ MODIFIED_____

4. **MEDICAL PROFESSIONAL NEGLIGENCE-INTRODUCTION,** *Pa. S.S.J.I.11.00*

Professional negligence consists of a negligent, careless, or unskilled performance by a physician or nurse of the duties imposed on her by the professional relationship with the patient. It is also negligence when a physician or nurse shows a lack of proper care and skill in the performance of a professional act.

ACCEPTED_____ REJECTED_____ MODIFIED_____

5. **MEDICAL MALPRACTICE—STANDARD OF CARE,** *Pa. S.S.J.I.11.01*

A physician must have the same knowledge and skill and use the same care normally used in the medical profession. A physician whose conduct does not meet this professional standard of care is negligent.

A physician must also keep informed of the contemporary developments in the medical profession and must use current skills and knowledge. In other words, a physician must be up to date on the improvements of the day in medical skills and knowledge, and if he fails to keep current or fails to use current knowledge in the medical treatment of the patient, the physician is negligent.

A physician must also use the same degree of care as a reasonable person would under the circumstances, and if the physician fails to do so, he is negligent.

Likewise, a nurse must have the same knowledge and skill and use the same care normally used in the nursing profession. A nurse whose conduct does not meet this professional standard of care is negligent.

A nurse must also keep informed of the contemporary developments in the medical profession and must use current skills and knowledge. In other words, a nurse must be up to date on the improvements of the day in medical skills and knowledge, and if she fails to keep current or fails to use current knowledge in the nursing treatment of the patient, the nurse is negligent.

A nurse must also use the same degree of care as a reasonable person would under the circumstances, and if the nurse fails to do so, she is negligent.

You must decide whether the defendants were negligent. If you find that the defendants were negligent, then you must determine whether the defendants' negligence was a factual cause of the plaintiff's injuries. If you so find, you should return a verdict in favor of the plaintiff and against the defendants.

ACCEPTED_____ REJECTED_____ MODIFIED_____

6. **MEDICAL MALPRACTICE—FACTUAL CAUSE,** *Pa. S.S.J.I. 11.02*

(A) Causation

I previously explained to you that if you find the doctor and/or nurse is negligent, you then must consider whether the negligence was a factual cause of the harm suffered by the patient.

Under the law we call conduct that causes harm a "factual cause."

Negligent conduct is a factual cause of harm if the conduct played an actual, real role in harming the plaintiff.

The connection between the conduct and the harm cannot be imaginary or insignificant. There may be more than one factual cause of harm.

You can find conduct a factual cause of harm even if a person's contribution to the harm was relatively minor or the result unusual.

A person remains responsible for his or her conduct that causes harm even if other causes contributed to the harm.

(B) Increased Risk of Harm

When a defendant physician or nurse negligently fails to act or negligently delays in taking indicated diagnostic or therapeutic steps, and his or her negligence is a factual cause of injuries to the plaintiff, that negligent defendant physician or nurse is responsible for the injuries caused.

Where the plaintiff presents expert testimony that the failure to act or delay on the part of the defendant physician or nurse has increased the risk of harm to the plaintiff, this testimony, if

found credible, provides a sufficient basis from which you may find that the negligence was a factual cause of the injuries sustained.

If there has been any significant possibility of avoiding injuries and the defendants have destroyed that possibility, she may be liable to the plaintiff.

It is rarely possible to demonstrate to an absolute certainty what would have happened under circumstances that the wrongdoer did not allow to come to pass.

ACCEPTED_____ REJECTED_____ MODIFIED_____

7. **CONCURRING CAUSES,** *Pa. S.S.J.I. 3.16*

There may be more than one factual cause of the harm suffered by the plaintiff. When negligent conduct of two or more persons contributes concurrently to an occurrence or incident, each of these persons is fully responsible for the harm suffered by the plaintiff regardless of the relative extent to which each contributed to the harm. A cause is concurrent if it was operative at the moment of the incident, and acted with another cause as a factual cause in bringing about the harm.

ACCEPTED_____ REJECTED_____ MODIFIED_____

8. **CONCURRING CAUSES—EITHER ALONE SUFFICIENT,** *Pa. S.S.J.I. 3.17*

Where the negligent conduct of a defendant combines with other circumstances and other forces to cause the harm suffered by the plaintiff, the defendant is responsible for the harm if his or her negligent conduct was a factual cause of the harm, even if the harm would have occurred without it.

ACCEPTED_____ REJECTED_____ MODIFIED_____

9. **ISOLATION OF SOLE CAUSE AMONG MULTIPLE ACTORS,** *Pa. S.S.J.I. 3.19*

Where the conduct of two or more persons is negligent, and it is proved that the harm was caused by the negligent conduct of only one of them, but there is uncertainty as to which one caused it, the burden is upon each person to prove that she has not caused the harm.

ACCEPTED_____ REJECTED_____ MODIFIED_____

10. **MEDICAL MALPRACTICE—SUGGESTED SPECIAL JURY INTERROGATORIES (UNDER THE MCARE ACT EFFECTIVE FOR ALL CLAIMS ARISING SUBSEQUENT TO MARCH 20, 2002),** *Pa. S.S.J.I. 11.11B modified with* **OLD *Pa. S.S.J.I.* 3.03A**

The court has already instructed you about what you may consider in determining whether the defendants were negligent, and whether such negligence, if any, was a factual cause in bringing about the plaintiff's harm.

If you find that more than one defendant is liable to the plaintiffs, you must apply section 2 of the Comparative Negligence Act, which provides:

> Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed.

Under this act, if you find that any defendant or more than one defendant was causally negligent, it is your duty to apportion the relative degree of causal negligence between all of the defendants found negligent. In apportioning the causal negligence you should use your common sense and experience to arrive at a result that is fair and reasonable under the facts of this occurrence as you have determined them from the evidence.

You must set forth the percentages of causal negligence attributable to each of the defendants you find to have been causally negligent. The total of these percentages must be 100 percent. You will then determine the total amount of damages to which the plaintiff would be entitled.

To further clarify these instructions, the court will now distribute to each of you a verdict form containing specific questions. At the conclusion of your deliberations, one copy of this form should be signed by your foreman and handed to the court clerk; this will constitute your verdict. The verdict form reads as follows:

> Question 1:
>
> Do you find the Defendant Gary D. Ott, M.D. negligent in the care and treatment of Angela Hale?
>
> Yes _____ No _____

If you answered question #1 "no", the Plaintiffs cannot recover against Defendant Gary D. Ott, M.D. and you need not answer question #2, proceed to answer question 3.

Question 2:

Do you find that Defendant Gary D. Ott, M.D.'s negligence increased the risk of harm for Reganne and Ashtyn Hale?

Yes _____ No _____

If you answered question #2 "no", the Plaintiffs cannot recover against Defendant Gary D. Ott, M.D.

Question 3:

Do you find the Defendant Dubois Regional Memorial Hospital negligent in the care and treatment of Angela Hale?

Yes _____ No _____

If you answered question #3 "no", the Plaintiffs cannot recover against Defendant Dubois Regional Memorial Hospital and you need not answer question #4, proceed to answer question 3.

Question 4:

Do you find that Defendant Dubois Regional Memorial Hospital's negligence increased the risk of harm for Reganne and Ashtyn Hale?

Yes _____ No _____

If you answered question #4 "no", the Plaintiffs cannot recover against Defendant Dubois Regional Memorial Hospital.

Question 5:

If you find only one of the Defendants liable, there is no need to answer this question; however, if you find both Defendant Gary D. Ott, M.D. and Defendant Dubois Regional Memorial Hospital liable, taking the combined casual negligence that was a factual cause in increasing the risk of harm to Reganne and Ashtyn Hale as 100%, what percentage of that casual negligence was attributable to:

Defendant Gary D. Ott, M.D.: _____%
Defendant Dubois Regional Memorial Hospital: _____%

Total: 100%

After you return your answers to these questions on the verdict form, signed by your foreman, the court will determine the amount to be awarded to the plaintiffs.

ACCEPTED_____ REJECTED_____ MODIFIED_____

11. **NUMBER OF WITNESSES**, *Pa. S.S.J.I.* 5.03

The number of witnesses offered by one side or the other does not, in itself, determine the weight of the evidence. It is a factor, but only one of many factors that you should consider. Whether the witnesses appear to be biased or unbiased or whether they are interested or disinterested persons, are among the important factors that indicate the reliability of their testimony. The important thing is the quality of the testimony of each witness. In short, the test is not which side brings the greater number of witnesses or presents the greater quantity of evidence; but which witness or witnesses, and which evidence, you consider most worthy of belief. Even the testimony of one witness may outweigh that of many, if you have reason to believe his or her testimony in preference to theirs. Obviously, however, where the testimony of the witnesses appears to you to be of the same quality, the weight of numbers assumes particular significance.

ACCEPTED_____ REJECTED_____ MODIFIED_____

12. **CONFLICTING TESTIMONY**, *Pa. S.S.J.I.* 5.04

You may find inconsistencies in the evidence. Even actual contradictions in the testimony of witnesses do not necessarily mean that any witness has been willfully false. Poor memory is not uncommon. Sometimes a witness forgets; sometimes he or she remembers incorrectly. It is also true that two persons witnessing an incident may see or hear it differently.

If different parts of the testimony of any witness or witnesses appear to be inconsistent, you the jury should try to reconcile the conflicting statements, whether of the same or different witnesses, and you should do so if it can be done fairly and satisfactorily.

If, however, you decide that there is a genuine and irreconcilable conflict of testimony, it is your function and duty to determine which, if any, of the contradictory statements you will believe.

ACCEPTED_____ REJECTED_____ MODIFIED_____

13. **DIRECT AND CIRCUMSTANTIAL EVIDENCE** *Pa. S.S.J.I.* 5.07

Evidence may either be direct evidence or circumstantial evidence. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw, heard, or did. Circumstantial evidence is proof of one or more facts from which you could find another fact. You should consider both kinds of evidence. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence. You may decide the case solely based on circumstantial evidence.

ACCEPTED_____ REJECTED_____ MODIFIED_____

14. **IRRELEVANT CONSIDERATIONS**, *Pa. S.S.J.I. 11.09*

A medical malpractice case is a civil action for damages and nothing more. You must decide only the issue of whether the plaintiffs have suffered injuries as the result of the defendants' negligence, and is thus entitled to monetary compensation for those injuries. Your verdict does not involve punishment of the defendants, or even criticism of their professional abilities, beyond the facts of this matter. It does not involve the defendants' reputation, her medical practice, or her rights as a licensed physician or nurse. Therefore, no thought should be given to these irrelevant considerations in reaching your verdict.

ACCEPTED_____ REJECTED_____ MODIFIED_____

15. **EXPERT TESTIMONY – CREDIBILITY GENERALLY**, *PA. S.S.J.I.* 5.30

You will recall that various witnesses gave testimony of his or her qualifications as an expert.

A witness who has special knowledge, skill, experience, training, or education in a particular science, profession, or occupation may give an opinion as an expert as to any matter in which he or she is skilled. In determining the weight to be given to the expert's opinion, you should consider the qualifications and reliability of the expert and the reasons and facts given for the opinion. You are not bound by an expert's opinion merely because he or she is an expert; you may accept or reject it, as in the case of other witnesses. Give it the weight, if any, to which you deem it entitled.

ACCEPTED_____ REJECTED_____ MODIFIED_____

16. **EXPERT TESTIMONY – BASIS FOR OPINION**, *Pa. S.S.J.I* 5.31

In general, the opinion of an expert has value only when you accept the facts upon which it is based. This is true whether the facts are assumed hypothetically by the expert, come from his personal knowledge, from some other proper source or from some combination of these.

ACCEPTED_____ REJECTED_____ MODIFIED_____

17. **HYPOTHETICAL QUESTIONS**, *Pa. S.S.J.I.* 5.32

Questions have been asked in which an expert witness was invited to assume that certain facts were true and to give an opinion based upon that assumption. These are called hypothetical questions. If you find that any material fact assumed in a particular hypothetical question has not been established by the evidence, you should disregard the opinion of the expert given in response to that question. By material fact, we mean one which was important to the expert in forming his opinion.

Similarly, if the expert has made it clear that his opinion is based on the assumption that a particular fact did not exist and, from the evidence you find that it did exist and that it was material, you should give no weight to the opinion so express.

ACCEPTED_____ REJECTED_____ MODIFIED_____

18. **WEIGHING CONFLICTING EXPERT TESTIMONY,** *Pa. S.S.J.I.* 5.33

In resolving any conflict that may exist in the testimony of expert witnesses, you are entitled to weigh the opinion of one expert against that of another. In doing this, you should consider the relative qualifications and reliability of the expert witnesses, as well as the reasons for each opinion and the facts and other matters upon which it was based.

ACCEPTED_____ REJECTED_____ MODIFIED_____

19. **CAUTIONARY CHARGE: JURY NOT TO ASSUME JUDGE HAS EXPRESSED AN OPINION ON THE EVIDENCE,** *Pa. S.S.J.I.* 5.40

I have invited your attention to various factors which you may consider in evaluating the witnesses testimony. In doing so, I have not attempted to indicate any opinion on my part concerning the weight which you should give to the evidence or to any part of it and I would not want you to think that I had. In any event, it is for you and you alone to determine the credibility of each witness.

ACCEPTED_____ REJECTED_____ MODIFIED_____

20. **DEFENSES**

Solely because there is a trial and the Defendants have asserted a defense does not mean, in and of itself, that the defense is legitimate.

*This point is requested in the event the Court grants a point to the effect that the mere filing of a lawsuit, in and of itself, is no reason to award a verdict.*

ACCEPTED_____ REJECTED_____ MODIFIED_____

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PLAINTIFFS' PROPOSED JURY INTERROGATORIES** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by hand-delivery of a true and correct copy to the party and address listed below on the 21st day of September 2007:

**Daniel J. Nelson, Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

CA

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs | * | CIVIL ACTION - LAW |
| vs. | * | |
| GARY D. OTT, M.D., AND DUBOIS REGIONAL MEDICAL CENTER, Defendants | * | NO. 05-364-CD |
| ANGELA HALE and RANDY HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs | * | |
| vs. | * | |
| GARY D. OTT, M.D., AND DUBOIS REGIONAL MEDICAL CENTER, Defendants | * | NO. 06-936-CD |

ORDER OF COURT

NOW, September 20, 2007, upon consideration of defense motion for compulsory nonsuit and on examination of the testimony of Dr. Cetrulo, IT IS THE ORDER OF THIS COURT that said motion be and is hereby denied.

BY THE COURT:

John K. Reilly, Jr.
Senior Judge

FILED
01/10/17/BK
SEP 21 2007
William A. Shaw
Prothonotary/Clerk of Courts

ICC Attys:
Cohen, Bowles
Blasko, Neely
Johnson, Oliver
GK

FILED

SEP 2 1 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/21/07

___ You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) X Plaintiff(s) Attorney ___ Other

___ Defendant(s) X Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>GARY D. OTT, MD; an adult individual and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation<br><br>Defendants. | CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION<br><br>Case No.: 2005-364-CD<br>***Consolidated at Case No.: 2005-364-CD***<br><br>**PLAINTIFFS' ADDITIONAL SUGGESTED JURY CHARGE**<br><br>Filed on Behalf of Plaintiffs |

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| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION<br><br>Case No.: 2006-936 CD<br>***Consolidated at Case No.: 2005-364-CD***<br><br>Counsel of Record for Plaintiffs:<br><br>Harry S. Cohen, Esquire<br>PA I.D. #30682<br><br>Todd D. Bowlus, Esquire<br>PA I.D. #89106<br><br>HARRY S. COHEN & ASSOCIATES, PC<br>Two Chatham Center, Suite 985<br>Pittsburgh, PA 15219<br>Firm ID #813<br><br>(412) 281-3000<br><br>**JURY TRIAL DEMANDED** |

FILED No CC
09:21 BD
SEP 24 2007
William A. Shaw
Prothonotary/Clerk of Courts
Filed per Judge Ammerman

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| GARY D. OTT, MD *ET AL,* | : | |
| Defendants. | : | |

**PLAINTIFFS' ADDITIONAL SUGGESTED JURY CHARGE**

AND NOW, come the Plaintiffs, Randy Hale and Angela Hale, parents and natural guardians of Reganne Hale and Ashtyn Hale, minors, by and through their attorneys of record, Harry S. Cohen & Associates, PC, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Suggested Jury Charge:

1. **FAILURE TO PRODUCE EVIDENCE** *Pa. S.S.J.I.* 5.06 (Civ)

In this case, Dr. Ott did not call Dr. Alshulter as a witness. The general rule as it applies in the case of failure to call a witness is as follows:

> where a potential witness is within the control of one of the parties and is shown to have special information relevant to the case, so that his testimony would not merely be cumulative, and where that witness' relationship to one of the parties is such that the witness would ordinarily be expected to favor that party, then if that party does not produce the witness' testimony, and there is no satisfactory explanation for the

failure to do so, you may draw the inference that such testimony would not have been favorable.

Therefore, if you find that Dr. Alshulter, who was not called as a witness, was within the control of Dr. Ott, has special information that was relevant, and that his testimony would not merely be cumulative, and that his relationship to Dr. Ott is such that Dr. Alshulter would ordinarily be expected to favor Dr. Ott, then if there is no satisfactory explanation for Dr. Ott's failure to call that witness, you may infer that the testimony of Dr. Alshulter would have been unfavorable.

ACCEPTED_____ REJECTED_____ MODIFIED_____

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By:_____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PLAINTIFFS' ADDITIONAL SUGGESTED JURY CHARGE** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by hand-delivery of a true and correct copy to the party and address listed below on the 24th day of September 2007:

**Daniel J. Nelson, Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

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

FILED
12:31 BOL
SEP 24 2007 Filed per Judge Ammerman
William A. Shaw
Prothonotary/Clerk of Courts

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|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | *Civil Action-Medical Professional Liability Action*<br>Case No. 2005-364 CD<br>*Consolidated at No. 2005-364-CD*<br><br>JURY TRIAL DEMANDED |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | Case No. 2006-936 CD<br>*Consolidated at No. 2005-364-CD*<br>*Civil Action-Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED<br><br>Type of Pleading:<br>POINTS FOR CHARGE<br><br>Filed on Behalf of Defendant<br>***Gary D. Ott, M.D.***<br><br>Counsel of Record for This Party<br>***John W. Blasko, Esquire***<br>Pa. Supreme Court I.D. #6787<br>McQuaide, Blasko, Fleming & Faulkner, Inc.<br>811 University Drive<br>State College, PA 16801<br>(814) 238-4926<br>Fax: (814) 238-9624<br><br>Counsel for Adverse Party Plaintiffs<br>***Harry S. Cohen, Esquire***<br>***Todd D. Bowlus, Esquire*** |

John W. Blasko

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | Case No. 2006 - 936 CD<br><br>*Civil Action - Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED |

**DEFENDANT GARY D. OTT, M.D.'S PROPOSED POINTS FOR CHARGE**

DEFENDANT'S PROPOSED POINT FOR CHARGE # 1.

Under all the evidence and the law applicable to this case, I direct, as a matter of law, that you return a verdict in favor of Defendant Dr. Gary D. Ott and against the Plaintiffs.

ACCEPTED _____
REFUSED _____
COVERED _____
MODIFIED _____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 2.

In civil cases such as this one, the Plaintiffs have the burden of proving those contentions which entitle them to relief.

When a party has the burden of proof on a particular issue, their contention on that issue must be established by a fair preponderance of the evidence. The evidence establishes a contention by a fair preponderance of the evidence if you are persuaded that it is more probably accurate and true than not.

To put it another way, think, if you will, of an ordinary balance scale, with a pan on each side. Onto one side of the scale, place all of the evidence favorable to the plaintiff; onto the other, place all of the evidence favorable to the defendant. If, after considering the comparable weight of the evidence, you feel that the scales tip, ever so slightly or to the slightest degree, in favor of the plaintiff, your verdict must be for them. If the scales tip in favor of the defendant, or are equally balanced, your verdict must be for the defendant.

The burden of proof is on the Plaintiffs to establish that: (1) Dr. Ott did not possess and employ the required skill and knowledge; or (2) did not exercise the care and judgment of a reasonable person in like cases, **and** that Plaintiffs' claimed injuries either: (1) resulted from the failure on the part of Dr. Ott to possess and employ the required skill and knowledge; or (2) resulted from his failure to exercise the care and judgment of a reasonable person in like circumstances. Dr. Ott does not have the burden of proving or disproving anything, although he may, and has, offered evidence in this case.

If, after considering all of the evidence, you feel persuaded that these propositions are more probably true than not true, your verdict must be for the Plaintiffs. Otherwise, your verdict must be for Dr. Ott.

Pennsylvania Suggested Standard Jury Instruction No. 5.50 (1981); Collins v. Hand, 431 Pa. 378, 246 A.2d 398, 401 (1968); Donaldson v. Maffucci, 397 Pa. 548, 156 A.2d 835, 838 (1959); MacDonald v. U.S., 767 F. Supp. 1295 (M.D. Pa. 1991), affirmed, 983 F.2d 1051.

ACCEPTED _____
REFUSED _____
COVERED _____
MODIFIED _____

DEFENDANT'S POINT FOR CHARGE #3

Dr. Ott is not legally liable for the alleged actions or inactions of any other physician, the nursing staff or any other health care providers involved in the care of Mrs. Hale. Similarly, Dr. Ott is not liable for any health care providers who have not been made parties to this lawsuit.

Willinger v. Mercy Cath. Med. Center, 312 A.2d 280 (1976); Strain v. Ferroni, 405 Pa. Super. 349, 592 A.2d 698, 704-05 (1991); Yorston v. Pennell, 397 Pa. 28, 153 A.2d 255, 259-60 (1959); Shull v. Schartz, 364 Pa. 554, 73 A.2d 402 (1950); Powell v. Risser, 375 Pa. 60, 99 A.2d 454, 456 (1953); Scacchi v. Montgomery, 365 Pa. 377, 75 A.2d 535, 537 (1950); Muller v. Likoff, 255 Pa. Super. 111, 310 A.2d 303, 205 (1973).

ACCEPTED _____
REJECTED _____
COVERED _____
MODIFIED _____

DEFENDANT'S POINT FOR CHARGE # 4

Dr. Ott is not negligent simply because a lawsuit has been filed against him.

The practice of medicine is a complex and experimental field. The law does not hold a physician liable for every unfortunate result, accidental occurrence, or failure of treatment which may occur following contact with a patient. The mere fact that you may find that a bad result or poor outcome followed Dr. Ott's contact with Mrs. Hale does **not**, in itself, establish any presumption or inference of negligence by Dr. Ott.

Collins v. Hand, 431 Pa. 378, 246 A.2d 398, 401 (9168); Lambert v. Soltis, 422 Pa. 304, 221 A.2d 173, 175 (1966); Ragan v. Steen, 29 Pa. Super. 515, 331 A.2d 724 (1974); Toogood v. Rogal, 824 A.2d 1140, 1150 (2003)

ACCEPTED _____
REJECTED _____
COVERED _____
MODIFIED _____

DEFENDANT'S POINT FOR CHARGE # 5

A physician owes his patient a duty to employ that degree of knowledge, skill, and care ordinarily possessed by members of the medical profession. There is no requirement that he be infallible, and making a mistake is not negligence. Perfection and prophetic insight are not required.

Toogood v. Rogal, 824 A.2d 1140, 1150, (2003); Incollingo v. Ewing, 444 Pa. 263, 282 A.2d 206, 213 (1971); Smith v. Yohe, 412 Pa. 94, 194 A.2d 167, 170-71 (1963); Duckworth v. Bennett, 320 Pa. 47, 181 A. 558, 559 (1953); Powell v. Risser, 375 Pa. 60, 99 A.2d 454, 456 (1953); Hodgson v. Bigelow, 335 Pa. 497, 7 A.2d 338, 342 (1939); Ward v. Garvin, 328 Pa. 395, 195 A. 885 (1938); English v. Free, 205 Pa. 624, 55 A. 777, 777-78 (1903).

ACCEPTED _____
REJECTED _____
COVERED _____
MODIFIED _____

DEFENDANT'S PROPOSED POINT FOR CHARGE #6

An error in judgment on the part of the physician is also **not** evidence of negligence. If a physician possesses reasonable and ordinary learning and skill, and uses care such as is ordinarily used in like or similar situations by physicians of reasonable and average skill, he is not negligent even though the judgment which he arrives at may subsequently prove to be incorrect.

Smith v. Yohe, 412 Pa. 94, 194 A.2d 167 (1963);
Toogood v. Rogal, 824 A.2d 1140, 1150 (2003).

ACCEPTED _____
REJECTED _____
COVERED _____
MODIFIED _____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 7

A physician must have and use the same knowledge and skill and exercise the same care as that which is usually had and exercised in the medical profession. A physician whose conduct does not meet this professional standard of care is negligent.

A physician who holds himself out as a specialist in a particular field of medicine must have and use the same knowledge and skill and exercise the same care as that which is usually had and exercised by other specialists in that same medical specialty. A specialist whose conduct does not meet this professional standard of care is negligent.

A physician must also keep informed of the contemporary developments in the medical profession or his specialty therein and he must use these current skills and knowledge. In other words, a physician is bound to be up to accepted and proven advances of the day in medical skills and knowledge. If he fails to inform himself of these advances or if he fails to employ these advances in the medical treatment of the patient he is negligent. Of course, a physician is not required to employ procedures or treatments which are still considered experimental or have not been confirmed as generally safe or effective.

A physician must also use the same degree of care as would a reasonable person under the circumstances, and if he fails to do so he is negligent.

You must decide whether or not Dr. Ott was negligent in any of these respects. In so doing, you must apply the standard of practice that existed for practitioners of the particular specialty in 2002, not 2007.

If you find that Dr. Ott was negligent in any of these respects, then you must determine whether this negligence was a substantial contributing factor in bringing about the injuries of the Plaintiffs. Only if you so find, may you return a verdict in favor of the Plaintiffs and against Dr. Ott.

Pennsylvania Suggested Standard Jury Instruction No. 10.03A (1991) (amended).

ACCEPTED _____
REFUSED _____
COVERED _____
MODIFIED _____

DEFENDANT'S POINT FOR CHARGE #8

The art of healing frequently calls for balancing of risks and dangers to a patient. Consequently, if injury results from the course adopted, where no negligence or fault is present, liability should not be imposed upon a physician actually seeking to assist the patient.

Toogood v. Rogal, 824 A.2d 1140 (2003).

ACCEPTED _____
REJECTED _____
COVERED _____
MODIFIED _____

DEFENDANT'S POINT FOR CHARGE #9

In addition, medical uncertainties exist because each patient is unique, and undesirable results occur even when the diagnosis is correct and treatment is properly administered.

A physician is not a warrantor of cures. Physicians do not guarantee the outcome of their care and the result of medical treatment or surgery is not certain. Thus, no inference of negligence arises from an undesirable outcome of medical care.

Toogood v. Rogal, 824 A.2d 1140, 1150, 1151 (2003).

ACCEPTED _____
REJECTED _____
COVERED _____
MODIFIED _____

DEFENDANT'S POINT FOR CHARGE #10

A physician is not liable simply because a patient failed to improve or when serious disease processes were not arrested and where another course of action might possibly have brought a better result.

Toogood v. Rogal, 824 A.2d 1140, 1150 (2003).

ACCEPTED _____
REJECTED _____
COVERED _____
MODIFIED _____

DEFENDANT'S POINT FOR CHARGE # 11

In order for Plaintiffs to recover against Dr. Ott, the Plaintiffs must prove that any negligent conduct of Dr. Ott was a substantial factor in bringing about the injury. This is what the law recognizes as legal cause. A substantial factor is an actual, real factor, although the result may be unusual or unexpected, but it is not a factor having no connection or only an insignificant connection to the injury, or an imaginary or fanciful factor.

A defendant may not be held liable, even if he is found to be negligent, if his negligence was not a substantial factor in bringing about harm to the plaintiff. Similarly, if other causes would have produced the harm independent of a defendant's negligence, the defendant is not liable.

Jones v. Montefiore Hospital, 494 Pa. 410, 431 A.2d 920, 923 (1981); Majors v. Broadhead Hotel, 416 Pa. 265, 205 A.2d 873, 878 (1965).

ACCEPTED _____
REFUSED _____
COVERED _____
MODIFIED _____

DEFENDANT'S PROPOSED POINT FOR CHARGE #12

If you find that Plaintiffs would have suffered the harm complained of regardless of the conduct of Dr. Ott, then Dr. Ott's conduct would not be a substantial factor in bringing about any harm to Plaintiffs, and your verdict must be in favor of Dr. Ott.

Hamil v. Bashline, 481 Pa. 256, 392 A.2d 1280 (1978).

ACCEPTED _____
REJECTED _____
COVERED _____
MODIFIED _____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 13

You are not permitted to determine your verdict based on sympathy for a party.

See S.S.J.I. (Civ.) 20.00 subsection (8)

ACCEPTED _____
REFUSED _____
COVERED _____
MODIFIED _____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 14

You cannot speculate or guess as to the proximate cause of the injuries of which the Plaintiffs complain. Plaintiffs have the burden of proving with reasonable medical certainty that the injuries complained of were caused by the allegedly negligent acts or omissions of Dr. Ott, and if you are left to speculate or guess as to whether Plaintiffs' claimed injuries were the result of the allegedly negligent acts or omissions of Dr. Ott, you must find in his favor.

Cwiakala v. Paal, 427 Pa. 322, 235 A.2d 145, 146-47 (1967); Laubach v. Haigh, 433 Pa. 487, 252 A.2d 682, 683 (1969); Gordon v. Trovato, 234 Pa. Super. 279, 338 A.2d 653, 657 (1975).

ACCEPTED: _____
REFUSED: _____
COVERED: _____
MODIFIED: _____

DEFENDANT'S POINT FOR CHARGE #15

Physicians hold an important place in our society due to the role that they play in the health and even survival of the peoples of this nation. For that reason, society does not allow a physician's actions to be second guessed at trial without a clear understanding of the standards of care required.

Toogood v. Rogal, 824 A.2d 1140, 1151 (2003).

ACCEPTED: _____
REFUSED: _____
COVERED: _____
MODIFIED: _____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 16

The opinion of an expert is necessary to establish the standard of care required under the circumstances, that a deviation from said standard existed, and that the alleged injuries were proximately caused by the deviation from the standard of care. In this latter regard, expert testimony is necessary to establish the causal connection between the injury and the allegedly negligent conduct with reasonable medical certainty in those cases where the connection is not obvious, such as in this case.

Brannan v. Lankenau Hospital, 490 Pa. 588, 417 A.2d 196, 199 (1980); Maliszewski v. Rendon, 374 Pa.Super. 109, 542 A.2d 170, 172 (1988), appeal denied, 526 Pa. 617, 554 A.2d 510 (1988).

ACCEPTED: _____
REFUSED: _____
COVERED: _____
MODIFIED: _____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 17

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation may give his opinion as an expert as to any matter in which he is skilled. In determining the weight to be given to his opinion, you should consider the qualifications, experience and reliability of the expert and the reasons given for his opinion. You are not bound by an expert's opinion merely because he is an expert; you may accept or reject it, as in the case of other witnesses. Give it the weight, if any, to which you deem it entitled.

Pennsylvania Suggested Standard Jury Instruction 5.30.

ACCEPTED: _____
REFUSED: _____
COVERED: _____
MODIFIED: _____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 18

In resolving any conflict that may exist in the testimony of expert witnesses, you are entitled to weigh the opinion of one expert against that of another. In doing this, you should consider the relative qualifications and reliability of the expert witnesses, as well as the reasons for each opinion and the facts and other matters upon which it was based.

Pennsylvania Suggested Standard Jury Instruction 5.33 (1981).

ACCEPTED: _____
REFUSED: _____
COVERED: _____
MODIFIED: _____

DEFENDANT'S PROPOSED POINT FOR CHARGE # 19

In general, the opinion of an expert has value only when you accept the facts upon which it is based. This is true whether the facts are assumed hypothetically by the expert, come from his personal knowledge, from some other proper source, or from some combination of these.

Questions may have been asked in which an expert witness was invited to assume that certain facts were true and to give an opinion based upon that assumption. These are called hypothetical questions. If you find that any material fact assumed in a particular hypothetical question has not been established by the evidence, you should disregard the opinion of the expert given in response to that question. (By material fact, we mean one which is important to the expert in forming his opinion.)

Similarly, if the expert has made it clear that his opinion is based on the assumption that a particular fact did not exist, and from the evidence you find that it did exist and that it was material, you should give no weight to the opinion so expressed.

Pennsylvania Suggested Standard Jury Instructions Nos. 5.31, 5.32 (1997); Battistone v. Benedetti, 385 Pa. 163, 122 A.2d 536, 539 (1956); Jackson v. United States Pipeline Co., 325 Pa. 436, 191 A. 165, 166 (1937), *quoted* in Gordon v. State Farm Life Ins. Co., 415 Pa. 256, 203 A.2d 320, 322 (1964).

ACCEPTED: _____
REFUSED: _____
COVERED: _____
MODIFIED: _____

DEFENDANT'S PROPOSED POINT FOR CHARGE #20

The mere "possibility" that the claimed injuries could be related to the negligence at issue is **not** sufficient proof of causation. In such case, the Plaintiffs have not met their burden of proof on the item of injury at issue.

Gordon v. Trovato, 234 Pa. Super. 279, 338 A.2d 653, 654, 657 (1975); Rice v. Hill, 315 Pa. 166, 172-73, 172 A. 289 (1934); Lorch v. Eglin, 369 Pa. 314, 321, 85 A.2d 841, 844 (1952); Baccare v. Mennella, 246 Pa. Super. 53, 369 A.2d 806, 807, 809 (1976); American Air Filter Co., Inc. v. McNichol, 527 F.2d 1297 (3rd. Cir. 1975).

ACCEPTED _____
REJECTED _____
COVERED _____
MODIFIED _____

DEFENDANT'S POINT FOR CHARGE # 21

You will now retire to consider all of the evidence received in this trial in the light of the various factors I have presented to you and apply the law as I have given it to the facts as found by you.

If you find that Dr. Ott was negligent, and that his conduct was a substantial factor in bringing about harm to the Plaintiffs, your verdict must be in favor of the Plaintiffs and against Dr. Ott.

If you find that Dr. Ott was not negligent, or that his negligence was not a substantial factor in bringing about harm to the Plaintiffs, your verdict must be for Dr. Ott.

ACCEPTED _____
REFUSED _____
COVERED _____
MODIFIED _____

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

FILED
SEP 24 2007
William A. Shaw
Prothonotary/Clerk of Courts

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | *Civil Action-Medical Professional Liability Action*<br>Case No. 2005-364 CD<br>*Consolidated at No. 2005-364-CD*<br><br>JURY TRIAL DEMANDED |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | Case No. 2006-936 CD<br>*Consolidated at No. 2005-364-CD*<br>*Civil Action-Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED<br><br>Type of Pleading:<br>SPECIAL VERDICT QUESTIONS<br><br>Filed on Behalf of Defendant<br>***Gary D. Ott, M.D.***<br><br>Counsel of Record for This Party<br>***John W. Blasko, Esquire***<br>Pa. Supreme Court I.D. #6787<br>McQuaide, Blasko, Fleming & Faulkner, Inc.<br>811 University Drive<br>State College, PA 16801<br>(814) 238-4926<br>Fax: (814) 238-9624<br><br>Counsel for Adverse Party Plaintiffs<br>***Harry S. Cohen, Esquire***<br>***Todd D. Bowlus, Esquire*** |

John W. Blasko

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | Case No. 2006 - 936 CD<br><br>*Civil Action - Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED |

**SPECIAL VERDICT QUESTIONS**

TO THE JURY:

Based on the preponderance of the evidence, answer the following Special Verdict Questions which have been propounded to you.

**QUESTION #1:**

Were any of the following Defendants negligent:

a) GARY D. OTT, M.D.,

(check one) _____ Yes

_____ No

b) DUBOIS REGIONAL MEDICAL CENTER, through its agents, employees and representatives

(check one) _____ Yes

_____ No

**INSTRUCTIONS:**

(a) If you have answered "Yes" to Question #1, as to any of the Defendants, proceed to Question #2 below.

(b) If you have answered "No" above as to all Defendants, do not answer any more questions and return to the Courtroom after the jury foreperson has signed the last page.

**QUESTION #2:**

If you answered Question #1 "yes" as to one or more of the Defendants, was the negligence of that Defendant a substantial factor in bringing about the harm to Plaintiff:

a) GARY D. OTT, M.D.,

(check one) _____ Yes

_____ No

*(Answer only if you answered "yes" as to this Defendant in Question #1)*

b) DUBOIS REGIONAL MEDICAL CENTER, through its agents, employees and representatives

(check one) _____ Yes

_____ No

*(Answer only if you answered "yes" as to this Defendant in Question #1)*

**INSTRUCTIONS:**

(a) If you have answered "Yes" as to a Defendant both as to Question #1 and Question #2, proceed to Question #3.

(b) If you answered "No" as to any Defendant in response to Question #2, do not answer any more questions and return to the Courtroom after the jury foreperson has signed the last page.

**QUESTION #3:**

Only if you have answered "Yes" to Questions #1 and #2, what percentage of causal negligence was attributable to each Defendant?

Percentage of causal negligence attributable to GARY D. OTT, M.D. _____% (enter 0 to 100%)

*(Answer only if you answered "yes" as to this Defendant in Questions #1 and #2)*

Percentage of causal negligence attributable to DUBOIS REGIONAL MEDICAL CENTER, through its agents, employees and representatives _____% (enter 0 to 100%)

*(Answer only if you answered "yes" as to this Defendant in Questions #1 and# 2)*

TOTAL MUST EQUAL: 100%

**INSTRUCTIONS:**

Please return to the Courtroom after the foreperson has signed below.

Dated:_____

_____
JURY FOREPERSON

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | : | |
| v. | : | No. 2005-364-CD |
| | : | Consolidated at No. 2005-364-CD |
| GARY D. OTT, M.D.; an adult individual and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation Defendants | : | |

FILED
SEP 24 2007
0/4:00/
William A. Shaw
Prothonotary/Clerk of Courts

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, | : | |
| v. | : | No. 2006-936-CD |
| | : | Consolidated at No. 2005-364-CD |
| GARY D. OTT, M.D.; an adult individual and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation Defendants | : | |

**VERDICT**

We, the jurors empanelled in the above entitled case, find as follows

Question 1:

Do you find the Defendant, Gary D. Ott, M.D., negligent in the care and treatment of Angela Hale?

Yes_____ No X

If you answered #1 "no", the Plaintiffs cannot recover against Defendant Gary D. Ott, M.D. and you need not answer question #2, proceed to answer question #3.

Question 2:

Do you find that Defendant Gary D. Ott, M.D.'s negligence was a factual cause of harm for Reganne and Ashtyn Hale?

Yes_____ No_____

If you answered question #2 "no", the Plaintiffs cannot recover against Defendant Gary D. Ott, M.D.

Question 3:

Do you find the Defendant Dubois Regional Memorial Hospital negligent in the care and treatment of Angela Hale?

Yes_____ No X

If you answered question #3 "no", the Plaintiffs cannot recover against Defendant Dubois Regional Memorial Hospital and you need not answer question #4.

Question 4:

Do you find that Defendant Dubois Regional Memorial Hospital's negligence was a factual cause of harm for Reganne and Ashtyn Hale?

Yes_____ No_____

If you answered question #4 "no", the Plaintiffs cannot recover against Defendant Dubois Regional Memorial Hospital.

Question 5:

If you find both Defendant Gary D. Ott, M.D. and Defendant Dubois Regional Memorial Hospital liable, taking the combined causal negligence that was a factual cause of harm to Reganne and Ashtyn Hale as 100%, what percentage of that causal negligence was attributable to:

Defendant Gary D. Ott, M.D.: 0 %
Defendant Dubois Regional Memorial Hospital: 0 %
Total 100%

9-24-07
Date

Brian Daniel
Jury Foreman

# COURT OF COMMON PLEAS, CLEARFIELD COUNTY PENNSYLVANIA

## CASE NO. 05-364-CD and 06-936-CD

**Date of Jury Selection:** August 28, 2007

**Presiding Judge:** John K. Reilly Jr., SJSP

**Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor**

**Court Reporter:** Betsy Nissel - 9/17-19-20-24
Beth Kruba. 9/18-21

**Date of Trial:** September 17-26, 2007

**Date Trial Ended:** Sept. 24, 2007

**VS**

**Gary D. Ott M.D. and DuBois Regional Medical Center**

## MEMBERS OF THE JURY

1. Frederick Cutler
2. Traci Moore
3. Brian David
4. Linda Young
5. James Emigh
6. Ellery Solt

ALT #1 Susan Pilosky

7. Jeffrey Freeman
8. Carol Daly
9. Angi Lansberry
10. Roberta Ball
11. Shirley Freeman
12. Deborah Benninger

ALT #2 John Rumery

**PLAINTIFF'S WITNESSES:**

1. Kathryn Rayburck R.N.
2. Denise Smith Fenner R.N.
3. Gary D. Ott M.D.
4. Curtis Sitzild M.D.
5. Angela Hale
6. Randy A. Hale
7. Patricia D. Fardotka, PAD - RNC.

**PLAINTIFF'S ATTY:** Harry S. Cohen Esq.
Todd D. Bowers. Esq.

**ADDRESS TO JURY:** 12:22 P.M.

**JUDGE'S ADDRESS TO JURY:** 2:22 PM.

**DEFENDANT'S WITNESSES:**

1. Gary D. Ott - M.D.
2. James Martin - M.D
3. Geraldine Jones, RN.
4. Mark Evans, M.D.
5.
6.

**DEFENDANT'S ATTY:** John W. Blasko Esq and David R. Johnson Esq. Fred Bottarilla Esq.
Brad Korinski, Esq. 10:03 AM. Atty Johnson

**ADDRESS TO JURY:** 10:46 AM Atty Blasko

**JURY OUT:** 3:01 PM **JURY IN:** 3:45 PM

**VERDICT:** In favor of Defendants: Dr Gary D. Ott
Du Bois Reg. Med Center.

8. Re-call Angela Hale
9. Sandra Reznick, M.D.

**FOREPERSON:** Brian David

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | *Civil Action-Medical Professional Liability Action*<br>Case No. 2005-364 CD<br>*Consolidated at No. 2005-364-CD*<br><br>JURY TRIAL DEMANDED |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | Case No. 2006-936 CD<br>*Consolidated at No. 2005-364-CD*<br>*Civil Action-Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED<br><br>Type of Pleading:<br>Praecipe for Entry of Judgment on the Verdict<br><br>Filed on Behalf of Defendant<br>***Gary D. Ott, M.D.***<br><br>Counsel of Record for This Party<br>***John W. Blasko, Esquire***<br>Pa. Supreme Court I.D. #6787<br>McQuaide, Blasko, Fleming & Faulkner, Inc.<br>811 University Drive<br>State College, PA 16801<br>(814) 238-4926<br>Fax: (814) 238-9624<br><br>Counsel for Adverse Party Plaintiffs<br>***Harry S. Cohen, Esquire***<br>***Todd D. Bowlus, Esquire*** |

FILED pd $20.00
icc to Atty Blasko
OCT 05 2007 8:35cm
icc + notice to
Atty: Johnson
Cohen + Bowlus
William A. Shaw
Prothonotary/Clerk of Courts

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, Defendants. | ) | Case No. 2006 - 936 CD<br><br>*Civil Action - Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED |

**PRAECIPE FOR ENTRY OF JUDGMENT ON THE JURY'S VERDICT**

TO THE PROTHONOTARY:

Please enter judgment on the jury verdict entered on September 24, 2007, in favor of Defendant, Gary D. Ott, M.D., and against the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor and Angela Hale and Randy Hale as parents and natural guardians of Ashtyn Hale, a minor, given that Post-Trial Motions have not been filed within 10 days, as required by Pa.R.C.P. 227.1(c).

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

BY _____
JOHN W. BLASKO
Attorney for Defendant,
Gary D. Ott, M.D.
811 University
State College, PA 16801
(814) 238-4926

Dated: 10/4/07

**JUDGMENT ENTERED ON THE JURY VERDICT OF SEPTEMBER 24, 2007 IN FAVOR OF DEFENDANT, GARY D. OTT, M.D. AND AGAINST PLAINTIFFS, ANGELA HALE AND RANDY A. HALE AS PARENTS AND NATURAL GUARDIANS OF REGANNE HALE AND ASHTYN, HALE, MINORS.**

Dated: October 5, 2007

_____
PROTHONOTARY

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | ) | *Civil Action-Medical Professional Liability* |
| | ) | Case No. 2005-364-CD |
| vs. | ) | *Consolidated at No. 2005-364-CD* |
| GARY D. OTT, M.D., et al., Defendants. | ) | JURY TRIAL DEMANDED |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, | ) | *Civil Action - Medical Professional Liability* |
| | ) | Case No. 2006 - 936 CD |
| | ) | *Consolidated at No. 2005-364-CD* |
| vs. | ) | |
| GARY D. OTT, M.D., et al., Defendants. | ) | JURY TRIAL DEMANDED |

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Praecipe for Entry of Judgment on the Jury's Verdict in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 10 day of October, 2007, to the attorney(s) of record:

| | |
|---|---|
| Harry S. Cohen, Esquire<br>Todd D. Bowlus, Esquire<br>Harry S. Cohen & Associates, PC<br>Two Chatham Center, Suite 985<br>Pittsburgh, PA 15219 | David R. Johnson, Esquire<br>Thomson, Rhodes & Cowie, P.C.<br>1010 Two Chatham Center<br>Pittsburgh, PA 15219 |

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
811 University Drive
State College, PA 16801
(814) 238-4926
Attorneys for Defendant
Gary D. Ott, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**PLAINTIFFS' REPLY TO NEW MATTER IN DEFENDANT GARY D. OTT, MD'S ANSWER TO MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORTS OR IN THE ALTERNATIVE MOTION FOR TRIAL CONTINUANCE**

FILED NO CC
m/12:47bl
MAY 02 2007
(GR)
William A. Shaw
Prothonotary/Clerk of Courts

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936-CD

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

April 30, 2007

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | Case No.: 2006-936-CD |
| Plaintiffs, | : | ***Consolidated at Case No.: 2005-364-CD*** |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL. | : | |
| Defendants. | : | |

**PLAINTIFFS' REPLY TO NEW MATTER IN DEFENDANT GARY D. OTT, MD'S ANSWER TO MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORTS OR IN THE ALTERNATIVE MOTION FOR TRIAL CONTINUANCE**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale and Ashtyn Hale, minors, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Reply:[1]

1. The allegations set forth in paragraph 11 of New Matter are denied. Plaintiffs requested an extension of time to file two expert reports that will render opinions on "causation" as well as damages. It is admitted that Plaintiffs' causation experts would be enabled to submit

[1] Plaintiffs presume that Defendants' reference to the term "liability" and avoidance of the term "negligence" and "causation" implies that in the first phase of a bifurcated trial, a jury would determine "negligence" and "causation" to determine "liability" and so the second phase would address damages only.

As such, it would be anticipated that a jury in the first phase would answer the following:

Q. Was each Defendant negligent?

Q. If so, did the Defendant's negligence increase the risk of harm that the minor-Plaintiff would be born prematurely?

In the second phase of the trial, a jury would answer the following:

Q. What amount of money would fairly compensate the minor-Plaintiff for the injuries related to prematurity?

their reports earlier if their opinions were confined to causation only and could later be supplemented to address the issue of the extent of damages.

WHEREFORE, Plaintiffs move this Honorable Court for an Order allowing Plaintiffs to file supplemental expert reports after March 31, 2007 and/or continue the trial of this matter and remove this case from the September 2007 trial list.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO NEW MATTER IN DEFENDANT GARY D. OTT, MD'S ANSWER TO MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORTS OR IN THE ALTERNATIVE MOTION FOR TRIAL CONTINUANCE** has been served on the 30th day of April 2007 to the following via facsimile and/or U.S. Mail:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**PLAINTIFFS' REPLY TO NEW MATTER IN DEFENDANT GARY D. OTT, MD'S ANSWER TO MOTION TO DISMISS CASE (2006-936 CD) WITHOUT PREJUDICE**

FILED NO CC
m/12:47/BD
MAY 02 2007 (GK)
William A. Shaw
Prothonotary/Clerk of Courts

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936-CD

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

April 30, 2007

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | Case No.: 2006-936-CD |
| Plaintiffs, | : | ***Consolidated at Case No.: 2005-364-CD*** |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL. | : | |
| Defendants. | : | |

**PLAINTIFFS' REPLY TO NEW MATTER IN DEFENDANT GARY D. OTT, MD'S ANSWER TO MOTION TO DISMISS CASE (2006-936 CD) WITHOUT PREJUDICE**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale and Ashtyn Hale, minors, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Reply:[1]

1. The allegations set forth in paragraph 9 of New Matter are denied. Plaintiffs requested an extension of time to file two expert reports that will render opinions on "causation" as well as damages. It is admitted that Plaintiffs' causation experts would be enabled to submit

[1] Plaintiffs presume that Defendants' reference to the term "liability" and avoidance of the term "negligence" and "causation" implies that in the first phase of a bifurcated trial, a jury would determine "negligence" and "causation" to determine "liability" and so the second phase would address damages only.

As such, it would be anticipated that a jury in the first phase would answer the following:

Q. Was each Defendant negligent?

Q. If so, did the Defendant's negligence increase the risk of harm that the minor-Plaintiff would be born prematurely?

In the second phase of the trial, a jury would answer the following:

Q. What amount of money would fairly compensate the minor-Plaintiff for the injuries related to prematurity?

their reports earlier if their opinions were confined to causation only and could later be supplemented to address the issue of the extent of damages.

WHEREFORE, Plaintiffs move this Honorable Court for an Order dismissing case number 2006-936 CD without prejudice.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO NEW MATTER IN DEFENDANT GARY D. OTT, MD'S ANSWER TO MOTION TO DISMISS CASE (2006-936 CD) WITHOUT PREJUDICE** has been served on the 30th day of April 2007 to the following via facsimile and/or U.S. Mail:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**PLAINTIFFS' MOTION FOR CONTINUANCE OF ARGUMENT DATE**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

May 8, 2007

FILED /CC
MAY 10 2007
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | Case No.: 2006-936 CD |
| Plaintiffs, | : | ***Consolidated at Case No.: 2005-364-CD*** |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL | : | |
| Defendants. | : | |

**PLAINTIFFS' MOTION FOR CONTINUANCE OF ARGUMENT DATE**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale and Ashtyn Hale, minors, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion:

1. On April 4, 2007, two Rules to Show Cause were issued on Plaintiffs' Motion for Extension of Time to File Expert Reports/Motion for Trial Continuance, and, Motion to Dismiss Case (2006-936 CD) Without Prejudice.

2. The Rules scheduled argument for May 14, 2007.

3. John Blasko, Counsel for Dr. Ott, filed a Motion for Continuance because he was scheduled to commence trial on May 14 in McKean County.

4. The argument date was then rescheduled to May 29; however, Plaintiffs' Counsel is scheduled to commence trial on May 29 in Allegheny County (although a Mediation in that case is scheduled for May 14).

5. Plaintiffs made numerous attempts to obtain another date from Defense Counsel to reschedule the argument in May; however, Plaintiffs were advised that Defense Counsel's

schedules would not permit another May date. (See correspondence dated May 3 and May 4, 2007 attached collectively hereto as Exhibit "A.").

6. Accordingly, Plaintiffs request that the Court enter an Order continuing the argument from May 29, 2007 at 9:00 a.m. to another date in June 2007.[1]

WHEREFORE, Plaintiffs request that the Court enter an Order continuing the argument from May 29, 2007 at 9:00 a.m. to another date in June 2007.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

[1] The *Flanagan* trial will likely last from May 29 - June 5. The only other date in June that Plaintiffs' Counsel is unavailable is June 7, 2007.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR CONTINUANCE OF ARGUMENT DATE** has been served on the 8th day of May 2007 to the following via facsimile and/or U.S. Mail:

**Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Exhibit A

Harry S. Cohen & Associates, P.C.
LAW OFFICES

May 3, 2007

**VIA HAND-DELIVERY**

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219

**Re: Angela Hale and Randy A. Hale, parents and natural guardians of Reganne Hale, a minor, v. Michael J. Kush, M.D.; Gary D. Ott, M.D.; and Dubois Regional Medical Center**
**Case No.: 2005-364-CD**

Dear Mr. Johnson:

As I advised in the voicemail that I left you on Wednesday, May 2, 2007, Harry and I are scheduled to begin trial on May 29, 2007 (*Flanagan v. Plaza-Ponte et al.* Allegheny Cty.), which is the new argument date on our Hale Motions. Although we were optimistic that the *Flanagan* case would settle, it now appears that we will indeed be going to trial. Therefore, we need to reschedule this argument date.

That said, we are not looking to postpone the argument, and actually, are interested in moving the argument up. John Blasko advised that he is available on the afternoon of May 23 and the morning of May 24. As I requested in my voicemail, please advise if either of these two dates work for you so that I can contact the Court to see if they are amenable to moving the argument to one of these two days.

If I do not hear from you in the next few days, we will simply have no choice but to file a Motion for Continuance, similar to the Motion that Mr. Blasko previously filed that moved the argument date from May 14 to May 29.

Thank you. I look forward to hearing from you.

Yours very truly,

**HARRY S. COHEN & ASSOCIATES, PC**

Todd D. Bowlus, Esquire

TDB:jb
cc: John W. Blasko. Esquire

Two Chatham Center • Suite 985 • Pittsb 281-3000 • Fax: (412) 232-6688
E-mail: hcohen@med medmal1.com

ALL-STATE LEGAL®
PLAINTIFF'S EXHIBIT

Harry S.
Cohen
&
Associates, P.C.
LAW OFFICES

May 4, 2007

**VIA HAND-DELIVERY**

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219

**Re: Angela Hale and Randy A. Hale, parents and natural guardians of Reganne Hale, a minor, v. Michael J. Kush, M.D.; Gary D. Ott, M.D.; and Dubois Regional Medical Center**
**Case No.: 2005-364-CD**

Dear Mr. Johnson:

As I advised in the voicemail that I left you today, John Blasko just informed me that he is now available anytime during the weeks of May 7-11 and May 14-18 (excluding the morning of May 9) to reschedule the argument date for the outstanding Motions. Harry and I are not available on May 14 and 17.

Accordingly, please advise if you or Brad Korinski is available on May 7, 8, 9 (afternoon), 10, 11, 15, 16, or 18 so that I can contact the Court to reschedule the argument.

Thank you. I look forward to hearing from you.

Yours very truly,

**HARRY S. COHEN & ASSOCIATES, PC**

Todd D. Bowlus, Esquire

TDB:jb
cc: John W. Blasko. Esquire

Two Chatham Center • Suite 985 • Pittsburgh, PA 15219 • Tel: (412) 281-3000 • Fax: (412) 232-6688
E-mail: hcohen@medmal1.com • http://www.medmal1.com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | Case No.: 2006-936 CD |
| Plaintiffs, | : | ***Consolidated at Case No.: 2005-364-CD*** |
| vs. | : | |
| MICHAEL J. KUSH, ET AL. | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, this 11th day of May 2007, it is hereby it is hereby ORDERED, ADJUDGED and DECREED that, upon consideration of Plaintiffs' Motion for Continuance of Argument Date, the argument on Plaintiffs' Motion for Extension of Time to File Expert Reports/Motion for Trial Continuance, and, Motion to Dismiss Case (2006-936 CD) Without Prejudice is continued and rescheduled for the 11th day of May 2007 in Courtroom 1 at 10:00 A.m.

BY THE COURT:

Judge J. Cammerman

J.

FILED 1cc
02:52 BN Atty Cohen
MAY 11 2007
William A. Shaw
Prothonotary/Clerk of Courts
(GK)

FILED

MAY 11 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/11/07

X You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,
Plaintiffs

vs.

MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,
Defendants

) No. 05 - 364 C.D.
)
) Type of Case: Civil Action-Medical Professional Liability Action
)
) Type of Pleading: AFFIDAVIT OF NON-INVOLVEMENT OF DEFENDANT, TAI Y. YOO, M.D., P.C.
)
) Filed on Behalf of: Defendant, TAI Y. YOO, M.D., P.C.
)
) Counsel of Record for this Party
)
) Toni M. Cherry, Esq.
) Supreme Court No.: 30205
)
) Gleason, Cherry and Cherry, L.L.P.
) Attorneys at Law
) P. O. Box 505
) One North Franklin Street
) DuBois, PA 15801
)
) (814) 371-5800

FILED 4cc
MAY 14 2007 Atty T. Cherry
William A. Shaw
Prothonotary/Clerk of Courts

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

***AFFIDAVIT OF NON-INVOLVEMENT OF DEFENDANT, YOO TAI Y, M.D., P.C.***

TAI YOUNG YOO, M.D., being duly sworn, deposes as follows:

1. On May 15, 1980, Tai Young Yoo Tai, M.D. P.C. was incorporated as a professional corporation.

2. I was the sole shareholder in the corporation.

3. The corporation was out of existence since June 30, 2001 pursuant to an Out of Existence/Withdrawal Affidavit and Distribution of Assets filed with the Department of Revenue, Bureau of Compliance, Pennsylvania, Commonwealth of Pennsylvania, copies of which are attached hereto marked Exhibit "A.".

4. Confirmation of the Tai Young Yoo, M.D., P.C. being out of existence as of July 16, 2001 is attached hereto by letter dated July 29, 2005 of the Commonwealth of Pennsylvania, Department of Revenue, marked Exhibit "B."

5. The final Pennsylvania corporate tax report of 2000 of Tai Young Yoo, M.D., P.C. was filed on or about September 20, 2001, a copy of which is attached hereto marked Exhibit "C."

6. The Tai Young Yoo, M.D., P.C. was out of existence and non-operative during the time when the Plaintiff, Angela Hale, was cared and treated by Gary D. Ott, M.D.

7. At no time from January 1, 2002 to the present date has Gary D. Ott, M.D. been an employee of Tai Young Yoo, M.D., P.C.

8. I, individually, nor the Tai Young Yoo, M.D., P.C. corporation have ever been involved in the care of and treatment of Angela Hale or Reganne Hale.

9. Tai Young Yoo, M.D., P.C. or Tai Young Yoo, M.D. were never in any way responsible for the medical care and treatment of Angela Hale and Reganne Hale.

WHEREFORE, based on the foregoing, I, Tai Young Yoo, M.D., hereby respectfully request this Honorable Court dismiss Tai Young Yoo, M.D., P.C. as a Defendant in the above captioned case pursuant to 40 P.S. §1303.506.

Tai Young Yoo, MD

TAI YOUNG, YOO, M.D.

Sworn to and subscribed before me
this 25th day of November, 2006.

Paula M. Cherry

Notary Public

Commonwealth of Pennsylvania
NOTARIAL SEAL
PAULA M. CHERRY, Notary Public
City of Dubois, County of Clearfield
My Commission Expires Sept. 16, 2009

EXHIBIT A

REV-238 CM (9-00) LA

23800011117

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF REVENUE
BUREAU OF COMPLIANCE
BUSINESS CLEARANCE SECTION
DEPT 280947
HARRISBURG, PA 17128-0947
TELEPHONE NUMBER (717) 783-6052
TT# (800) 447-3020 (Services for Taxpayers with Special Hearing and Speaking Needs Only)

# OUT OF EXISTENCE/WITHDRAWAL AFFIDAVIT

PLEASE PRINT OR TYPE INFORMATION

DEPARTMENT USE ONLY

**NOTE: The reverse side of this form must be completed. Section A pertains to a PA corporation or a foreign corporation that operated wholly within Pennsylvania. Section B pertains to all other foreign corporations.**

Date of Incorporation or Certificate of Authority 7/01/1980 Account ID 1067-932

State of Incorporation PENNSYLVANIA Entity ID (EIN) 25-1380922

Name of Corporation/Taxpayer TAI YOUNG YOO, M.D., P.C.

On this _____ day of _____, year _____ before me

personally appeared, TAI YOUNG YOO, M.D. ,

who duly swears or affirms; I was connected with the above corporation and have knowledge of its affairs.

Said corporation ceased to transact business in Pennsylvania on or about * 6/30/2001 (Month / Day / Year), and all assets were

sold, assigned or distributed on 6/30/2001 (Month / Day / Year), and since that time, the corporation has not owned any property located in Pennsylvania,

nor maintained an office therein, nor has performed any sales activity, and does not intend to transact further business in the Commonwealth.

* If corporation never transacted business or held assets in Pennsylvania, please use the words **NEVER TRANSACTED BUSINESS** in place of a cessation date.

The filing of this Affidavit does not affect the status of the Certificate of Incorporation/Authority of this corporation but does permit the Department of State to relinquish the use of the present name of the corporation to another corporation.

**This affidavit is not to be filed by a PA corporation utilizing its PA charter to conduct business in another state. Out of state corporations soliciting business in Pennsylvania are subject to tax and should file this document only upon ceasing activity in Pennsylvania.**

**Sworn to and subscribed before me this**

**_____ day of _____, year _____**

**(Notary Public, District Justice, or Authorized Agent, Department of Revenue)**

**My commission expires _____, year _____**

**(Notary Signature and Seal)**

**(Signature of Affiant)**

**TITLE:**

**(Present address of Affiant)**

**Telephone Number** _____

**PLEASE PRINT OR TYPE INFORMATION**
**NO FILING FEE**

CF0PA3 02/05/01

23800011117

THIS SCHEDULE MUST BE COMPLETED.
ENTER "NONE" **ONLY** IF THE CORPORATION HAS NO ASSETS AND/OR LIABILITIES.

23800012118

# DISTRIBUTION OF ASSETS

**Please Print or Type**

| **Name of Corporation** | **Account ID** | **Date of Final Distribution** |
|---|---|---|
| TAI YOUNG YOO, M.D., P.C. | | |
| **Business Address** | | |
| DEPOSIT BANK BLDG, SUITE 236 | | |
| **City** / **State** / **Zip Code** | | |
| DUBOIS / PA / 15801 | 1067-932 | 6/30/01 |

| **A. CORPORATION OPERATING 100% WITHIN PA MUST COMPLETE THIS SECTION (Provide copies of Federal Form 1099-DIV)** | **SHARES OF STOCK OF EACH STOCKHOLDER** | | **MONEY RECEIVED BY EACH STOCKHOLDER** | | **AMOUNT AND NATURE OF OTHER ASSETS RECEIVED BY EACH STOCKHOLDER** | | |
|---|---|---|---|---|---|---|---|
| | **NUMBER** | **PAR VALUE** | **DATE** | **AMOUNT** | **DATE** | **DESC** | **AMOUNT** |
| Stockholder Name / Social Security No.<br>TAI YOUNG YOO, M.D. 168-44-5477 | 1,000 | 1 | | | | EQUIP, ETC. | |
| Street Address / City / State / Zip Code<br>246 EAST SHERIDAN AVENUE<br>DUBOIS, PA 15801 | | | 6/30/01 | 8,123 | 6/30/01 | | 8,941 |
| Stockholder Name / Social Security No. | | | | | | | |
| Street Address / City / State / Zip Code | | | | | | | |
| Stockholder Name / Social Security No. | | | | | | | |
| Street Address / City / State / Zip Code | | | | | | | |

**B. CORPORATIONS WITHDRAWING FROM PA BUT CONTINUING OPERATIONS OUTSIDE OF PA MUST PROVIDE THE FOLLOWING INFORMATION AND/OR DOCUMENT(S).**

**1. FULL DETAILS OF DISPOSITION OF PA PROPERTY. ATTACH COPIES OF FEDERAL SCHEDULE D AND/OR FEDERAL FORM 4797, IF APPLICABLE.**

**2. PLEASE INDICATE IF SALES IN PA WILL CONTINUE AFTER DATE OF CESSATION. IF SO, HOW WILL THEY BE NEGOTIATED AND BY WHOM?**

**ATTACH STATEMENT CONTAINING THE REQUIRED INFORMATION IF ADDITIONAL SPACE IS NEEDED.**
**IF ANY INDIVIDUAL OR CORPORATION OTHER THAN STOCKHOLDERS & CREDITORS RECEIVED ASSETS, LIST NAMES & ADDRESSES OF EACH, & AMOUNT OR VALUE RECEIVED BY EAC...**

- IF ANY CONSIDERATION WAS PAID FOR ANY OF THE ASSETS, STATE NAME AND ADDRESS OF INDIVIDUAL OR CORPORATION MAKING SUCH PAYMENT AND EXACT AMOUNT PAID BY EACH. (ATTACH A SEPARATE SHEET TO THIS FORM.)
- IF ANY MONEY OR PROPERTY REMAINS UNDISTRIBUTED, STATE AMOUNT, NATURE AND VALUE OF SAME, AND STATE WHY IT HAS NOT BEEN DISTRIBUTED. (ATTACH A SEPARATE SHEET TO THIS FORM.)
- IF ANY REAL ESTATE HAS BEEN DISTRIBUTED OR SOLD WITHIN THE FINAL TAX PERIOD, GIVE THE DATE OF RECORDING TITLE TRANSFER WITH LOCAL RECORDER OF DEEDS.
  DATE: _____

| **Name of Person Making this Report** | **Signature** | **Title** | **Date** |
|---|---|---|---|
| | | President | |
| **Present Street Address** / **City** / **State** / **Zip Code** | | | |
| DEPOSIT BANK BLDG, SUITE 236, DUBOIS, PA 15801 | | | |

CF0PA3A 01/29/01

23800012118

BUREAU OF COMPLIANCE
BUSINESS CLEARANCE
P.O. BOX 280947
HARRISBURG, PA 17128-0947

# Commonwealth of Pennsylvania
# Department of Revenue

July 29, 2005

TAI YOUNG YOO M D P C
SUITE 315
DU BOIS PA 15801

P.C.
Out of
Existence

**RE Box Number: 1067-932**
**EIN: 25-1380922**

Dear Sir or Madam:

The Bureau of Compliance, Business Clearance Section, has processed the Out of Existence/Withdrawal Affidavit for the above referenced company.

This company has been marked out of existence on the records of the Pennsylvania Department of Revenue with an effective date of 7/16/2001 and has been relieved of the responsibility of filing corporate tax reports.

If you have any further questions, please call.

Sincerely,

Cedrick Hudson
O/E Mergers Section
Clearance & Collection Division
(717) 705-7635

RCT-101 (9-00) LA

PA DEPARTMENT OF REVENUE
BUREAU OF CORPORATION TAXES
DEPT 280427
HARRISBURG, PA 17128-0427

10100011111b

# PA Corporate Tax Report 2000 RCT-101

Department Use Only
Date Received

**Step A** Tax Period

1 Tax period beginning MM 07 DD 01 YY 00 Ending MM 06 DD 30 YY 01

DLN

**Step B** Label

2 Use peel-off Pennsylvania Corporate Tax label from the cover of the Tax Instruction Book. Otherwise print or type.
3 ☐ Check if address change (complete and file Form REV-854).
4 ☐ Check if filing period change (complete and file Form REV-854).
5 ☒ Check here if tax report is prepared by Tax Practitioner and you Only require a name and address label.

**Affix Label Here**

Corporation Name: TAI YOUNG YOO, M.D., P.C.
Account ID: 1067-932
Number and Street: DEPOSIT BANK BLDG, SUITE 236
Entity ID (EIN): 25-1380922
City or Town: DUBOIS, PA 15801 State ZIP Code

DR6 S ☐ DR7 A ☐
Tax DLN

**Step C** Check Applicable Block(s) and See Instructions

6 ☐ PA S 7 ☒ Last Report 8 ☐ LLC 9 ☐ Family Farm 10 ☐ Business Trust 11 ☐ Holding Company 12 ☐ Solicitation Only
13 ☐ First Report 14 ☐ Regulated Investment Company 15 ☐ 52-53 Week Filer 16 ☐ KOZ/EIP Credit

**Step D** Tax Summary

17 Compute tax liability for Capital Stock/Foreign Franchise, Loans and Corporate Net Income Taxes on pages 2 & 3, then complete this tax summary.

STAPLE YOUR CHECK HERE

| | A Tax Liability from Tax Report | B Estimated Payments and Credits on Deposit for the Current Period | C Calculation Column A minus Column B Positive or (negative) |
|---|---|---|---|
| Capital Stock Foreign Franchise Tax | 0 | 2,410 | -2,410 |
| Loans Tax | 0 | 0 | 0 |
| Corporate Net Income Tax | 0 | 0 | 0 |
| Total | 0 | 2,410 | -2,410 |

Enter Whole Dollars Only

18 If column C **total** is greater than zero, complete **Step E.**
19 If column C **total** is less than zero, an overpayment exists. Skip to **Step F.**
20 If column C **total** is zero, no payment is due. Skip to **Step G.**

**Step E** Tax Payment Application

21 Apply column C **total** from **Step D** by tax. The payment amount for each tax must be zero or greater.

| Department Use Only I | Department Use Only P | | Payment |
|---|---|---|---|
| | | Capital Stock Foreign Franchise Tax | |
| | | Loans Tax | |
| | | Corporate Net Income Tax | |
| | | Total Payment | |

Enter Whole Dollars Only

Total Payment must equal the column C Total from Step D.
Make check for this amount payable to: 'PA Department of Revenue'
**If your payment exceeds $20,000, refer to the CT-1PA Corporation Tax Booklet, Section I, page 2 for Electronic Funds Transfer (EFT) Instructions.**

**Step F** Overpayment

22 Check **Only One** box to select a refund or transfer method.
A ☐ Automatically transfer overpayment(s) to current tax period underpaid taxes and the remaining portion to the next tax period.
B ☐ Automatically transfer $_____ of the current tax period overpayment(s) to the next tax period after paying any current tax period underpaid taxes and refund the remaining portion of the current tax period overpayment(s).
C ☒ Refund the overpayment from the current tax period after paying any current tax period underpaid taxes.

**Step G** Tax Preparer's Mailing Address

23 ☒ Check here to mail settlement notice And And requests for addnl info to preparer's address. Preparer's address must be printed or typed below.

Sign Here X

Print Individual Preparer or Firm's Name: 24 Clyde, Ferraro & Co., LLP
Individual or Firm's Signature of Preparer
Individual or Firm's Street Address: RR#3 Box 265
Title
Telephone Number: (814) 371-2141
City: DuBois State: PA ZIP Code: 15801
Date: 9/20/01
Preparer's EIN, SSN or PTIN: 173-34-2820

**Step H** Signature

I hereby affirm under penalties prescribed by law that this report (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is a true, correct and complete report. If prepared by a person other than the taxpayer, his declaration is based on all information of which he has any knowledge.

Sign Here X

Signature of Officer of Corporation: 25
Telephone Number
Title: President
Date

PACZ0101L 02/05/01

10100011111b

EXHIBIT "C"

Form **7004**
(Rev. October 2000)

Department of the Treasury
Internal Revenue Service

# Application for Automatic Extension of Time To File Corporation Income Tax Return

OMB No. 1545-0233

Name of corporation

TAI YOUNG YOO, M.D., P.C.

Employer identification number
25-1380922

Number, street, and room or suite no. (If a P.O. box or outside the United States, see instructions.)

DEPOSIT BANK BLDG, SUITE 236

City or town, state, and ZIP code

DUBOIS, PA 15801

Check type of return to be filed:

- ☐ Form 990-C
- ☒ Form 1120
- ☐ Form 1120-A
- ☐ Form 1120-F
- ☐ Form 1120-FSC
- ☐ Form 1120-H
- ☐ Form 1120-L
- ☐ Form 1120-ND
- ☐ Form 1120-PC
- ☐ Form 1120-POL
- ☐ Form 1120-REIT
- ☐ Form 1120-RIC
- ☐ Form 1120S
- ☐ Form 1120-SF

● Form 1120-F filers: Check here if the foreign corporation does not maintain an office or place of business in the United States ..... ▶

**1 Request for Automatic Extension** (see instructions)

**a Extension date.** I request an automatic 6-month (or, for certain corporations, 3-month) extension of time until 3/15, 20 02, to file the income tax return of the corporation named above for ▶☐ calendar year 20 ___ or ▶☒ tax year beginning 7/01, 2000, and ending 6/30, 20 01

**b Short tax year.** If this tax year is for less than 12 months, check reason:
☐ Initial return ☐ Final return ☐ Change in accounting period ☐ Consolidated return to be filed

**2 Affiliated group members** (see instructions). If this application also covers subsidiaries to be included in a consolidated return, provide the following information:

| Name and address of each member of the affiliated group | Employer identification number | Tax period |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

| | | | | | |
|---|---|---|---|---|---|
| 3 | Tentative tax (see instructions) ..... | | | 3 | |
| 4 | **Payments and refundable credits:** (see instructions) | | | | |
| a | Overpayment credited from prior year ..... | 4a | 3,187 | | |
| b | Estimated tax payments for the tax year ..... | 4b | | | |
| c | Less refund for the tax year applied for on Form 4466 ..... | 4c | ( ) | Bal ▶ 4d | 3,187 |
| e | Credit for tax paid on undistributed capital gains (Form 2439) ..... | | | 4e | |
| f | Credit for Federal tax on fuels (Form 4136) ..... | | | 4f | |
| 5 | Total. Add lines 4d through 4f (see instructions) ..... | | | 5 | 3,187 |
| 6 | **Balance due.** Subtract line 5 from line 3. **Deposit this amount using the Electronic Federal Tax Payment System (EFTPS) or with a Federal Tax Deposit (FTD) Coupon** (see instructions) ..... | | | 6 | ( |

Signature. Under penalties of perjury, I declare that I have been authorized by the above-named corporation to make this application, and to the best of my knowledge and belief, the statements made are true, correct, and complete.

(Signature of officer or agent) — President CPA (Title) — 9/30/01 (Date)

KFA **For Paperwork Reduction Act Notice, see instructions.**

CF0US11 11/27/00

Form **7004** (Rev. 10-2000)

Corporation TAI YOUNG YOO, M.D., P.C. Account ID 1067-932 Tax Period Ending M M D D Y Y 6/30/01

## Section A: Capital Stock/Foreign Franchise Tax

| | Taxable Period Beginning | Taxable Period Ending | Taxpayer Use (Whole Dollars Only) | Department Use Only |
|---|---|---|---|---|
| **History of Earnings** | MMDDYY | MMDDYY | Book Income | |
| Oldest Period - Start Here ▶ | 7/01/96 | 6/30/97 | 9,119 | |
| | 7/01/97 | 6/30/98 | 2,264 | |
| | 7/01/98 | 6/30/99 | ( 15,418) | |
| | 7/01/99 | 6/30/00 | 10,977 | |
| Additional periods use these spaces (skip lines if not required) | | | | |
| 1 Current tax period book income (loss) ▶ 1 | 7/01/00 | 6/30/01 | -13,779 | |

| | | | |
|---|---|---|---|
| 2 | Total book income (sum of income for all tax periods within, up to, but not over, 5 years total) | 2 | -6,837 |
| 3 | Divisor (in years and part years rounded to three decimal places). See instructions | 3 | 5.000 |
| 4 | Divide line 2 by line 3 | 4 | -1,367 |
| 5 | **Average Book Income** - Enter line 4 or if line 4 is less than zero enter '0' | 5 | 0 |
| 6 | Divide line 5 by .095 | 6 | |
| 7 | Sum of capital stock, paid-in capital and retained earnings less treasury stock at the end end of the current period | 7 | |
| 8 | Sum of capital stock, paid-in capital and retained earnings less treasury stock at the **beginning** of the current period | 8 | 30,843 |
| 9 | If line 7 is more than twice as great or less than half as much as line 8, add lines 7 and 8 and divide by 2. Otherwise enter line 7 | 9 | 15,422 |
| 10 | **Net Worth** - Enter line 9 or if line 9 is less than zero enter '0' | 10 | 15,422 |
| 11 | Multiply line 10 by 0.75 | 11 | 11,567 |
| 12 | Add lines 6 and 11 | 12 | 11,567 |
| 13 | Divide line 12 by 2 | 13 | 5,784 |
| 14 | $125,000 valuation deduction | 14 | ($125,000) |
| 15 | Capital Stock Value - Line 13 less line 14 but not less than '0'. If 100% taxable, enter line 15 on line 17 | 15 | 0 |
| 16 | Proportion of taxable assets or apportionment proportion (from Schedule A-1, line 5 below) | 16 | |
| 17 | **Taxable Value** - Multiply line 15 by line 16. If less than zero, enter '0' | 17 | 0 |
| 18 | Capital Stock/Foreign Franchise Tax - Multiply line 17 by .00899, and enter this amount → | 18 | |

## Schedule A-1: Apportionment Schedule for Capital Stock/Foreign Franchise Tax

Enter the numerator(s) and denominator(s) of fractions used for apportioning the capital stock value. Enter the figures only for the apportionment method (Three Factor or Single Factor) used in the tax computation. Also enter the apportionment proportion calculated to six decimal places in line 5 below.

**Three Factor** - From insert sheet (RCT-106) page 2 or Manufacturing Exemption Schedule (RCT-105)

| | | | | | |
|---|---|---|---|---|---|
| 1a | Property factor - Pennsylvania | 1a | | | |
| b | Property factor - Total | b | | 1c | |
| 2a | Payroll factor - Pennsylvania | 2a | | | |
| b | Payroll factor - Total | b | | 2c | |
| 3a | Sales factor - Pennsylvania | 3a | | | |
| b | Sales factor - Total | b | | 3c | |

**Single Factor** - From insert sheet (RCT-106) page 1 or Manufacturing Exemption Schedule (RCT-102)

| | | | | | |
|---|---|---|---|---|---|
| 4a | Single factor - Numerator | 4a | | | |
| b | Single factor - Denominator | b | | | |
| 5 | Apportionment proportion - Also enter on line 16 in Section A above | | | 5 | |

## Section B: Loans Tax

## Section B-1: Corporate Loans Tax Information

| | | | |
|---|---|---|---|
| 1 | (Foreign corporations only) Did your corporation have a treasurer or other fiscal officer resident in Pennsylvania and paying interest on indebtedness of the corporation? If answer is no no, remaining questions on this schedule do not have to be answered | 1 | ☐ Yes ☐ No |
| 2 | Did your corporation have indebtedness outstanding to individual residents of Pennsylvania and/or to partnerships resident in Pennsylvania? | 2 | ☐ Yes ☒ No |
| 3 | Did your corporation have indebtedness outstanding held by a trustee, agent or guardian for a resident individual taxable in its own right or by an executor or administrator of an estate wherein the decedent was a resident of Pennsylvania? | 3 | ☐ Yes ☒ No |

**If the answers to question 2 and/or 3 were 'Yes,' continue below.**

| 4 Amount of interest actually paid on indebtedness in question 2 or 3 during the tax period reported. | 5 Rate of interest applicable to indebtedness in question 2/3. | 6 Nominal value of txbl indebtedness (divide 5 into 4) enter total of this column on page 3. |
|---|---|---|
| | | |
| | | |
| | | |
| | | Total |

Corporation TAI YOUNG YOO, M.D., P.C. Account ID 1067-932 Tax Period Ending M M D D Y Y 6/30/01

| | | | | |
|---|---|---|---|---|
| 1 | **Taxable Indebtedness** (complete Schedule B-1 on page 2 of the RCT-101) | 1 | 0 | |
| 2 | Multiply line 1 by .004 | 2 | | |
| 3 | Treasurer's commission (see instructions) | 3 | | |
| 4 | **Loans Tax** - Line 2 minus line 3 → | 4 | 0 | |

## Section C: Corporate Net Income Tax

| | | | Taxpayer Use (Whole Dollars Only) | Department Use Only |
|---|---|---|---|---|
| 1 | Income or loss from federal return on a separate company basis (Attach copy of **federal Form 1120 or 1120S, etc** to back of the RCT-101) | 1 | -12,821 | |
| 2 | **Deductions:** | | | |
| a | Corporate dividends received (from Schedule C-2, line 6) | a | | |
| b | Interest on U.S. securities (attach schedule) Gross Interest ____ less Expenses ____ | b | | |
| c | Other (attach schedule) see instructions | c | | |
| | **Total Deductions** - sum of a through c | 2 | | |
| 3 | Line 1 less line 2 | 3 | -12,821 | |
| 4 | **Additions:** | | | |
| a | Taxes imposed on or measured by net income (attach schedule) | a | | |
| b | Tax preference items (attach copy of federal Form 4626) | b | | |
| c | Employment incentive payment credit adjustment (attach Schedule W) | c | | |
| d | Other (attach schedule). See instructions | d | | |
| | **Total Additions** - sum of a through d | 4 | | |
| 5 | **Income (or loss) with Pennsylvania Adjustments** - line 3 plus line 4 | 5 | -12,821 | |

**Corporation Which Transacts Its Entire Business in Pennsylvania (does Not apportion) Should Skip to Line 11 and Enter Line 5 There.**

| | | | | |
|---|---|---|---|---|
| 6 | Total nonbusiness income (or loss) | 6 | | |
| 7 | **Income (or loss) to be Apportioned** - line 5 minus line 6 | 7 | | |
| 8 | Apportionment proportion (from Schedule C-1 line 5) | 8 | | |
| 9 | **Income (or loss) Apportioned to Pennsylvania** - line 7 multiplied by line 8 | 9 | | |
| 10 | Nonbusiness income (or loss) allocated to Pennsylvania | 10 | | |
| 11 | **Taxable Income (or loss) After Apportionment** - Line 9 plus line 10. Enter amount from line 5 for corporations which do **not** apportion. If a loss, add to Form RCT-103 | 11 | -12,821 | |
| 12 | **Total net operating loss deduction (from RCT-103) cannot exceed $2,000,000** | 12 | | |
| 13 | **Pennsylvania Taxable Income** - Line 11 minus line 12. If less than zero, enter '0' | 13 | 0 | |
| 14 | **Corporate Net Income Tax** - multiply line 13 by .0999 → | 14 | 0 | |

## Schedule C-1: Apportionment Schedule for Corporate Net Income Tax

Enter the numerator(s) and denominator(s) of fractions used for apportioning income. Also enter the apportionment proportion calculated to six decimal places in line 5 below.

**Three Factor** - From insert sheet (RCT-106) page 2.

| | | | | |
|---|---|---|---|---|
| 1a | Property factor - Pennsylvania | 1a | | |
| b | Property factor - Total | b | | 1c |
| 2a | Payroll factor - Pennsylvania | 2a | | |
| b | Payroll factor - Total | b | | 2c |
| 3a | Sales factor - Pennsylvania | 3a | | |
| b | Sales factor - Total | b | | |
| c | Triple weighted sales factor (see instructions) (line 3a divided by line 3b) x 3 | | | 3c |

**Single Factor** - Apportionment Proportion

| | | | |
|---|---|---|---|
| 4a | Single factor - Pennsylvania | 4a | |
| b | Single factor - Total | b | |
| 5 | Apportionment proportion - Also enter on line 8 in Section C. (see instructions) | | 5 |

**Taxpayer - Check off All that are enclosed with this tax report**

- [X] **Federal Form 1120 or 1120S** (required)
- [ ] **Separate company balance sheet**
- [ ] **RCT-105**
- [X] **RCT-103**
- [ ] **RCT-102**
- [ ] **REV-238**
- [ ] **Federal Form 1065 (LLCs)**
- [ ] **RCT-106**
- [ ] **Consolidated balance sheet (required for parent corporations)**

10100014119

Corporation TAI YOUNG YOO, M.D., P.C. Account ID 1067-932

Tax Period Ending M M D D Y Y 6/30/01

## Schedule C-2: Pennsylvania Dividend Deduction Schedule

| | | | |
|---|---|---|---|
| 1 | Federal Schedule C, line 20, total deductions | 1 | |
| 2 | Federal Schedule C, line 15, foreign dividend gross-up (Section 78) | 2 | |
| 3 | Dividends from less-than-20%-owned foreign corporations listed on lines 13 and 14 of federal Schedule C - x 70% | 3 | |
| 4 | Dividends from 20%-or-more-owned foreign corporations listed on lines 13 and 14 of federal Schedule C - x 80% | 4 | |
| 5 | Dividends listed on lines 13 and 14 of federal Schedule C from foreign corporations that meet the "80% voting and value test" of IRC Section 1504(a)(2) and otherwise would qualify for 100% deduction under IRC Section 243(a)(3) if they were a domestic corporation. **Do not list any amounts included in item 4** | 5 | |
| 6 | **Total Pennsylvania Dividend Deduction** - add lines 1, 2, 3, 4 and 5 (enter above at Section C, line 2a) | 6 | |

## Section D: General Information Questionnaire

1 Location of corporation's records.
DUBOIS PA

2 Corporation's records in care of:
CORPORATION

3 Method of accounting, if different than for federal.
SAME

4 Location of principal office.
DEPOSIT BANK BUILDING, DUBIOS PA

5 Has federal government changed taxable income as originally reported for any prior period for which reports of change have not been filed in Pennsylvania? Give year(s)
NO

6 Name and Account ID of any corporation holding all or a majority of the stock of this corporation.
N/A

7 Other corporations of which this corporation owns all or a majority of the stock. (Consolidated returns must be submitted.)

| Name | File in PA | Account ID | Entity ID (EIN) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

8 Date of incorporation 7/01/1980

9 Incorporated under laws of state of PENNSYLVANIA

10 Pennsylvania sales tax license number

11 Brief description of corporate activity in Pennsylvania: PHYSICIAN

Outside Pennsylvania:

List other states in which taxpayer has activity:

If incorporated outside Pennsylvania, does the corporation solicit sales in Pennsylvania? Please check ☐ Yes ☐ No

If yes, does the corporation use:

Please check ☐ Employee ☐ An exclusive sales representative ☐ An independent sales representative?

12 Schedule of real property used in Pennsylvania (buildings And land)

| Owned/ Rented | Street Address | City | County |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

## Section E: Corporate Status Changes

13 Have you sold or transferred business assets during the taxable year, if so what percent of total assets does this transaction represent? **What is name and address of purchaser?**

% _____ Name _____

Address _____

10300011118

**RCT-103** (9-00)

Bureau of Corporation Taxes

# Net Operating Loss Schedule

File with Form RCT-101

| Taxable Period Ended (MM/DD/YY) | Name of Corporation | Account ID (Pennsylvania Box Number) |
|---|---|---|
| 6/30/01 | TAI YOUNG YOO, M.D., P.C. | 1067-932 |

| (1) Tax Period Beginning | (2) Tax Period Ending | (3) Net Loss Carryforward to Current Period | (4) Amount Deducted (Current Period) | (5) Net Loss Carryforward to Next Period |
|---|---|---|---|---|
| 7/01/98 | 6/30/99 | 2,464 | | 2,464 |
| 7/01/00 | 6/30/01 | | | 12,821 |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | Total ..... | 0 | |



10300011118

FILED 1cc Attys:
02:50 BK
MAY 14 2007
Cohen & Bowlus
Johnson & Oliver
Blasko & Neely
T. Cherry
EK

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor | : | |
| VS. | : | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation | : | |

O R D E R

NOW this 11th day of May, 2007, following argument and discussion as will appear of record this date, it is the ORDER of this Court as follows:

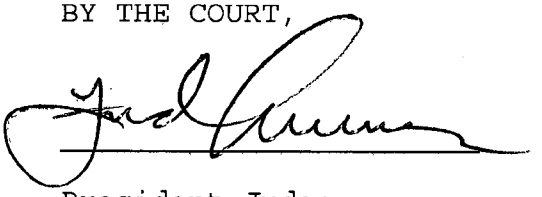
1. The Plaintiffs' Motion for Extension of Time to File Expert Reports is hereby granted relative only to damage experts. In regard to any experts on the issues of negligence or causation, the Court's prior case management Order will continue to be in effect.

2. The Plaintiffs' Motion to Dimiss Case 2006-936-CD without prejudice is hereby denied as is any request for continuance of the previously scheduled jury trial and the case of both minor Plaintiffs will proceed.

3. The parties have agreed that they will proceed to trial on September 17, 2007, and that the matter be

bifurcated. The jury trial scheduled to commence on said date shall be relative issues of alleged negligence and causation only. Any legal determination relative to damages shall be done, if necessary, at a later proceeding.

BY THE COURT,



President Judge

FILED
MAY 14 2007
William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/14/07

____ You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) __X__ Plaintiff(s) Attorney ____ Other

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation.

Defendants.

CIVIL DIVISION

No. 05-364-CD
**CONSOLIDATED WITH**
No. 06-936-CD

Issue No.

DISCLOSURE OF EXPERT REPORTS

Code: 007

Filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

Counsel of Record for These Parties:

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

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

(412) 232-3400

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m/ 11:20 BY
JUL 02 2007
William A. Shaw
Prothonotary/Clerk of Courts

DISCLOSURE OF EXPERT REPORTS

NOW COME Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C. and files the following disclosure concerning expert reports. Attached hereto are the following items:

1. Report of Geraldine A. Jones, RNC, BS, dated May 28, 2007.
2. Curriculum vitae of Geraldine A. Jones, RNC, BS.
3. Report of Mark Evans, M.D., dated September 22, 2006.
4. Curriculum vitae of Mark Evans, M.D.
5. Supplemental report of Dr. Evans dated June 24, 2007.

In addition to the foregoing, defendant specifically reserves the right to utilize at trial expert testimony identified in expert disclosures filed on behalf of other parties.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

***Geraldine A. Jones, RNC, BS***

***204 Holly Drive***
***Camp Hill, PA 17110***
***Tax ID: 200-40-7456***

***Phone: (717) 975-5111 (h)***
***(717) 782-4775 (w)***

May 28, 2007

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

RE: Ashtyn Hale, a minor by her parents and natural guardians, Angela and Randy Hale vs. Dubois Regional Medical Center et al.
Case No. : 05-364-CD

Dear Mr. Johnson:

Thank you for the opportunity to review the materials concerning the above mentioned matter. The following are the documents I reviewed and my clinical summary and opinion of the nursing care rendered to Angela Hale and her unborn infants at Dubois Regional Medical Center on November 9, 2002 and November 10, 2002.

**DOCUMENTS REVIEWED**

1. Dubois Regional Medical Center inpatient records for Angela Hale from 11/9/02 and 11/10/02
2. Fetal monitor strips from 11/9/02 and 11/10/02
3. Deposition transcripts of Dr. Kush, Kathyrn Raybuck, RN, Desiree Smith-Fremmer, RN, and Dr. Ott
4. Office records of DRMC Maternal Fetal Medicine for Angela Hale
5. Complaint and Answer
6. Expert report from Patricia Fedorka, Ph.D., RNC

## CLINICAL SUMMARY

In 2002, Angela Hale was a 26 year-old married female, Gravida 4, para 1 with a LMP of 4/28/02 and an EDD of 2/2/03. She was 5 ft. 3 in. tall and weighed 190 pounds. Her total weight gain was 24 pounds. Her past medical history was significant for an irregular heartbeat and a heart murmer that required prophylactic antibiotics for dental work. She had no known allergies and was a nonsmoker. She denied the use of alcohol and illicit drugs.

Her past obstetrical history included a spontaneous miscarriage at 4 weeks gestation in 1995, a spontaneous vaginal delivery in 1996 of a 6 pound 7 ounce female with preterm labor during that pregnancy, and a molar pregnancy in 1999.

Her first prenatal visit with Dr. Ott was on 6/13/02 at approximately 6 weeks gestation. Initial prenatal labs were all within normal limits except for a mild anemia (11.8/34.0). Her blood type was A negative. She received Rhogam at 28 weeks. Medications included prenatal vitamins, iron and folic acid. An MAFP was drawn on 8/22/02 at approximately 17 weeks gestation and was elevated (2.46). For this reason she was referred to the office of Dr. Kush of DRMC Maternal Fetal Medicine for a level 2 ultrasound. The ultrasound revealed a monochorionic/diamniotic twin gestation with appropriate growth for her gestation (19-20 weeks). His plan was to do obstetrical growth scans every 3-4 weeks. She had 2 additional ultrasounds performed by Dr Kush prior to going into preterm labor. These were performed on 10/14/02 and 11/07/02 and were reported as normal interval growth and amniotic fluid and no evidence of twin to twin transfusion syndrome. She had 6 prenatal visits with Dr. Ott between 6/13/02-10/31/02.

On 11/9/02 at 1200 she presented to the ER at DRMC at 28 weeks gestation with complaints of brownish vaginal discharge and pressure in her lower abdomen. Dr. Ott was present at 1210 and performed a cervical exam. At that time the cervix was closed, 2 1/2 cms thick and high. A NST was ordered and electronic fetal monitoring (EFM) was initiated. A clean catch urine for urinalysis and culture was obtained (3+ bacteria and negative protein). Results of the culture or any treatment was not found in the documentation. No medications were administered. Documentation on the focus notes revealed "accels present, much fetal movement and mild decels." At 1430 no contractions were noted and at 1515 irregular contractions were noted; no bloody show or leakage of fluid. She was observed for 3 hours and 35 minutes and reexamined at 1515 by Dr. Ott. There was no cervical change noted and she was discharged to home with appropriate discharge instructions including modified bedrest and a follow up appointment with Dr. Ott on 11/12/02.

On 11/10/02 at 1645 Angela presented to the DRMC outpatient testing area with complaints of increased frequency of irregular crampy pelvic pain. A phone order was received from Dr. Ott for EFM to rule out labor and to perform a sterile vaginal exam (SVE). EFM was initiated at 1647. The nursing documentation revealed contraction activity was irregular and mild to palpation.

At 1730 a SVE revealed that the cervix was unchanged since her last exam on 11/9/02. At 1805 the nurse called Dr. Ott with a verbal report and received orders for PO and SC Terbutaline 25 mg. and the patient was to be given an Rx for Brethine (5 mg. q 6 hours). She received the medications at 1830. At 1840 she c/o back and groin discomfort and no contractions were seen on the monitor. At 2000 the patient requested pain medication. Dr. Ott was called and arrived at 2014. He reviewed the EFM strips and performed a SVE. At that time she was 3-4 cms 90% effaced and 0 station with intact membranes.

She was admitted to Labor and Delivery at 2020. IV hydration was started and Magnesium Sulfate was initiated at 2030 (6 gmn loading dose then 2 gms/hr). She was also given Betamethasone 12 mg IM and SQ Terbutaline at 2030. A foley catheter was inserted at 2043. At 2117 she was 6 cms dilated and a c-section was called. Magnesium Sulfate was then discontinued. Baby A's FHR was recording in the120 -130's and Baby B's was noted as 150-160's. EFM was discontinued at 2140.

A primary low transverse c-section was performed under spinal anesthesia. Incision time was 2204. Twin A (Reganne) was in the vertex position and delivered at 2208 with apgars of 7/9 and a weight of 1136 gms. Twin B (Ashtyn) was in the double footling position and delivered at 2209 with apgars of 4/7 and weighed 1228 gms. Angela was transferred to PACU in stable condition. EBL was noted as less than 1000cc. After delivery the infants were transferred to the NICU under the care of Dr. Grout. Records of their post delivery care were not received. Angela was discharged on 11/12/02. Medications included Zoloft, Motrin, and PNV. Follow up appointment was scheduled for 11/18/02.

Placental pathology revealed a monochorionic diamnotic slightly hypomature twin placenta. Bilateral trivascular umbilical cords; no evidence of chorioamnioniotis or funisitis.

**OPINION**

ED visit on 11/9/02

I see no exposure for the hospital or nurses on this day. The nurses were attentive and at the bedside continuously. Monitoring was technically difficult and the EFM strips are sketchy due to early gestational age, fetal activity, and twin pregnancy. However, the nurse did document both FHR's in the nurses notes every half hour. Contraction (ctx.) activity was assessed and documented as irregular, however, the EFM did evidence ctx. 2-6 minutes. A second nurse also assessed the EFM strip. The patient was personally seen, examined and discharged by Dr. Ott. There was no cervical change. Appropriate discharge instructions were given.

Observation, admission and delivery on 11 /10/02

It is my expert nursing opinion that the nursing staff acted reasonably and within the standard of care on this day. The nurses were constantly assessing this patient and

her unborn infants and they never left her bedside. IV hydration and tocolytic medications were timely administered, neonatal resuscitation was anticipated and appropriate personnel available.

Nurse Fedorka, the plaintiff expert, stated the nurse did not palpate the uterus but this can be disputed by the documentation in the nurses notes. At 1650 and 1830 the uterine contractions were noted to be "mild to palpation and zero to palpation." The patient was also asked to press the mark button on the EFM when she felt contractions. The nurses were making every effort to evaluate the uterine activity as stated above.

Nurse Fedorka also stated that the nurses did not reassess cervical status. It is not unreasonable to wait a period of time for IV hydration and tocolytic medications to take effect before reassessing cervical status. These were administered at 1805. A patient at 28 weeks gestation does not get frequent cervical exams unless there is a change in her comfort level or uterine activity. Cervical exams can release prostagladins which can stimulate more contractions and the risk of infection increases with the increased number of cervical exams. The patient did not request pain medication until 2000. That is when the nurse re-examined her. There is no basis to conclude that doing a cervical exam 1-2 hours earlier would have prevented the preterm labor from occurring or changed the outcome in this case.

It has to be said that even in the best of circumstances good medical care does not always result in stopping preterm labor, especially in multiple gestations. In this case I don't believe her labor could have been stopped.

Please feel free to contact me at any time if I can be of further assistance to you. I reserve the right to amend my opinion should additional materials become available. Thank you for the opportunity to review this case.

Respectfully submitted,

Geraldine A Jones, RNC, BS

Geraldine A. Jones, RNC, BS

# Geraldine A. Jones, RNC, BS

204 Holly Drive, Camp Hill, Pennsylvania 17011
(717) 975-5111


## CAREER PROFILE

Conscientious, flexible, and organized healthcare professional with more than twenty years of experience in the healthcare industry. Background includes varied clinical practice, risk management, claims, and case management settings. Excellent communication, assessment, and problem solving skills. Self directed and also willing to work constructively with other healthcare members to meet departmental needs.

## PROFESSIONAL EXPERIENCE

**PINNACLE HEALTH SYSTEM**, Polyclinic Campus, Harrisburg, Pennsylvania

**Obstetrical Care Coordinator** • 2002-Present
Responsible for the coordination of obstetrical services. Provide care to 75-100 patients enrolled in the state-regulated Healthy Beginnings Plus (HBP) maternity program.

- Conduct prenatal intakes, assess medical histories, and identify obstetrical risk factors to develop a treatment plan in conjunction with the obstetrical healthcare providers
- Serve as the primary contact with the patient and facilitate multidisciplinary care and communication
- Coordinate referrals to perinatology, social service, dietary, and home health
- Educate pregnant women on wellness, preterm labor, family planning and all aspects of prenatal care
- Participate in weekly rounds with a perinatologist to collaborate a treatment plan for high risk pregnant patients
- Triage patients and perform fetal surveillance, i.e., Nonstress tests

**Staff Nurse** • 2000-2002 Harrisburg Hospital Campus
Responsible for providing direct patient care to low and high risk patients in labor and delivery, antepartum, operating and recovery room.

- Assessed, planned, implemented, evaluated and coordinated the total care of patients
- Performed perinatal surveillance including nonstress tests and oxytocin challenge tests
- Scrubbed, circulated, and administered pre-operative and post-operative care
- Educated patients and support people on patients' diagnoses and treatment

**PerDiem Staff Nurse** • 1993-2001 Polyclinic Medical Center, Harrisburg, Pennsylvania
Responsible for clinical obstetrical nursing in the labor, delivery, and recovery areas.

- Performed nonstress tests and oxytocin challenge tests
- Participated in the Clinical Practice Committee by researching and assimilating information to update policies and procedures

**Assistant Head Nurse, Labor and Delivery** • 1987-1991
Responsible for staffing, direct care and supervision in the daily operation of a twelve bed labor and delivery Suite in a Level 3 hospital.

- Assisted in hiring, evaluating, and management of nursing staff
- Collaborated with staff development in the orientation of new staff
- Assisted in payroll and scheduling
- Ordered, managed, and maintained unit supplies
- Participated in Quality Assurance and Collaborative Practice activities

**Staff Nurse** • 1972-1987
Responsible for direct patient care of low and high risk antepartum and obstetrical patients through clinical practice, education and research.

- Assumed charge duties on all shifts
- Scrubbed and circulated for caesarean sections and tubal ligations
- Precepted and oriented new staff and student nurses
- Assisted in Neonatal Intensive Care Unit

**Staff Nurse Medical Surgical Unit** • 1971-1972

**PHICO GROUP, INC.** Mechanicsburg, Pennsylvania

**Medical Care Analyst** • 1993-2001
Provided technical support to Claims, Risk Management and Legal Counsel via medical record review and analysis for standard of care.

- Interpreted and analyzed all electronic fetal monitor strips
- Developed and presented educational programs related to obstetrical claims and nursing liability
- Reviewed and updated hospital policies and procedures
- Authored internal and external publications which addressed high frequency/exposure claims
- Co-authored "The Litigation Support Manual For Nurses and Allied Health"
- Participated on the Safety Committee and the Emergency Response Team

## EDUCATION

**Bachelor of Science in Health Arts**
St. Frances University, Joliet, Illinois

**Diploma, Nursing**
Polyclinic School of Nursing, Harrisburg, Pennsylvania
**Registered Nurse License**
Commonwealth of Pennsylvania

## PROFESSIONAL CERTIFICATIONS

NCC Inpatient Obstetrical Nurse
NCC Electronic Fetal Monitoring
Neonatal Resuscitation
BLS for Healthcare Provider (CPR/AED)

Comprehensive Genetics

**MARK I. EVANS, M.D.**
President, Fetal Medicine Foundation of America
Professor of Obstetrics & Gynecology
Mt. Sinai School of Medicine

September 22, 2006

Mr. David R. Johnson
Thomson, Rhodes, and Cowie, PC
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

RE: Hale v Kush, et al
Your file #14176

Dear Mr. Johnson:

As per your request, I have reviewed numerous files in the above mentioned case. These initially included:

1. Complaint
2. Answer and new matter of Kush and DRMC
3. Medical Records of Dr. Kush, Dr. Ott,
4. Medical Records of DRMC ER 11/9/02 and admission of 11/10/02
5. Medical Records of Dr. Cherian and Punxsutawney Area hospital records for 1996 pregnancy
6. Deposition transcripts of Drs. Kush, Kay, Raybuck, Smith-Fremmer, and Ott.

I subsequently received reports from:

1. Curtis Cetrulo MD
2. Bennett Walstatter, MD
3. Robert Atlas, MD
4. Robert McDowell, Jr. MD
5. Mark Epstein, MD
6. Patricia Fedorka, Ph.D., R.N.C

Received DRJ
SEP 25 2006
BLL
Place ( ) Dictated on ( )
Diary/ Note ( )
Copy to DRJ ( ) Copy Key Doc.( )

Mark I. Evans, M.D., PLLC, 131 East 65th Street, New York, New York 10021 Phone: 212.744.2590 / Fax: 212.879.2606
Web: www.CompreGen.com / E-mail: Evans@CompreGen.com

Clinical History

Angela Hale was a 26 year old G4 P1021 white female patient of Dr. Ott with an LMP of 4 28 02 and EDC of 2 3 03 whose prenatal course was noted for an near elevated MSAFP of 2.46 MOM at 16.6 weeks which lead to an ultrasound by Dr. Kush that diagnosed a monozygotic diamniotic twin pregnancy.

Her past history was noted for one spontaneous loss, one molar pregnancy, and a previous full term birth in 1996 that had itself had an episode of preterm labor.

Prior to the time of the near elevated MSAFP, her prenatal course had been uneventful. She was 5'3" and 190lbs at her first visit and put on 25 lbs through 28 weeks.

Evaluation by Dr. Kush on 9/11/02 revealed a monochorionic diamniotic twin pregnancy. A plan was made for co-management of the remainder of the pregnancy. Subsequent ultrasounds were scheduled monthly and performed on 10/9/02 and 11/6/02 which showed continuing concordant growth.

| DATE | Twin A | Twin B |
|---|---|---|
| 9/11/02 | 18.6wks/249g 13% | 19.2wks/261g 22% |
| 10/9/02 | 23.1wks/562g 43% | 23.1wks/588g 40% |
| 11/6/02 | 27.1wks/1054g 33% | 26.6wks/1058g 34% |

Mrs. Hale presented to Dubois regional Medical Center on 11/9/02 with complaints of irregular contractions and brownish discharge. She had no fluid leakage or vaginal bleeding. Her cervix was long and closed without change from her previous prenatal visit. FHTs were positive for both twins. She was sent home and instructed to return to Dr. Ott's office within several days.

She returned to DRMC on 11/10/02 complaining of increasing frequency of irregular, crampy pelvic pain. Cervical exam at 17:30 was consistent with the night before. She was given one dose of Terbutaline, but exam at about 20:30

showed her to have dilated to 3-4cm, 90% effaced and 0 station. She was admitted with a plan for hydration, tocolysis, and steroids. She received one dose of Celestone on 11/10/02.

Her labor did not stop and decision was then made to perform a 1* LTCS delivering

1. Viable female "A" 1136g Apgars 7/8
2. Viable female "B" 1228g Apgars 4/7

Subsequently, Reganne and Ashtyn were followed in the DRMC NICU. Reganne was transferred to Children's Hospital in Pittsburgh and was said to have a Grade 1 intraventricular hemorrhage, retinopathy of prematurity, reflux, and bronchopulmonary dysplasia. She was later said to have developed at Grade III IVH, hydrocephalus, periventricular leukomalacia ,and diplegic spastic cerebral palsy.

ASSESSMENT

Plaintiff alleges that Reganne's problems are related to negligence on the part of Drs. Kush and Ott, and DRMC essentially arguing that there was failure to follow the pregnancy closely, failure to order growth ultrasounds, evaluate her cervix, have Dr. Kush manage the pregnancy, observe the patient for an "extended" period on 11/9/02, order tocolysis and steroids on 11/9/02, and failure to diagnose and treat her preterm labor on 11/10/02.

Evaluation of the records and testimony in this case does not support these allegations. In fact, many of the specifics alleged as not being done were, in fact, done.

1. It is perfectly appropriate for an MFM and generalist to co-manage a concordant monozygotic twin pregnancy
2. Growth ultrasounds were ordered and performed monthly as appropriate.
3. The ultrasounds showed concordant, normal growth
4. Her MSAFP, which was the cause of her initial US and diagnosis of the twin pregnancy, was actually normal for a twin pregnancy.
5. Her cervix was evaluated both on 11/9/02 and 11/10/02 and was unchanged on at least two exams before labor resulted in dilatation

6. Tocolysis and steroids were not indicated until there was evidence of labor having an effect on the cervix and thus a serious concern for premature delivery.
7. Steroids and tocolysis were started when appropriate.
8. Delivery was effected appropriately by CS when it appeared imminent
9. Intraventricular hemorrhage is an unfortunate and unpreventable complication of premature delivery at 28 weeks and is more common in monozygotic twins that dizygotic twins.
10. The remainder of Reganne's conditions are sequelae related to the premature delivery, per se, and not of any negligence of the health care providers who all complied with the standards of care.
11. Even if tocolysis and steroids were given the day before, it is most likely that the outcome would have been exactly the same.

Review of the reports submitted by plaintiff's experts does not change my opinions:

Dr. Epstein states that Reganne's conditions are likely related to the premature birth. I agree. However, as a pediatric neurologist, he is not in any expert position to opine on the use by obstetricians of tocolytics.

Dr. McDowell likewise states that the child's problems are related to prematurity. I have no disagreement with this specific conclusion.

Dr. Atlas argues, in effect, that since labor eventually progressed that the contractions appreciated by the medical staff on 11/9/02 had to be "more frequent than that." This is not a reasonable conclusion. Furthermore, the use of fibronectin has very low sensitivity and positive predictive value in such situations and is in my opinion virtually worthless. Clinical exam is likewise just as useful as cervical ultrasound. There is absolutely no requirement by the standard to use these two approaches as opposed to those used. For 11/10/02 he opines that since the exam changed over 3 hours that the first exam had to have been wrong. This is unreasonable.

Dr. Cetrulo states that it was a breach of standard to not admit Ms. Hale on 9/11/02 even without any hard evidence of labor. This is unreasonable and absolutely not appropriate. Admitting everyone with contractions in pregnancy would have a profound cost for essentially no benefit. Furthermore, even if she had been admitted, there is no reason to believe that tocolysis would have made any difference in the clinical outcome.

Dr. Walstatter likewise argues that is was beneath the standard not to have examined the patient at an hourly interval. This is inappropriate and inconsistent with standard obstetrical teaching.

Ms. Fedorka opines that there should have been more exams. While as an obstetrician gynecologist, I will refrain from making specific nursing standards statements, I have worked with obstetrical nurses my entire career, and did not have any problem with the care provided here. Multiple plaintiff experts opine in effect that since she delivered, her exams earlier had to have been wrong. This is nonsense.

Over the past 25 years, I have managed thousands of multiple pregnancies. Even with the most aggressive of management, poor outcomes are very common particularly with monozygocity. Therefore, I can state to a reasonable degree of medical certainty that there were no deviations in the standard of care by any of the healthcare providers that were responsible for the medical problems in the female twin. I base my opinions on my expertise, review of relevant literature over the years, and clinical experience and board certification in the specialties of Obstetrics and Gynecology and Medical Genetics. I reserve the right to modify these opinions as additional information and details might become available.

Thank you very much.

Sincerely,



Mark I. Evans, MD

# CURRICULUM VITAE

## MARK I. EVANS, M.D.


**PROFESSIONAL POSITION** Professor of Obstetrics and Gynecology
Mt. Sinai School of Medicine
Director, Comprenhensive Genetics

**ADDRESS:** **Office:** Comprehensive Genetics
131 East 65th Street
New York, NY 10021

**Tel:** 212 744 2590
**Fax:** 212 879 2606 (fax)
**E-Mail:** Evans@CompreGen.com


President, Fetal Medicine Foundation of America

President, International Fetal Medicine & Surgery Society Foundation

President Elect, Central Association of Obstetricians and Gynecologists


**HOME ADDRESS**: 100 Old Palisades Road, #2906
Fort Lee, NJ 07024
(201) 585-0686
(201) 585-0685 fax


**CIVIL STATUS**: Divorced
Children: Kiera Lindsey Evans
June 24, 1982
Shara Martine Evans
December 14, 1985

**DATE OF BIRTH**: May 14, 1952, Brooklyn, New York

**CITIZENSHIP**: United States of America

**EDUCATION**: New York University (University College)
Bronx, New York, September 1969 - June 1970

Tufts University, Medford, Massachusetts
Bachelor of Science, Department of Psychology
(Magna cum laude with Special Honors)
June, 1973

State University of New York
Downstate Medical Center
Brooklyn, New York
Doctor of Medicine (Distinction in Research)
May, 1978

**Revised 12/4/05**

**POST GRADUATE TRAINING:**

1st, 2nd, and 3rd year Resident
Department of Obstetrics and Gynecology
The University of Chicago/Pritzker School of Medicine
The Chicago Lying-In Hospital Chicago, Illinois
July, 1978 - June, 1981

Chief Resident in Obstetrics and Gynecology
The University of Chicago
Pritzker School of Medicine, Chicago Lying-In Hospital
Chicago, Illinois
July, 1981 - June, 1982

Interinstitute Medical Genetics Fellowship
Warren G. Magnuson Clinical Center
National Institutes of Health
Bethesda, Maryland
July, 1982 - June, 1984

**FACULTY APPOINTMENTS:**

Instructor, Department of Obstetrics and Gynecology
The George Washington University Medical School
Washington, D.C.
July, 1982 - June, 1984

Assistant Professor, Department of Obstetrics and Gynecology
Wayne State University School of Medicine
Detroit, Michigan
July, 1984 - July, 1988

Assistant Professor, Department of Molecular Biology
Wayne State University School of Medicine
Detroit, Michigan
July, 1987 - July, 1988

Associate Professor with Tenure
Departments of Obstetrics and Gynecology and
Molecular Biology and Genetics
Wayne State University School of Medicine
Detroit, Michigan
August, 1988 - August, 1991

Professor with Tenure
Departments of Obstetrics and Gynecology and
Molecular Biology and Genetics
Wayne State University School of Medicine
Detroit, Michigan
August, 1991 - September, 1994
(Dept MBG changed to Center for Molecular Medicine & Genetics)

Visiting Professor
Department of Obstetrics and Gynecology
Medical College of Ohio
September, 1991 - June, 1993
Vice-Chief
Department of Obstetrics and Gynecology
Detroit Medical Center
December, 1991 – September, 1998

Professor
Department of Pathology
Wayne State University School of Medicine
Detroit, Michigan
July, 1992 - 2001

Professor with Tenure
Depts of Obstetrics and Gynecology, and Pathology
Center for Molecular Medicine & Genetics
Wayne State University School of Medicine
Detroit, Michigan
September, 1994 – 2001

Vice Chairman
Department of Obstetrics and Gynecology
Wayne State University
March, 1996 – September, 1998

Interim Chairman and Specialist-in-Chief
Department of Obstetrics and Gynecology
Wayne State University
October, 1998 – October, 1999

Director, Human Genetics Program
July, 1996 - 2001

Charlotte B. Failing Professor of Obstetrics and Gynecology
December, 1996 – 2001

Distinguished Professor
Wayne State University
September, 2000 – 2001

Professor and Chairman of Obstetrics and Gynecology
Professor of Human Genetics
Director of Fetal Therapy Program
MCP Hahnemann University
November 2000 – October 2002

Professor of Obstetrics and Gynecology
Columbia University College of Physicians and Surgeons
2003 – 2004

Professor of Obstetrics and Gynecology
Mt. Sinai School of Medicine
2004-

**PREVIOUS PROFESSIONAL APPOINTMENTS**

Research Associate, Research Laboratory and
Department of Obstetrics and Gynecology
Nassau County Medical Center
East Meadow, New York
June, 1973 - March, 1974

Research Associate
Department of Obstetrics and Gynecology
Rebecca Sieff Government Hospital
Safad, Israel
April, 1974 - July, 1974

Special Advisor to the Director
National Center for Health Care Technology
Office of Health Resources, Statistics and
Technology, Public Health Service
Rockville, Maryland
November, 1980 - October, 1981

President, International Fetal Medicine & Surgery
Society, 1987

President, International Fetal Medicine & Surgery
Society, 1997

Treasurer
International Society for Prenatal Diagnosis
October, 1998 – 1993

Vice President, Central Association of
Obstetricians and Gynecologists
October 2003- October 2004

**MEDICAL LICENSURE**:

New York, Michigan, California, Pennsylvania,
New Jersey (Active)
District of Columbia, Illinois, Maryland, Virginia, Ohio (inactive)

**BOARD CERTIFICATION**:

National Board of Medical Examiners
July, 1979

American Board of Medical Genetics
June, 1984

American Board of Obstetricians and Gynecologists
December, 1985
Recertified: 1998
Recertified: 1999
Recertified: 2000
Recertified: 2001
Recertified: 2002
Recertified: 2003
Recertified: 2004
Recertified: 2005
Recertified: 2006

**HONORS *and* AWARDS**:

President, International Fetal Medicine & Surgery Society, 1987, 1997

Central Association Award,
Central Association of Obstetricians and Gynecologists
September, 1988

Who's Who of Emerging Leaders in America
2nd edition, 1989

3rd edition, 19914th edition, 1993
Wayne State University
Career Development Chair
July, 1989 - June, 1990

Co-Chairman
Fetus as a Patient
Detroit, Michigan
October, 1990

Alpha Omega Alpha
Wayne State University Chapter
April, 1994

"The Best Doctors in America"
1994, 1996, 1998, 2000, 2002, 2004

Wayne State University
Board of Governors
Faculty Recognition Award
June, 1994

Who's Who in the World
16th Edition, 1995
17th Edition, 1997
18th Edition, 1999
19th Edition, 2001
20th Edition, 2003
21st Edition, 2004
22nd Edition, 2005

Who's Who in Science and Engineering
3rd Edition, 1996
4th Edition, 1998
5th Edition, 2000
6th Edition, 2002
7th Edition, 2003-2004
8th Edition, 2004-2005

Who's Who in America
50th Edition, 1996
51st Edition, 1997
52nd Edition, 1998
53rd Edition, 1999
54th Edition, 2000
55th Edition, 2001
56th Edition, 2002
57th Edition, 2003
58th Edition, 2004
59th Edition, 2005

Who's Who in Medicine and Health Care
2nd Edition, 1998
3rd Edition, 2000
4th Edition, 2002-2003
5th Edition 2004-2005

Who's Who in the East
31st, Edition, 2003
32nd Edition, 2005

1,000 Top Docs in the USA
American Health, March, 1996

Wayne State University
Academy of Scholars
April, 1996

Board of Directors
Fetus as a Patient
May, 1996 - Present

2,000 Best Doctors in the USA
MB Braun Publishers
December, 1996

Best Doctors for Women
Good Housekeeping, 1997

Society for Gynecologic Investigation
President's Achievement Award
March, 1999

Distinguished Professor
Wayne State University
September, 2000

Top 45 Obstetricians in America
Ladies Home Journal
April 2002

Vice President
Central Association of Obstetricians and Gynecologists
October 2003

President Elect
Central Association of Obstetricians and Gynecologists
October 2004

Physicians for Reproductive Choice and Health Award
November 24, 2004

American Fertility Association
Family Building Award
November, 2005

4

**TEACHING EXPERIENCE**:

16+ years at Wayne State University
2 years at the National Institutes of Health and
George Washington University
4 years at the University of Chicago
2 years at MCP Hahnemann University
2 years at Columbia University
2 years at Mt. Sinai School of Medicine

**GRADUATE PROFESSIONAL COURSES TAUGHT/DIRECTED**

Wayne State University
OB/GYN 710 - Reproductive Genetics for 16 years
Genetics - First Year Medical School for 16 years
Ethics - Second Year Medical School for 7 years

MCP Hahnemann University
Genetics – First Year Medical School for 2 years

All Michigan OB/GYN
Comprehensive Review Course
Director for 9 years

Program Chairman
American College of Obstetricians & Gynecologists - District V
Hawaii, 1995

Program Chairman
March of Dimes National Annual Meeting

Fort Lauderdale, March, 1997

Program Director
NICHD - Fetal Therapy Symposium
Bethesda, April, 1997

International Organizer
Nobel Foundation Symposium on Fetal Therapy
May, 1998

Program Chair
International Society of Prenatal Diagnosis 9th Meeting
Los Angeles, June, 1998

American College of Obstetricians & Gynecologists
Free Standing Post Graduate Courses:
Screening and Diagnosis in Obstetrics & Gynecology
2001, 2005, 2006

**FELLOWS**:

Arie Drugan, M.D., 1987-1989
Mark Paul Johnson, M.D., 1988-1990
Nelson B. Isada, M.D., 1990 - 1992
Mordechai Hallak, M.D., 1991 - 1992
Peter G. Pryde, M.D., 1991 - 1993
Avihai Reichler, M.D., 1992 - 1994
Roderick F. Hume Jr, M.D., 1993 - 1995
In Bai Chung, M.D., 1995 - 1997
Yuval Yaron, M.D., 1995 - 1997
Ralph Kramer, M.D., 1995 - 1998
Baruch Feldman, M.D., 1997 - 1999

**ELECTED MEMBERSHIPS**:

Psi Chi, Tufts University
June, 1973

Sigma XI, SUNY Downstate Medical Center
May, 1977

American Federation of Clinical Research
February, 1978

Junior Fellow
American College of Obstetricians & Gynecologists
January, 1979 - December, 1986

American Society of Human Genetics
July, 1983

International Fetal Medicine & Surgery Society
June, 1984

Fellow
American College of Obstetricians and Gynecologists

December, 1986

Society for Gynecologic Investigation
January, 1987

Central Association of Obstetricians and Gynecologists
October, 1987

Society of Perinatal Obstetricians
January, 1990

Founding Fellow
American College of Medical Genetics
November, 1992

Fetoscopy Working Group
September, 1994

Association of Professors of Medical and Human Genetics
April, 1995

American Gynecologic and Obstetrics Society
April, 1995

Cosmos Club
Washington, DC
September, 1998

Chicago Gynecological Society
May, 1999

The Obstetrical Society of Philadelphia
November, 2001

New York Obstetrical Society
June, 2004

**NATIONAL/INTERNATIONAL COMMITTEES**:

Chairman, Illinois Section
Junior Fellows District VI
American College of Obstetricians and Gynecologists
September, 1981 - September, 1982

NICHD Workshop in Intrauterine Growth Retardation
July, 1983

NICHD Ad Hoc Committee on Chorionic Villus Biopsy
October, 1983

Ethics Committee
American College of Obstetricians and Gynecologists
April, 1987 - July, 1990

Ultrasonography Task Force
American Medical Association
January, 1989 - March, 1991

NIH-NICHD
Site Visit Teams
February, 1990
March, 1991
November, 1991
May, 1993

PROLOG Task Force
American College of Obstetricians & Gynecologists
September 1989 - January, 1991

NICHD Workgroup
Reproductive Genetic Testing: Impact Upon Women
November, 1991

NIH-NICHD
RFP Review Committee
March, 1993

American College of Obstetricians and Gynecologists
District V Advisory Council
October 1993 - 1999

Medical Advisory Board
Ehlers Danlos National Foundation
July, 1988 -

World Health Organization
Ad Hoc Prenatal Diagnosis Committee
May, 1994

American College of Medical Genetics
Biochemical Screening Committee
October, 1994 - 1999

American College of Obstetricians and Gynecologists
Course Coordination Committee
1996 – 1999

Board of Directors
Fetus as a Patient
1996 -

Program Chairman

March of Dimes National Meeting
1997

Board of Trustees
Central Association of Obstetricians & Gynecologists
October, 1997 – 2000

Treasurer
International Society for Prenatal Diagosis
October, 1998 –2002

Accreditation Council for Graduate Medical Education
Residency Review Committee for Medical Genetics
January, 1999 – 2004

American College of Obstetricians and Gynecologists
Task force on Neonatal Encephalopathy
January, 2000 – May 2002

American College of Medical Genetics
Finance Committee
January, 2000 - 2003

National Institute Child Health Development
Human Pluripotent
Stem Cell Review Group
April 2001 -

**PROFESSIONAL CONSULTATIONS**

**PRESENTATIONS-TESTIMONY**: United States Food & Drug Administration
Alpha-fetoprotein Screening, January, 1981
State of Michigan Legislature
"The Informed Consent Bill"
February, 1992

State of Michigan Legislature
"Partial Birth Abortion"
March, 1996

State of Michigan Legislature
"Infant Protection Act"
May 1999

Evans vs. Kelly 977
F. Supp. 1283 (E.D. Michigan 1997)

Evans vs. Granholm 00-CV-70586
(E.D. Michigan, April 26, 2001)
(Permanent Injunction)

U.S. Supreme Court
Amicus Curie brief in Steinberg vs Carhart, 530 U.S. 914 (2000)

National Abortion Federation,
Mark I. Evans, et al vs
Aschcroft 03-8695 RCC S.D.N.Y.
November, 2003

**CONSULTANTSHIPS**:

National Center for Health Care Technology
November, 1980 - January 1981
National Center for Health Care Technology - Centers for Disease Control - Alpha-fetoprotein Screening
January, 1981

Metpath - Corning-Quest: National Medical Advisory Board
January, 1988 - October 2000

National Advisory Board for Ethics in Reproduction
July, 1994 - 1999

**STATE COMMITTEES**:

Genetics Advisory Committee of Michigan Department of Public Health
September, 1984 – October 2000

Chairman, Subcommittee on Utilization of Genetic Services in Michigan Department of Public Health
August, 1989 - September, 1992

Ethics Committee
Michigan State Medical Society
July, 1991 - July, 1992

Human Genome Project
Ethics Committee - University of Michigan
April, 1992 - 1998

Committee on CME Accreditation
Michigan State Medical Society
July, 1992 - 1999

Michigan State Medical Society
Program Planning Committee
January 1995 - 1999

Michigan State Medical Society
Chairman, Committee on Genetic Technology
February, 1998 – 1999

**LOCAL COMMITTEES**:

Ethics Committee
Wayne County Medical Society
July, 1988 - September, 1991

Medico-Legal Committee
Wayne County Medical Society
October, 1990 - September, 1992

Leadership Development Task Force
Wayne County Medical Society
March, 1991

Medical Education Committee
Wayne County Medical Society
September, 1991 - 1998

**UNIVERSITY *and* HOSPITAL COMMITTEES**:

Wayne State University/Hutzel Hospital
Hutzel Hospital Credentials Committee
January, 1985 - December, 1987

Pathology Chairman Search Committee
April, 1988 - October, 1988

OB/GYN Executive Committee
July, 1984 – October, 1999

Associate Director
Wayne State University Medical School
American Board of Medical Genetics Fellowship
1986 - 1993

OB/GYN Promotion and Tenure Committee
May, 1988 - July, 1994, July 1995 - 1996
Chairman, August, 1989 - July, 1994

OB/GYN Salary Committee
May, 1988 - 1997

Pediatrics Department Review Committee
November, 1988 - February, 1989

Year IV Curriculum Committee
Wayne State University Medical School
January, 1989 – 1992

Hutzel Hospital
Research & Education Committee
Chairman, June, 1989 – December, 1997
Dean's Council for Continuing Medical Education
October, 1989 - May, 1996

OB/GYN LCME Review Committee
Chairman, June 1990-December, 1990

OB/GYN Finance Committee
May, 1991 – October, 1999

OB/GYN ERGOT, Foundation Board
May, 1991 – October, 1999

Medical School LCME
Task Force
July, 1991 - September, 1991

OB/GYN Advisory Committee
August, 1991 - March, 1996

Grand Rounds Director
September, 1993 – August, 2000

Director
Wayne State University Medical School
American Board of Medical Genetics Fellowship
1994 – 1999

Hutzel Hospital
Medical Executive Committee
November, 1991 - April, 1995

Hutzel Hospital
Risk Management Committee
November, 1991 - 1997
Hutzel Hospital
Patient Care Improvement Committee
November, 1991 – 1997

Hutzel Hospital
Finance Committee
July, 1992 - December, 1996
Wayne State University

Institutional Review Board
(Human Investigations Committee)
September, 1992 - May, 1996

Hutzel Hospital Growth Committee
Chairman, November, 1993 - September, 1994
Executive Board of Faculty Senate
Wayne State University School of Medicine
July, 1995 - July, 1996

Promotion and Tenure Committee
Wayne State University School of Medicine

July, 1995 - July, 1996

Orthopedic Chairman Search Committee
July, 1995 - April, 1996

Council of Department Chairman
July, 1998 – October, 1999
Specialist in Chief, Obstetrics and Gynecology
July, 1998 – October, 1999

DMC Medical Executive Board
July, 1998 – October, 1999

FMRE Board Trustee
August, 1998 – October, 1999

**MCP Hahnemann University/Hahnemann Hospital**

Business Development Action Group
November, 2000 – June 2002

Clinical Chairs Committee
November 2000 – June 2002

Executive Medical Committee of the Faculity
November 2000 – June 2002

Interdepartmental Activities Action Group
November 2000 - June 2002
Revenue Cycle Committee
November 2000 – June 2002

Tenet/University Operations Committee
November 2000 – June 2002

Hahnemann Hospital Medical Executive Committee
November 2000 - June 2002

Financial Oversight Committee
November 2000 – June 2002

Chairman
Curriculum Review Task Force
September 2001 - May 2002

**JOURNAL EDITORSHIP**:

Fetal Diagnosis and Therapy
S. Karger Publishing Company
Basel, Switzerland
1991 – 1997

Editor-In-Chief
Fetal Diagnosis and Therapy

S. Karger Publishing Company
Basel, Switzerland
1997 -

American Journal of Medical Genetics
Section: Reproductive Genetics
Associate Editor
1994 - 2000

International Editor
Gynecology, Obstetrics, and Reproductive Medicine
Ankara, Turkey
1995 -

Co-Editor
The Ultrasound Review of Obstetrics and Gynecology
2000 -

**EDITORIAL BOARDS**:

Fetal Therapy
S. Karger Publishing Company
Basel, Switzerland
1986 - 1990

Journal of the Society for Gynecologic Investigation
1993 -

American Journal of Medical Genetics
1994 - 2000

Prenatal Diagnosis
1995 -

The Journal of Maternal-Fetal Medicine
1996 - 2001

The Journal of Reproductive Medicine
1996 –

The Journal of Maternal-Fetal and Neonatal Medicine
2002 -

**PERIODIC REVIEWER**:

Obstetrics and Gynecology
American Journal of Obstetrics & Gynecology
New England Journal of Medicine
Journal of the American Medical Association
Fertility & Sterility
American Journal of Human Genetics
International Journal of Gynecology and Obstetrics
Medical Principles & Practice
Surgical Endoscopy
Genetic Testing

Gynecologic Oncology
European Journal of Human Genetics
Kidney International
Journal of the Neurological Sciences
Journal of Intensive Care Medicine
Acta Paediatrica
Journal of the National Medical Association
Human Reproduction
Expert Opinion in Pharmco Therapy
Archives of Diseases in Children

**GRANT & CONTRACT SUPPORT**:

**Evans MI** – Principal investigator
March of Dimes, Support for the International Fetal Surgery Registry, 1988, $10,000

**Evans MI** - Wayne State University
Career Development Chair, 1989, $18,000

**Evans MI** - Co-investigator - Bottoms SF (PI)
Maternal-Fetal Medicine Network Center Grant - NICHD
1991, $530,869

**Evans MI** - Principal investigator
March of Dimes, Summer Student Research Support
1992, $4,000

**Evans MI** - Co-investigator - H. Levy (PI)
Maternal Phenylketonuria in Pregnancy Project - NICHD
April 1992 - $1,594,839

**Evans MI** - Principal investigator
Prenatal Diagnosis Using Fetal Cells from Maternal Blood – NICHD
March 1994 – November, 1999, $1,247,973

**Evans MI** - Co-investigator - S.Bottoms (PI)
Cooperative Multicenter Maternal Fetal Medicine Unit Network
1995 - $624,635

**Evans MI** – Principal investigator
Early Amniocentesis – NICHD
1996 – $125,000

**Evans MI** - Principal investigator at WSU,
L. Jackson - Principal investigator of project
Randomized Clinical Trial of Transabdominal CVS & Amniocentesis
1997 - $181,108

**Evans MI** - Principal Investigator
Fetal Cells In Maternal Blood
Applied Imaging Corporation
1997 - $165,000

**Evans MI** - Principal Investigator
Center of Excellence: Program in Human Genetics
Wayne State University
1998 - $1,000,000

**Evans MI** – Principal Investigator
Women's Reproductive Health Research
Detroit Reproductive Career Development Research Center
NICHD, National Institute of Health
December, 1998 – October, 1999 - $2,000,000

**Evans MI** – Principal Investigator
Richard J. Barber Fund for Interdisciplinary Legal Research
1999, $20,000

**Evans MI** – Principal Investigator
National Institutes of Health
Fetal Cell Study (N01-HD-4-3202-09)
December, 1999 – November, 2002, $2,894,344

**VISITING PROFESSOR, GRAND ROUNDS, UNIVERSITY LECTURES**

University of Chicago, Northwestern University, National Institutes of Health, George Washington Pennsylvania State University, Beth Israel (Harvard), Michigan State Medical Society, University of Oxford, Karolinska Institute/Hospital & St Goren Childrens Hospital, Stockholm, National Obstetrics and Gynecology Society of Finland, (Turku), Michigan Perinatal Organization, University of Hawaii, Great Plains Organization, Catholic University of Rome (Troina Conference), Michigan State University, Case Western Reserve University (Cleveland Metroplitan), Wisconsin Association for Perinatal Care, Workshop - American College of Obstetricians & Gynecologists - Annual Clinical Meeting, Cornell (Nina A. Werblow Lecturship), Medical College of Ohio, University of Nebraska, Baylor, Jones Institute, Albany Medical College, Martin Luther King/Drew Medical Center, 030 Course - American College of Obstetricians/Gynecologists - ACM, Ochsner Clinic

(Weed Symposium), National Medical Association, American College of Surgeons, International Society of Ultrasound in Obstetrics and Gynecology, London, England, SUNY Syracuse/Symposium Augusta OB/GYN Society, Medical College of Georgia, Society for Gynecologic Investigation Symposium, Fetus as a Patient, Bonn, Germany, Washington University - (Barnes Hospital Centennial), Michigan State Medical Society, Southwestern Gynecologic Assembly, Chicago Medical School, Childrens Hospital of Michigan, Child Health 2000 (Vancouver), Medicine Foetale (Geneva), Karolinska Hospital and St Goran Hospital, Stockholm, Sweden, International Society of Ultrasound in Obstetrics and Gynecology, Bonn, Germany, University of S Carolina, South Carolina Genetics Conclave, Cedars-Sinai, SUNY Stony Brook/Suffolk County Medical Society Clinical Update (Plenary) American College of Obstetrics and Gynecology, 41st Annual Meeting, Washington, DC Jefferson, Georgetown (Perinatal Center Dedication) Armed Forces District ACOG Cérrahpasa University-Turkish National Ob/Gyn Conference, Istanbul State University of New York – Syracuse International Prenatal Diagnosis Conference - Jerusalem, University of Leuven VIII International Congress on Neuromuscular Disorders, Kyoto, Japan State University - New York, Brooklyn
Central Association of Obstetricians and Gynecologists
Cornell, New York perinatal Society Medicine Foetale-
Canes, Al Hasa Medical Center, Hofuf, Saudi Arabia, Royal College of Physicians and Surgeons of Canada/University of Toronto, RamBam Medical Center (Haifa)
University of Toronto, McGill, Instituto Superiore Di Santi, Rome
Sinai Hospital of Detroit (Feld Lectureship),
NICHD, National Institutes of Health - Aspen, Colorado
Madigan Army Medical Center
March of Dimes National Meeting, Fort Lauderdale, Florida
NICHD, Fetal Therapy Symposium, Bethesda, Maryland
Queen Charlotte Symposium, LondonBethesda Naval Hospital/Walter Reed
New York Academy of Science
Harvard School of Public Health
Perinatal Association of the Philippines, University of the Philippines

University of Perpetual Health – Riza (Manilla)
University of Pittsburgh, Pittsburgh Ob/Gyn Society
Brazilian Society for Fetal Medicine, Sao Paulo
University of Louisville, Louisville Ob/Gyn Society
Turkish National Ultrasound Congress, Istanbul
University of Sydney, Australia
Richardson Symposium, American College of Ob/Gyn
Nobel Forum - Stockholm
Medical College of Northeast Ohio
University of Buenos Aires
Charite-Humboldt University, Berlin
Tel Aviv University
Minnesota Section American College of Ob/Gyn

Beth Israel-Harvard (Bullian Lectureship)
Chicago Gynecologic Society (Williams Lectureship)
University of Basel, Portugese Society of Fetal Medicine – Lisbon
International Society for Neonatal Screening – Stockholm
Fetal Medicine Foundation – London
Brazilian Perinatal Society (Sau Paulo)
Albert Einstein College of Medicine
University of Western Ontario
Louisiana State University
Indiana Section ACOG
San Diego Gynecological Society
University of California, San Diego
Tampa Ob/Gyn Society/ University of South Florida
Oklahoma Ob/Gyn Society/University of Oklahoma
SGI Symposium on Gene Therapy – Salt Lake City, Utah
University of Michigan Medical Center
Eurofetus/Catholic University Leuven
Federation of Asian Perinatal Association, Manila
Northwestern (2000 Silbar Memorial Lecture)
University of Florida
New Jersey Perinatal Society
University of Medicine and Dentistry of New Jersey
Italian National Fetal Medicine Society-Sardinia, Italy
Cornell (Fuchs Lecureship)
Temple University
Johns Hopkins University
World Congress on Fertility & Sterility, Melbourne, Australia
University of Pennsylvania
George Washington University
Fetus as a Patient/Semmelweis Univeristy, Budapest
Harvard University (Beth Israel) Miller Lectureship
University of South Florida
Fetus as a Patient/Semmelweiss University/Budapest
European Society of Perinatal Medicine, Oslo
Fetal Medicine Foundation, Athens/Kalamata
ISUOG, New York
Rappaport Institute/Technion Haifa, Israel
Hadassah, Jerusalem, Israel
Beth Israel, New York (Bitterman Lectureship)
Yale University
New York University-Downtown Hospital
SUNY Stonybrook, Vanderbilt FIGO (Santiago)
Albert Einstein (NY) New Jersey Medical School
Johns Hopkins (Eastman Lectureship)
American Society for Reproductive Medicine (Ryan Ethics Symposium, New York University, New York Gyn Society
Mt.Sinai NY, Nobel Forum/ Stockholm, Fetal Medicine Foundation/Istanbul, University of Rome/ Erice
University of Bogata, Bogata, Colombia
Case Western/Cleveland Metro

**PATENTS**:

Evans MI, Greenwood FC
Contraceptive and prophylactic device
U.S. 4,945,923; August 7, 1990
Canadian 1,319,060; June 15, 1993

Dombrowski MP, Evans MI
Needle assembly with a movable stylet controlled by a spacer mechanism
U.S. 5,279,570; January 18, 1994

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Society for Gynecologic Investigation, 53rd annual meeting Toronto, Ontario, Canada, March 21-24, 2006

COMPREHENSIVE GENETICS

Mark I Evans, M.D.
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Professor of Obstetrics and Gynecology
Mt. Sinai School of Medicine

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June 24, 2007

Mr. David R. Johnson
Thomson, Rhodes, and Cowie, PC
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219-3499

RE: Hale v Kush, et al
Your file #14176

Dear Mr. Johnson:

As per your request, since my formal report to you on September 22, 2006 I have reviewed further files in the above mentioned case.

These include:

1. Deposition of Angela Hale
2. Deposition of Randy Hale
3. Deposition of George Cherian, MD

ASSESSMENT

As I stated in my original report, plaintiff alleges that Reganne's problems are related to negligence on the part of Drs. Kush and Ott, and DRMC essentially arguing that there was failure to follow the pregnancy closely, failure to order growth ultrasounds, evaluate her cervix, have Dr. Kush manage the pregnancy, observe the patient for an "extended" period on 11/9/02, order tocolysis and steroids on 11/9/02, and failure to diagnose and treat her preterm labor on 11/10/02.

Evaluation of the records and testimony in their entirety as I have received them in this case does not support these allegations.

Review of the new depositions does not change my opinions and continues to support the position that there were no violations of the standard of care by any of the health care providers or the hospital. Premature delivery in a monozygotic twin pregnancy is an unfortunate, not uncommon, and generally unpreventable complication well known in the obstetrical literature. The problems of Reganne Hale in this pregnancy are unfortunate sequelae of a premature birth and not related to the obstetrical management.

I can state to a reasonable degree of medical certainty that there were no deviations in the standard of care by any of the healthcare providers that were responsible for the medical problems in the female twin. I base my opinions on my expertise, review of relevant literature over the years, and clinical experience and board certification in the specialties of Obstetrics and Gynecology and Medical Genetics. I reserve the right to modify these opinions as additional information and details might become available.

Thank you very much.

Sincerely,

Mark I. Evans, MD

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within DISCLOSURE OF EXPERT REPORTS has been served upon the following counsel of record and same placed in the U.S. Mails on this 29th day of June, 2007:

Harry S. Cohen, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br>Defendants. | ) CIVIL DIVISION<br>)<br>) No. 05-364-CD<br>) **CONSOLIDATED WITH**<br>) No. 06-936-CD |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation.<br>Defendants. | ) |

ORDER OF COURT

AND NOW on this 10th day of July, 2007, it is hereby ORDERED, ADJUGED and DECREED that oral argument on Dr. Kush's motion for summary judgment is scheduled for the 10th day of August, 2007, at 10:00 a.m./p.m. before Judge Ammerman in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:

/s/ Fredric Ammerman J.

FILED 3cc Atty Korinski
01/4:00/BL
JUL 10 2007
GK

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/10/07

X You are responsible for serving all appropriate parties.

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

_____ Plaintiff(s) _____ Plaintiff(s) Attorney _____ Other

_____ Defendant(s) _____ Defendant(s) Attorney

_____ Special Instructions:

FILED

JUL 10 2007

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation.

Defendants.

CIVIL DIVISION

No. 05-364-CD
**CONSOLIDATED WITH**
No. 06-936-CD

Issue No.

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF MICHAEL J. KUSH, M.D.

Code: 007

Filed on behalf of Michael J. Kush, M.D., 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

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JUL 02 2007 Korinski
William A. Shaw
Prothonotary/Clerk of Courts

MOTION FOR SUMMARY JUDGMENT ON BEHALF OF MICHAEL J. KUSH, M.D.

NOW COMES Michael J. Kush, M.D., by his attorneys, Thomson, Rhodes & Cowie, P.C., and files the following motion for summary judgment for the reasons set forth below.

1. This is a medical malpractice case in which the plaintiffs claim that events occurring at or about the time of the birth of Reganne Hale and Ashtyn Hale, negligence occurred so as to cause injuries or damages to plaintiffs. Since this is a case of professional liability, any claim against the defendants is required to be supported by expert testimony. If plaintiffs do not have an expert who renders an opinion that a defendant was negligent, said defendant is entitled to have judgment entered in his favor.

2. In this case, the court has established a schedule for the presentation of expert testimony and the time has expired for plaintiffs to provide expert reports on liability.

3. Plaintiffs have complied with the requirement to provide expert testimony through furnishing expert reports authored by Patricia D. Fedorka, Ph.D., R.N.C., Robert Atlas, M.D., Bennett Walstatter, M.D., Curtis Cetrulo, M.D., Robert McDowell, Jr., M.D., and Mark A. Epstein, M.D. (See Exhibit A, Fedorka report dated May 1, 2006; Exhibit B, Atlas report dated August 20, 2006; Exhibit C, Walstatter report dated July 10, 2006; Exhibit D, Cetrulo report dated July 13, 2006; Exhibit E, McDowell report dated June 6, 2006; and Exhibit F, Epstein report dated July 1, 2006).

4. A careful review of each of these reports discloses that none of the experts opine that Michael J. Kush, M.D., one of the defendants, was negligent. None of the expert reports would provide a basis upon which jurors could conclude that Dr. Kush deviated from the

applicable standard of care. None of the reports provide a basis from which jurors could conclude that any alleged acts or omissions of Dr. Kush were a factual cause of any injuries or damages to the plaintiff.

5. With respect to the issue of liability, plaintiff's expert reports render opinions of negligence solely with regard to the events occurring on the day of birth and the preceding day. Dr. Kush was not involved in the patient's care or treatment on either of these days.

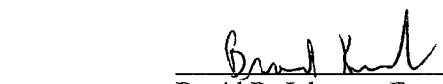
6. For all of these reasons, and taking into account all of the expert reports which have been filed on behalf of the plaintiff, there is no basis for a finding of liability against Michael J. Kush, M.D. With regard to the issue of Dr. Kush's alleged negligence, there is no genuine issue of material fact. Accordingly, Dr. Kush is entitled to summary judgment as a matter of law.

7. Defendants have filed a brief in support of this motion, which is incorporated by reference in its entirety.

WHEREFORE, for the reasons set forth above, summary judgment should be entered in favor of Michael J. Kush, M.D.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Michael J. Kush, M.D.,
one of the defendants.

*Patricia D. Fedorka, Ph.D., R.N.C.*
*Legal Nurse Consultant*

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Mr. Harry S. Cohen & Associates, P.C.
Mr. Todd Bowlus
Two Chatham Center
Suite 985
Pittsburgh, PA 15219

Received DRJ

AUG 2 3 2006

Place ( ✓ ) Dictated on ( )
Diary/ Note ( )
Copy to DRJ ( ) Copy Key Doc.( )

May 1, 2006

Re: Hale

Dear Mr. Bowlus:

I have reviewed the following documents:

1. Office records of DMMC Maternal Fetal Medicine for Angela Hale
2. Punxsatawney Area Hospital records from 1996 for Angela Hale
3. Office records of Dr. George Cherian for Angela Hale, 1996
4. Dubois Regional Medical Center inpatient records for Angela Hale from 11/9/02 and 11/10/02, including fetal monitor tracings
5. Dubois regional Medical Center inpatient records for Reganne Hale
6. Dubois Regional Medical center inpatient records for Ashtyn Hale
7. Timeline of events 11/9/02-11/10/02
8. Deposition transcript of Dr. Gary Ott
9. Deposition transcript of Kathryn Raybuck, R.N.
10. Deposition transcript of Desiree Smith (Fremer), R.N.

In 2002, Angela Hale was a 26 year-old, married gravida 4, para 1 with an LMP of 4/28/02 and an EDD of 2/3/03. She had a history of a miscarriage at 4 weeks gestation in 1995, a vaginal delivery of a 6 pound, 7 ounce female at 38 weeks after treatment for preterm labor in 1996 and a molar pregnancy in 1999. She began prenatal care with Dr. Gary Ott on 6/13/02 at 6 weeks gestation. Height was 5 feet, 3 inches. Pre-pregnant weight was 190 pounds and weight at delivery was 214 pounds, for a total pregnancy weight gain of 24 pounds. Her past medical history included an irregular heartbeat. According to the 9/10/02 medical records of Dr. Michael Kush, maternal-fetal medicine, Angela also had a history of a heart murmur and was on medications for any dental work. Documented blood pressures during pregnancy ranged from 104-160/70-100. There were no complete prenatal records from Dr. Ott's office included in the records reviewed, only the copy included in Dr. Kush's records, which includes prenatal visits up to 16 weeks

EXHIBIT
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A

gestation only. Documented prenatal labs included: blood type A negative, antibody screen negative, rubella immune, RPR non-reactive, hepatitis negative, H&H on 8/22/02 – 11.8 & 34.0. She had no reported history of drug, alcohol or tobacco use. Medications during pregnancy included prenatal vitamins, iron and folic acid. She had an elevated MAFP on 8/22/02 and was then referred to Dr. Kush, Maternal Fetal Medicine at Dubois Regional Medical Center for a Level II ultrasound.

On 9/11/02, at 19 weeks gestation by dates, Angela was seen by Dr. Kush. An ultrasound revealed a monochorionic/diamniotic twin gestation with appropriate growth for gestation. Both babies were female. On 10/14/02, Dr. Kush performed another U/S at 23 weeks gestation. Baby A was at that time breech with normal amniotic fluid and a heart rate of 153. Weight was in the 43rd percentile. Baby B was cephalic with a normal amniotic fluid volume and a heart rate of 158. Weight was in the 40th percentile. Angela's blood pressure at that visit was 160/84. Documentation states there was no c/o headache or nausea and vomiting. On 11/6/02, at 27 weeks gestation, sonar showed Baby A in the cephalic position with normal amniotic fluid volume, a heart rate of 164 and weight in the 33rd percentile. Baby B was in the cephalic position with normal amniotic fluid volume and a heart rate of 147. Weight was in the 34th percentile. Blood pressures on that visit were 152/100 and 130/88, repeated 15 minutes later. No edema or headache. There were no urine proteins documented at the maternal fetal medicine visits and no records of visits from Dr. Ott were included in the records reviewed.

At 1200 on 11/9/02, at 28 weeks gestation, Angela was seen at Dubois Regional Medical Center to r/o preterm labor. She complained of a brownish discharge and pressure in the lower abdomen. Dr. Ott was notified at 1215. A urinalysis was ordered which showed 3+ bacteria and negative protein. Results were called to Dr. Ott and a urine culture was obtained. (No results or documentation of treatment found in records reviewed.) NST was done and documented by a note of Dr. Ott's as reassuring. The RN documented "Small" variable decelerations for both babies. Irregular contractions were documented. SVE per Dr. Ott's note was closed/3 cm. long/medium firm/high/posterior. She was discharged at 1535 with instructions for bedrest with bathroom privileges and pelvic rest. She was to be seen by Dr. Ott on 11/12/02.

On 11/10/02 at 1645, Angela was again seen at Dubois Regional Medical Center complaint of every 5-minute contractions. External fetal monitoring (EFM) showed irregular contractions, mild to palpation. Angela was complaining of back pain and was "very fussy" according to the nurse's documentation. Fetal heart rate (FHR) of Baby A was 160-170 and Baby B, in the 150's.

At 1730, a SVE showed no change since the exam of 11/9/02. Dr. Ott was notified at 1805. At 1805, Terbutaline, sub-q and p.o. were given. Dr. Ott's H&P note states that the medications were given to treat symptomatic uterine contractions only." "The patient was given the medication in an attempt to bring comfort only as there was no indication for tocolysis given the absence of cervical change. At 1823, no contractions were seen on the monitor. At 1840, Angela continued to c/o back and groin discomfort. No contractions were seen on the monitor. At 2000, she requested pain medication. FHR of Baby A was

in the 110's-120's with average LTV and of Baby B was 150's-160's with avg. LTV and accelerations. Angela c/o q 3-4 minute contractions, evident on the monitor strip and documented on the nurse's notes at 2014. The RN did no further vaginal exams after 1730. Dr. Ott was called and arrived at 2014. A SVE by Dr. Ott at 2020 showed 3-4 cm dilation. IV fluids and a bolus of magnesium sulfate was started at 2028. Another dose of Terbutaline was also given sub-q. Angela was admitted as an inpatient.

An ultrasound showed Baby A in a vertex presentation and Baby B in a double footling breech presentation. Admission vital signs were 98.2, 120, 22, and 113/67. Dr. Ott's progress note of 2109 documented the patient having persistent painful contractions. If not able to stop contractions with tocolysis, C/S secondary to breech presentation (of Baby B). There are no further RN notes regarding the labor status or assessments. Notes were included on the fetal monitor tracings. At 2100, Betamethasone was given. Cervix was 6 cm. per Dr. Ott at 2116. Magnesium sulfate was discontinued at 2117. The EFM was turned off at 2140 and Angela was prepped for a C/Section. Before removal of the EFM, Baby A's FHR was in the 120's-130's and Baby B's, which had been tracing intermittently, was documented as audible in the 150's-160's.

A C/Section was performed under spinal anesthesia. NICU staff was present. Baby A, Reganne, was delivered at 2208 with Apgars of 7 & 8. Birthweight was 1136 grams. Intubated and received Survanta. She also received Dopamine and Indomethacin for a patent ductus arteriosus. She also developed a small left choroid plexus hemorrhage and necrotizing enterocolitis. She was transferred to Children's Hospital of Pittsburgh on 12/1/02.

Baby B, Ashtyn, was delivered at 2209 with Apgars of 4 and 7. Birth weight was 1228 grams. She was also treated with Survanta and a ventilator. Other complications included Stage I retinopathy of prematurity, reflux and bronchopulmonary dysplasia. She was discharged on 1/11/03.

Failures in nursing standards of care:

1. Failure to assess for preterm labor:

In the presence of a patient's complaint of ongoing back, pelvic and groin pain, even in the absence of noticeable contractions on the EFM, the nurse should have considered the possibility of cervical change and notified Dr. Ott and repeated the cervical exam. No evaluation of the cervix was done from the initial exam at 1730 until Dr. Ott's exam at 2020. This did not meet standards of care for a preterm patient whom was already at high risk for preterm labor due to her past history of preterm labor and her present twin gestation.

Preterm labor contractions are not of the same characteristics as term labor contractions. Preterm labor can present as backache or pain, pelvic pressure or groin pressure or pain

etc. An external toco may not pick up these contractions or it is possible that that the toco needed adjusted. There is no documented attempt by the nurse to palpate for contractions. This also did not meet standards of care for a preterm patient with a twin gestation and history of preterm labor in a previous pregnancy.

The only way to definitively diagnose labor, or the cessation of labor, is to evaluate for further cervical changes, especially with the patient's complaint of ongoing pain. The only way to determine effectiveness of the terbutaline was to re-assess the cervical status. This was not done and is below the standard of nursing care. Mrs. Hale stated that her symptoms upon presenting to the hospital on 11/10/02 were similar to what she experienced with her previous preterm labor

In conclusion, I can state within a reasonable degree of nursing certainty, that the care received by Mrs. Hale and her infants fell below the accepted standards of nursing practice and contributed to the outcome of the infants.

I reserve the right to amend or supplement this report in the light of additional discovery.

Sincerely,

Patricia D. Fedorka, PhD, RNC

Patricia D. Fedorka, Ph.D.,R.N.C.

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Center for Women's Health & Medicine
AT MERCY

August 20, 2006

Harry Cohen and Associates
Harry Cohen, Esquire
Two Chatham Center, Suite 985
Pittsburgh, PA. 15219

Maternal-Fetal Medicine
Robert Atlas, M.D.
Jerome N Kopelman, M.D.
Christopher Harman, M.D.
Michelle Kush, M.D.
Ahmer Baschat, M.D.
Carl Weiner, M.D.

Prenatal Genetics
Jessica Scott, MGC

RE: Angela Hale

Dear Attorney Cohen,

I have had the opportunity to review the above case for you and am ready to give my opinion regarding the care of Angela Hale. In giving my opinion I have reviewed the following medical records provided to me:

1. Prenatal records- Dr. Gary Ott
2. Dubois Regional Medical Center Admission of 11/09/02
   a. Fetal monitor tracing
3. Dubois Regional Medical Center Admission of 11/10/02
   a. Fetal monitor tracing
4. Office Records of Dr. George R Cherian, OB/GYN (1996 pregnancy)
5. Office records of DRMC- MFM- Dr. Michael Kush
6. Punxsutawney Area Hospital Records- 1996 (previous Pregnancy
7. Admission Dubois Regional Medical Center (limited records)
   Birth admission for Reganne Hale 11/10/02
8. Admission Dubois Regional Medical Center (limited records)
   Birth admission for Ashyn Hale 11/10/02
9. Children's Hospital of Pittsburgh- (Reganne) D/C summaries

The following summarizes the care provided to Angela Hale. She is a 26 year old G4 P1021 who was noted to have a monchorionic Diamniotic twin gestation. Her past medical history is significant for irregular heart rate. Her past obstetrical history is significant a spontaneous abortion in 1995, full term infant in 1996 of a 6 pound 7 ounce female. That pregnancy was complicated by preterm labor. She went into preterm labor at 32 weeks gestation (1/90%) and was on tocolytics (terbutaline) until 36 weeks. She had a molar pregnancy in 1999.

This pregnancy was complicated by an abnormal triple screen with an elevated MSAFP of 2.46 MOM. An ultrasound revealed a twin gestation. The patient had

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an infected tooth at 23 weeks gestation. Ultrasound exams were noted to be within normal limits with concordant fetal growth.

The patient presented to the labor and delivery unit on 11/09/02 with the complaint of contractions and pressure. She also complained of brown vaginal discharge. She was noted to be contracting every 3-5 minutes irregular with some irritability noted. Her cervical exam was noted to be closed and 3 cm long medium consistency. She was discharged to home.

She represented the following day with the same complaints along with back pain. She was again evaluated by the nurse and noted to be again long and closed by exam at 17:30. She continued to have complaints of back pain and groin pain. The patient was given a single dose of IV terbutaline and then an oral dose of terbutaline to treat symptomatic uterine contractions only. Dr. Ott then saw the patient three hours later and noted the patient to be 3-4 cm dilated, 90% effaced and 0 station. He immediately began IV tocolysis with Magnesium Sulfate. He also gave the patient betamethasone therapy. Angela was then reevaluated several hours later and was noted to be progressing to 7 cm dilated.

Dr. Ott therefore opted to deliver Angela via LCT C/S due to twin B being breech. He delivered Twin A with Apgars of 8, 9 weight 1136 gm. Twin B was delivered via breech extraction with Apgars of 4, 7 and a weight of 1228 gm.

Twin A had significant complications from Prematurity especially Necrotizing Enterocolitus and a Grade III Intraventricular Hemorrhage. She necessitated transfer to Children's Hospital of Pittsburgh.

Impression

In assessing the care provided to Angela Hale, I have several areas of concern.

1. On 11/9/02 the patient was assessed by Dr. Ott and the nurses. In their assessment, there is no indication that they assessed the uterine activity properly. They only state initially that there are irregular contractions noted. In my assessment there were contractions much more frequent then that.

In patients who are contracting preterm, these pregnancies are at marked increased risk of Prematurity. What puts this patient at much higher risk are two factors, the twin gestation and her history of preterm labor in her previous successful pregnancy.

Dr. Ott needed to assess the patient further. He needed to offer the patient a fetal Fibronectin, Transvaginal ultrasound of the cervix as this can predict preterm birth well.

They also should have considered keeping the patient for a longer period of time to assess the patient further for preterm labor. Also, with the patient contracting with the twin gestation, corticosteroids should have been administered at this time since the patient is at risk of PTB.

2. On 11/10/02 the patient presented with the same complaints of preterm labor. The initial exam was noted to be the same (closed/3 cm), however, in three hours the exam markedly changed. I question the initial exam by the nurse and most likely was inaccurate.

Overall, I am concerned with the quality of care provided by Dr. Ott and Dubois Regional Medical Center as it appears that this patient presented in plenty of time to have the preterm labor abated. I believe within a medical degree of certainly, that the care provided to Angela Hale deviated from the standard of care.

All of my opinions are to a degree of medical certainty. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Robert Atlas, MD
Chairman, Department of OB/GYN
Mercy Medical Center

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Received DRJ

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July 10, 2006

Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

Dear Mr. Cohen:

I have received all of the records that you sent to me regarding Angela Hale. It is my opinion that there were several breaches in the standard of care:

1. Dr. Ott failed to obtain previous medical records or ascertain whether or not Ms. Hale had actually experienced premature labor. He also failed to ascertain whether or not she had successfully been tocolysed during her previous pregnancy.

2. Dr. Ott failed to diligently observe Ms. Hale for premature labor during her hospitalization of November 10, 2002. Although the patient was contracting, he failed to have the patient re-evaluated for cervical dilation over a 3-hour period. The standard of care would be to have the patient re-evaluated no more than 1 hour from her previous exam.

3. Ms. Hale was given terbutaline for symptomatic relief. The contractions stopped but they restarted. At this time, the standard of care would require cervical evaluation. This would be due to the time factor and the presence of contractions.

4. The nurses failed to meet the standard of care by not appropriately assessing the patient for premature labor. The time between exams was far too great, and by the time premature labor was recognized it was too late to stop the labor.

It is my opinion that Dr. Ott's treatment of this high-risk, twin pregnancy was below the standard of care and led to the poor outcome of this pregnancy.

Very truly yours,

Bennett S. Walstatter, M.D.

Bennett S. Walstatter, MD
F.A.C.O.G



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July 13, 2006

Todd D. Bowlus, Esq.
Harry S. Cohen & Associates
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

**Re: Angela Hale vs. Dubois Hospital**

Dear Mr. Bowlus:

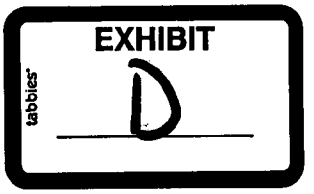
I have reviewed the following medical records:

1. Dubois Regional Medical Center Admission of 11/9/02;
   a. Fetal Strips;
2. Dubois Regional Medical Center Admission of 11/10/02;
   a. Fetal Strips;
3. Office Records of Dr. George R. Cherian, OB/Gyn;
4. Office Records of DRMC Maternal Fetal Medicine;
5. Punxsutawney Area Hospital Records - 1996 (limited records of previous pregnancy);
6. Admission Dubois Regional Medical Center (limited records) Birth Admission for Reganne Hale 11/10/02;
7. Admission Dubois Regional Medical Center (limited records) Birth Admission for Ashtyn Hale 11/10/02; and
8. Children's Hospital – Limited records of Reganne.

Additionally, I have reviewed the following:

1. Deposition transcript of Gary D. Ott, MD;
2. Deposition transcript of Michael J. Kush, MD;
3. Deposition transcript of Kathyrn Raybuck, RN; and
4. Deposition transcript of Desiree Smith, RN.

In 2002, Angela Hale, age 26, was married with a 6-year old daughter and lived in Dubois, Pennsylvania. She had a history of a miscarriage at 4 weeks gestation in 1995 and in 1996 she had threatened preterm labor which was stopped at 8 months gestation



with tocolytics. Her obstetrician at that time was Dr. George Cherian.

In 2002, Mrs. Hale became pregnant with twins. Her OB was Dr. Gary Ott. Her EDC was 2/3/03.

On 11/9/02, Mrs. Hale developed a "light brownish-red vaginal discharge." She went Dubois Regional Medical Center ("DRMC") and Dr. Ott performed an exam. It was determined that she was not dilated and she remained at DRMC for about 2 hours. She was then discharged home.

On 11/10/02, Mrs. Hale arrived at DRMC with her husband at around 2:00 pm complaining of contractions, diarrhea, and back pain. On admission the nurse performed a vaginal exam and determined that Mrs. Hale's exam had not changed since 11/9/02. At about 7 or 8 pm Dr. Ott arrived at DRMC and reviewed the fetal monitor strips and saw the contractions. Dr. Ott then performed a vaginal exam that demonstrated that Mrs. Hale was dilated 4 ½ centimeters. She was given bethamethasone and magnesium sulfate for tocolysis which was unsuccessful.

Between 8-9 pm, Mrs. Hale was dilated around 7 ½ centimeters. Dr. Ott then decided to perform a cesarean section. The twins were 28 weeks gestation.

On 11/10/02, at 10:08 pm baby A, Reganne, was delivered in vertex presentation. At 10:09 pm baby B, Ashtyn, was delivered. Ashtyn was double footling breech presentation.

Reganne had a Grade I IVH, required intubation, had retinopathy of prematurity, reflux, and bronchopulmonary dysplasia. Both Reganne and Ashtyn remained in the NICU at DRMC. On 12/1/02, Reganne was transferred to Children's Hospital in Pittsburgh. Reganne at that time had possible NEC (later thought to be a staph infection in her colon). Her Grade I IVH developed into a Grade III IVH and she also developed hydrocephalus that required shunting. Reganne remained at CHP until discharged home on 12/24/02. Ashtyn was discharged to home on 1/11/03.

Dr. Ott deviated from the standard of care in the following respects:

On November 9, 2002, when Mrs. Hale presented to DRMC with complaints of a red/brown discharge and contractions on the monitor, even if her cervix was unchanged, Mrs. Hale should have been admitted and started on tocolysis and bethamethasone. Dr. Ott's failure to order extended observation of Mrs. Hale on this date and order tocolytics and corticosteroids contributed to the unfortunate outcome.

On November 10, 2002, it was also a breach in the standard of care for Dr. Ott to delay in ordering a therapeutic dose of tocolytic agents to delay the delivery of the twins. Dr. Ott's note written after the delivery - that he ordered terbutaline for pain management - makes no sense. Terbutaline may be administered under these circumstances to stop contractions to stop premature labor; however, it must be administered with supervision in proper doses. This was not done by Dr. Ott's phone order. It was no excuse for Dr.

Ott to merely assume that he would hear from the nurses when Mrs. Hale began preterm labor. There was apparent improper communication with nurses about assessing preterm contractions and the frequency of vaginal exams in a patient at risk for preterm labor.

At a minimum, the delay in tocolysis increased the risk that preterm delivery would occur. Steroids ideally should be given 24-48 hours prior to the anticipated delivery to be most effective. Bethamethasone was administered about 3 hours prior to delivery. Reganne suffered a Grade I progressing to a Grade III IVH. Bethamethasone is helpful in preventing IVH and promoting lung maturity in preterm babies.

As for the nursing staff at DRMC, they deviated from the standard of care when Mrs. Hale again presented to DRMC on November 10, 2002 with complaints of contractions. The nursing staff failed to promptly evaluate Mrs. Hale and failed to promptly notify Dr. Ott of Mrs. Hale's symptoms. Additionally, the failure of the nursing staff to conduct more frequent vaginal exams and reassess cervical status, after the initial exam at 1730, was a deviation in the standard of care, especially given Mrs. Hale's ongoing complaints of pain and contractions. The nursing staff also failed to promptly administer tocolysis and bethamethasone.

In summary, Dr. Ott and the nursing staff at DRMC deviated from acceptable standards of care. These deviations increased the risk that preterm delivery would occur.

Sincerely,

Curtis L. Cetrulo, M.D.
Professor of Obstetrics and Gynecology
Tufts University School of Medicine

CLC/msg

**Robert L. McDowell, Jr., M.D.**
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June 6, 2006

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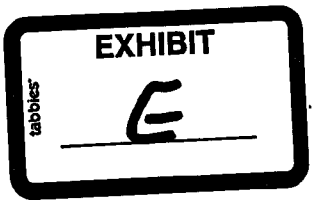
Re: Reganne and Ashtyn Hale

Dear Mr. Bowlus:

At your request, I have reviewed the medical care delivered to the above noted twin infants and their mother including:

1. Medical records of Angela Hale from Dubois Regional Medical Center admission of 11/9/02 including fetal monitoring strips
2. Medical records of Angela Hale from Dubois Regional Medical Center admission of 11/10/02 including fetal monitoring strips
3. Office records of Angela Hale from DRMC Maternal Fetal Medicine
4. A selection of neonatal records of Reganne Hale from Dubois Regional Medical Center including birth records
5. A selection of neonatal records of Ashtyn Hale from Dubois Regional Medical Center including birth records
6. A selection of medical records of Reganne Hale from The Children's Hospital of Pittsburgh from 12/1/02-12/24/02 including discharge summary
7. Outpatient medical records of Reganne Hale from The Children's Hospital of Pittsburgh including the Child Development Clinic, the Neurology Service, and Indiana Linkage Clinic,
8. Records of Reganne and Ashtyn Hale from Brookville Behavioral Health from 8/31/05 to 1/26/06

My review of these materials, with emphasis on the medical records, along with my education, training and experience of twenty-five years in the practice of pediatrics and neonatology, form the basis of my opinions in this matter. Although I have reviewed materials related to the care of both twins, my focus in this report is the medical care in the newborn period and follow-up care post discharge of twin A, Reganne Hale. All of my opinions in this matter are held to a reasonable degree of medical certainty. If further



materials are supplied for my review that alter my current opinions, I will supplement this report accordingly.

In brief summary, Ms. Hale, then age 26 years, pregnant with twins in her 28th week of pregnancy, was admitted to the DRMC labor and delivery floor on November 9, 2002 because of a concern of possible preterm labor. She had experienced preterm labor requiring tocolysis at approximately eight months gestation with her prior pregnancy. With this pregnancy, after a brief stay, she was discharged home following a nursing evaluation which revealed no cervical dilatation and mild irregular contractions.

The following morning, November 10, 2002, she returned to the same hospital with the same concern of possible preterm labor. An initial nursing assessment concluded mild irregular contractions and no cervical change from November 9, 2002. She was observed through that day and by approximately 8 P.M., when examined by Dr. Ott for the first time that day, was found to have 4.5 cm. cervical dilation and contractions present on her fetal monitoring strips. She was treated with Terbutaline and Magnesium Sulfate and Betamethasone was administered but she continued to progress in labor. By 9 P.M. cervical dilation had reached 7.5 cm. and delivery was felt to be imminent. As tocolysis was clearly unsuccessful, a plan was made to move forward with a caesarean section delivery as one of the twins was in a double footling breech presentation.

At delivery (10:08 P.M. on November 10, 2002), Baby A (Reganne) weighed 1136 grams and had Apgar scores of 8 and 9 at one and five minutes of age respectively. Her growth parameters revealed that she was appropriately grown for her gestational age of 28 weeks. Despite appropriate intervention with artificial surfactant and intubation with mechanical ventilation, she went on to develop severe Hyaline Membrane Disease requiring a prolonged course of mechanical ventilation and oxygen therapy. Initially, she required pressor support for hypotension and hypovolemia which resolved in her first twenty four hours. Her respiratory management was complicated by the development of a Patent Ductus Arteriosus which required medical management with Indomethacin. She required antibiotic treatment for presumed sepsis. She required phototherapy for Jaundice of Prematurity. She subsequently developed a grade I chorid plexus brain hemorrhage which eventually progressed to a Grade III intraventicular hemorrhage when her course became further complicated with the development of Necrotizing Enterocolitis, necessitating transfer to Children's Hospital of Pittsburgh on December 1, 2002 for definitive management.

While at Children's Hospital, she developed communicating hydrocephalus due to her intraventicular hemorrhage, was treated for coagulase negative staphylococcal sepsis and responded well to medical (non-surgical) management of her Necrotizing Enterocolitis. She developed Chronic Lung Disease, a sequela of her severe Hyaline membrane Disease requiring continuing oxygen therapy. Her final head sonogram on December 20, 2002 revealed resolving Grade III intraventricular hemorrhage, stable hydrocephalus but,

additionally, the ominous development of cystic periventricular leukomalacia. She was finally discharged back to DRMC on December 24, 2002.

Her final course at DRMC was relatively uneventful. She was successfully weaned from oxygen therapy for her Chronic Lung Disease over time. She was diagnosed with mild Retinopathy of Prematurity which eventually spontaneously resolved. She was started on caffeine as a respiratory stimulant because of increased periodic breathing on a sleep apnea screening. She was finally discharged home on January 11, 2003.

Subsequent pediatric, neurologic, developmental and rehabilitative follow-up have documented the evolution of the chronic, permanent disability of cerebral palsy, specifically spastic diplegia, the most common neurologic sequela of premature birth, intraventricular hemorrhage and periventricular leukomalacia. She, further, has demonstrated progressive development of global developmental delay and mental retardation involving both cognitive milestones and, most severely, language development. Behaviorally, she has developed mannerisms consistent with Pervasive Developmental Disorder, a clinical spectrum of social and language dysfunction which fits broadly in the category of the Autism Spectrum Disorders. Her current neurologic and developmental difficulties are permanent and severely handicapping and, although some improvement can be expected with appropriate intervention, she will be severely handicapped from these sequelae of her neonatal brain injury (intraventricular hemorrhage and periventricular leukomalacia) for life. Her particular pattern of developmental disabilities involving cognitive, language, motor and social-adaptive functioning is particularly devastating relative to longterm adult functioning and social adaption.

Based on my review of the medical records listed on the first page of this report, and my training, education and experience of twenty-five years in the practice of pediatrics and neonatology, it is my opinion, held to a reasonable degree of medical certainty, that this infant's severe current neurological and developmental dysfunction (mental retardation, cerebral palsy and pervasive developmental disorder) are the result of the significant brain injuries this child received in the newborn period while at DRMC. Her intraventricular hemorrhage and its associated brain injury and her periventricular leukomalacia are the most common brain injuries associated with premature birth and are virtually universally devastating to eventual cognitive, motor and social functioning. Review of her prenatal records and neonatal medical records fails to reveal any other reasonable explanation of this infant's brain injury such as genetic, metabolic, infectious or structural disorders. Subsequent neurologic consultations, developmental evaluations and neuroradiographic studies have failed to identify any other plausible etiology for her current disabling handicaps other than her neonatal brain injuries.

Therefore, it is my opinion, within a reasonable degree of medical certainty, that the current developmental handicaps this child manifests are permanent and due to the brain injuries this child suffered as a result of her premature birth and its complications.

All of my opinions stated above are held to a reasonable degree of medical certainty. If I can answer other questions, please do not hesitate to call.

Sincerely,

Robert L. McDowell, Jr., M.D.

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HOSPITAL
Dan Marino Center
*We're here for the children*

**Mark A. Epstein, M.D.**
**Medical Director**

July 1, 2006

Harry S. Cohen, Esquire
Harry S. Cohen & Associates, P.C.
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

**Re: Reganne Hale (DOB: 11/10/02)**
**Case No: 2005-364-CD**

Dear Mr. Cohen:

At your request, I had the opportunity to review the following medical records regarding this case:

1. Dubois Regional Medical Center, admission of 11/09/02 (fetal strips).
2. Dubois Regional Medical Center, admission of 11/10/02 (fetal strips)
3. Office records of DMMC Maternal Fetal Medicine.
4. Admission Dubois Regional Medical Center (limited records) – birth admission for Reganne Hale.
5. Admission Dubois Regional Medical Center (limited records) – birth admission for Ashtyn Hale.
6. Children's Hospital – limited records of Reganne Hale.
7. Children's Hospital of Pittsburgh Child Development Clinic (Reganne): (a) psychological evaluation (08/26/05) (b) medical neurology evaluation (04/24/95); (c) Indiana Linkage Clinic, progress note (02/25/04); (d) Children's Hospital (Reganne), inpatient discharge summary (12/24/02).
8. Dubois Regional Medical Center – office notes of Dr. Xu.
9. Brookeville Behavioral Health Records of Reganne Hale.
10. Brookeville Behavioral Health Records for Ashtyn Hale.

Reganne was an 1136 gram product of a twin gestation born by primary Cesarean section to a then 26-year-old $G_4 P_{1021}$ mother with an EDC of 02/03/03. Reganne was twin A, born at approximately 28 weeks gestation. Mrs. Hale had presented to Dubois Regional

2900 South Commerce Parkway ♦ Weston, FL 33331 ♦ (954) 385-6223 ♦ fax: (954) 385-6283

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Medical Center on 11/09/02 complaining of a brownish discharge and pressure in her lower abdomen. Fetal monitoring strips were reassuring for both twins and she was eventually discharged home. She presented to the hospital the following day with increased frequency of irregular, crampy, pelvic pain. At approximately 17:30 a nurse performed a vaginal examination and found the cervix to be closed with adequate length. The fetal heart strips were reassuring and Mrs. Hale was given a dose of both subcutaneous terbutaline and oral terbutaline. Approximately three hours later Dr. Ott arrived and performed a vaginal examination and found that the cervix was 3-4 cm dilated, 90% effaced, with the presenting fetus at 0 station. Orders were given at approximately 20:20 to start magnesium sulfate and IM steroids.

At approximately 21:09 Dr. Ott wrote that Mrs. Hale was having persistent, painful, uterine contractions and that twin B was in the breech position. By 21:17 the cervix was found to have dilated 7 cm despite efforts at tocolysis and, therefore, a primary Cesarean section took place.

Past obstetrical history was significant for a miscarriage in 1995, a molar pregnancy in 1999, and a full term pregnancy in 1996 that was complicated by premature labor, successfully stopped with tocolysis.

Reganne was born with Apgar scores of 8 at 1 minute and 9 at 5 minutes from the vertex position. Ashtyn was born with Apgar scores of 4 and 7, respectively, in a footling breech position. Subsequent placental pathology demonstrated no evidence of acute chorioamnionitis or funisitis.

Reganne had a stormy neonatal course. Her diagnoses included prematurity, respiratory distress syndrome, PDA closed with Indocin, neonatal jaundice, intraventricular hemorrhage, and necrotizing enterocolitis.

At birth Reganne was intubated and received Survanta and required dopamine for blood pressure support. She remained on mechanical ventilation until 11/27/02 when she was weaned to CPAP. During her hospitalization at Dubois Regional Medical Center, she had three head ultrasounds: The first on 11/11/02 was interpreted as within normal limits. On 11/15/02 the head ultrasound demonstrated a left choroid plexus hemorrhage with slight asymmetry of the ventricles. A repeat head ultrasound on 11/26/02 was without any change. Her head circumference at birth was 26 cm.

On 11/30/02, Reganne developed abdominal distension, redness of the right lower quadrant abdominal wall and bloody stools, indicative of necrotizing enterocolitis. She was reintubated and given antibiotics. She was then transferred to Children's Hospital of Pittsburgh where she remained hospitalized from 12/01/02 until 12/24/02.

Upon admission to Children's Hospital of Pittsburgh, the previous Grade I IVH progressed to a Grade III IVH which was noted on a head ultrasound of 12/06/02. The head ultrasound was found to be unchanged on 12/16/02. A repeat head ultrasound on 12/20/02 demonstrated a new finding of cystic periventricular leukomalacia bilaterally in the left frontal and right frontal parietal regions.

At the time of discharge, Reganne's neurological examination was significant for a head circumference of 30 cm. Her tone was noted to be slightly decreased, with only a fair grasp and suck.

Reganne was evaluated by Mary Louise Russell, M.D., at Children's Hospital of Pittsburgh Indiana Linkage Clinic on 02/25/04. At that time, Dr. Russell indicated that Reganne was noted to have delays in her motor function. She was not crawling and tended to throw herself back when she was sitting. She did not have a pincer grasp and would not put blocks into a container. Developmental history obtained suggested that she lifted her head in a prone position at 7-8 months of age, rolled from back to stomach at 6-7 months of age, and could stand with assistance at 11 months of age. She sat independently at 12 months of age. A neurological examination was abnormal due to increased resistance to passive stretch of her right ankle plantar flexor muscles. She also tended to maintain her thumbs in an adducted position within her palms. She was diagnosed with spastic diplegia, a form of cerebral palsy.

A neurological evaluation performed by Dr. Shu-Guang Xu on 09/22/03 demonstrated mild, unbalanced muscle tone in her trunk. A repeat neurological evaluation on 09/22/03 demonstrated increased tone bilaterally, especially in the distal portion of her lower extremities. Her deep tendon reflexes were also brisk. These physical signs were suggestive of cerebral palsy.

Reganne subsequently developed atypical behaviors such as biting, flapping hands, head banging, difficulty with sleep, oral stimulations such as licking inanimate objects, inability to feed herself, masturbation, fixations, mood swings, impulsive behaviors, and limited ability to communicate. Base upon the results of a psychological evaluation performed at Children's Hospital of Pittsburgh, Reganne was diagnosed with pervasive developmental disorder – not otherwise specified, and mental retardation, severity undetermined. A repeat psychological evaluation performed through the Brookeville Behavioral Health System on 01/05/06 came to the following conclusions: "Reganne Hale is a 3-year, 2-month old twin little girl who presents with multiple developmental, neurological, physical, and birth-related issues. She already has been diagnosed with pervasive developmental disorder, which is further complicated by her physical and neurological problems and the possibility of sub-average intellectual abilities."

It is well-established in the medical literature that the incidence of intraventricular hemorrhage correlates with both increasing degrees of prematurity and decreasing birth

weight. The pathogenesis of intraventricular hemorrhage is believed to be related to a number of factors including fluctuating cerebral blood flow in the vulnerable germinal matrix microvessels, leading to rupture. The cause of fluctuations in both systemic and cerebral circulations is related primarily to the mechanics of mechanical ventilation. Elevations of arterial blood pressure and fluctuating cerebral venous pressure also contribute to the pathogenesis of IVH which can be caused by episodes of systemic hypotension/hypertension, tracheal suctioning, and rapid volume expansion as can occur with blood transfusions.

The mechanisms of brain injury in infants with IVH include hypoxic-ischemic injury, thought to be responsible for periventricular leukomalacia, destruction of glial precursors in the germinal matrix which has a deleterious effect on subsequent brain myelination, as well as destruction of periventricular white matter which has a deleterious effect on subsequent cortical organization. Studies have demonstrated a significant reduction in cortical volume in infants who have suffered intraventricular hemorrhage in the neonatal period.

It is my medical opinion, as a board certified child neurologist, that Reganne Hale's present neurological condition, including cerebral palsy and cognitive deficits, is a direct result of the intraventricular hemorrhage and periventricular leukomalacia suffered as a result of her being born extremely premature at 28 weeks gestation. This brain injury is permanent in nature with no reasonable expectation for improvement. Had the birth of Reganne been delayed with the use of tocolysis to allow for further brain development and had steroid administration been allowed more time for fetal lung maturation, there would have been an ever increasing chance that Reganne would have been born without the development of intraventricular hemorrhage and its neurological sequelae.

I reserve the right to amend this report should further medical information become available to me.

Sincerely yours,

Mark A. Epstein, M.D.
Board Certified Child Neurologist
MAE/rs

2900 South Commerce Parkway ♥ Weston, FL 33331 ♥ (954) 385-6223 ♥ fax: (954) 385-6283

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within MOTION FOR SUMMARY JUDGMENT ON BEHALF OF MICHAEL J. KUSH, M.D. has been served upon the following counsel of record and same placed in the U.S. Mails on this 28th day of June, 2007:

Harry S. Cohen, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Brad R. Korinski, Esquire
Attorneys for Michael J. Kush, M.D., one of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br>Defendants. | ) CIVIL DIVISION<br>)<br>) No. 05-364-CD<br>) **CONSOLIDATED WITH**<br>) No. 06-936-CD |
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation.<br>Defendants. | ) |

ORDER OF COURT

AND NOW, to wit, on this _____ day of _____, 2007, upon consideration of the motion for summary judgment filed on behalf of Michael J. Kush, M.D., one of the defendants, it is hereby ORDERED, ADJUDGED and DECREED that defendant's motion for summary judgment is GRANTED.

Michael J. Kush, M.D. is hereby dismissed as a defendant from this litigation.

BY THE COURT:

_____J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**NOTICE OF SERVICE OF PLAINTIFFS' SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

FILED ICC AHY
m/11:20 cm
JUL 16 2007
William A. Shaw
Prothonotary/Clerk of Courts

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936-CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | Case No.: 2006-936-CD |
| Plaintiffs, | : | ***Consolidated at Case No.: 2005-364-CD*** |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL. | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' SIXTH REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' Sixth Request for Production of Documents Directed to Defendant Dubois Regional Medical Center was served on the 12th day of July 2007 by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
*Attorneys for Plaintiffs*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**NOTICE TO ATTEND DIRECTED TO DEFENDANT GARY D. OTT, M.D. WITH SUBPOENA DUCES TECUM**

Filed on Behalf of Plaintiffs

FILED 1cc AHY
m/11:50cm
JUL 23 2007
William A. Shaw
Prothonotary/Clerk of Courts

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD<br>***Consolidated at Case No.: 2005-364-CD*** |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD<br>***Consolidated at Case No.: 2005-364-CD*** |

**NOTICE TO ATTEND DIRECTED TO**
**DEFENDANT GARY D. OTT, M.D. WITH SUBPOENA DUCES TECUM**

To: Gary D. Ott, M.D.
c/o John W. Blasko, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

You are directed to come to the **Clearfield County Courthouse, 230 East Market Street, Clearfield, PA 16830 on Monday, September 17, 2007 at 9:00 a.m.**, to testify on

behalf of Plaintiffs and to remain until excused.

You are also directed, by Rule 234.3 (a) of the Pennsylvania Rules of Civil Procedure, to produce at the **Clearfield County Courthouse, 230 East Market Street, Clearfield, PA 16830 on Monday, September 17, 2007 at 9:00 a.m.**, the complete and entire **original** medical chart of Angela Hale, Reganne Hale and Ashtyn Hale in your possession.

If you fail to attend or produce, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE TO ATTEND DIRECTED TO DEFENDANT GARY D. OTT, M.D. WITH SUBPOENA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing of a true and correct copy to the party and address listed below on the 20th day of July 2007:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**NOTICE TO ATTEND DIRECTED TO RECORDS CUSTODIAN OF DEFENDANT DUBOIS REGIONAL MEDICAL CENTER WITH SUBPOENA DUCES TECUM**

Filed on Behalf of Plaintiffs

FILED 1cc Atty
m/11:50 Lm
JUL 23 2007
William A. Shaw
Prothonotary/Clerk of Courts

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD<br>***Consolidated at Case No.: 2005-364-CD*** |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD<br>***Consolidated at Case No.: 2005-364-CD*** |

**NOTICE TO ATTEND**
**DIRECTED TO RECORDS CUSTODIAN OF DEFENDANT**
**DUBOIS REGIONAL MEDICAL CENTER WITH SUBPOENA DUCES TECUM**

To: Records Custodian of Defendant Dubois Regional Hospital
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

You are directed to come to the **Clearfield County Courthouse, 230 East Market Street, Clearfield, PA 16830 on Monday, September 17, 2007 at 9:00 a.m.**, to testify on

behalf of Plaintiffs and to remain until excused.

You are also directed, by Rule 234.3 (a) of the Pennsylvania Rules of Civil Procedure, to produce at the **Clearfield County Courthouse, 230 East Market Street, Clearfield, PA 16830 on Monday, September 17, 2007 at 9:00 a.m.**, the complete and entire **original** medical chart of Angela Hale, Reganne Hale and Ashtyn Hale in your possession.

If you fail to attend or produce, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE TO ATTEND DIRECTED TO RECORDS CUSTODIAN OF DEFENDANT DUBOIS REGIONAL MEDICAL CENTER WITH SUBPOENA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing of a true and correct copy to the party and address listed below on the 20th day of July 2007:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**NOTICE TO ATTEND DIRECTED TO KATHRYN RAYBUCK, R.N.**

Filed on Behalf of Plaintiffs

FILED ICC Atty
m/11:50 cm
JUL 23 2007
William A. Shaw
Prothonotary/Clerk of Courts

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD<br>***Consolidated at Case No.: 2005-364-CD*** |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD<br>***Consolidated at Case No.: 2005-364-CD*** |

**NOTICE TO ATTEND DIRECTED TO KATHRYN RAYBUCK, R.N.**

To: Kathryn Raybuck, R.N.
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

You are directed to come to the **Clearfield County Courthouse, 230 East Market Street, Clearfield, PA 16830 on Monday, September 17, 2007 at 9:00 a.m.**, to testify on

behalf of Plaintiffs and to remain until excused.

If you fail to attend, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By:_____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE TO ATTEND DIRECTED TO KATHRYN RAYBUCK, R.N.** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing of a true and correct copy to the party and address listed below on the 20th day of July 2007:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD
***Consolidated at Case No.: 2005-364-CD***

**NOTICE TO ATTEND DIRECTED TO DESIREE SMITH, R.N.**

FILED 1cc Atty
m/11:50cm
JUL 23 2007
William A. Shaw
Prothonotary/Clerk of Courts

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
***Consolidated at Case No.: 2005-364-CD***

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD<br>***Consolidated at Case No.: 2005-364-CD*** |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD<br>***Consolidated at Case No.: 2005-364-CD*** |

**NOTICE TO ATTEND DIRECTED TO DESIREE SMITH, R.N.**

To: Desiree Smith, R.N.
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

You are directed to come to the **Clearfield County Courthouse, 230 East Market Street, Clearfield, PA 16830 on Monday, September 17, 2007 at 9:00 a.m.**, to testify on

behalf of Plaintiffs and to remain until excused.

If you fail to attenD, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE TO ATTEND DIRECTED TO DESIREE SMITH, R.N.** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing of a true and correct copy to the party and address listed below on the 20th day of July 2007:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE IRRELEVANT EVIDENCE**

Filed on Behalf of Plaintiffs

FILED NO CC
m/10:33/BH
JUL 27 2007 (GP)
William A. Shaw
Prothonotary/Clerk of Courts

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ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

July 25, 2007

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; ET AL. | : | |
| Defendants. | : | |

**PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE IRRELEVANT EVIDENCE**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion:

1. This case is set to commence trial on September 17, 2007.

2. In this case, Plaintiffs allege that the Defendant obstetrician and Defendant nursing staff breached the standard of care by failing to recognize and treat mother-Plaintiff's preterm labor, thereby allowing the premature delivery of the minor-Plaintiffs at 28 weeks gestation.

**Plaintiffs' Prior Motion to Dismiss Ashtyn Hale's Case Without Prejudice**

3. Because her injuries have been more difficult to assess and Plaintiffs were against time constraints for expert reports, Plaintiffs previously filed a Motion to Dismiss Ashtyn Hale's case without prejudice.

4. Since the parties agreed to a bifurcation of this matter, the Court was never required to rule on this Motion.

5. As a result of the bifurcation, the trial scheduled for September 17, 2007 is to determine liability only. If the Plaintiffs are successful, the second trial would be to determine damages.

6. Pa.R.E. 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

7. What is relevant in this case is whether the Defendants deviated from the standard of care. What is irrelevant in this case is the extent of Ashtyn Hale's injuries.

8. Accordingly, any reference to Plaintiffs' Motion to Dismiss or any reference to Ashtyn Hales' injuries being more difficult to assess would clearly be irrelevant and merely an attempt to prejudice the Plaintiffs.

**Dr. Kush's Pending Dismissal From The Case**

9. Although Michael Kush, M.D. is a named Defendant, he has pending before this Court a Motion for Summary Judgment to dismiss him from the case. Oral argument is scheduled for August 10, 2007 at 10:00 a.m.; Plaintiffs are not opposing Dr. Kush's Motion.

10. Evidence regarding Dr. Kush being named as a Defendant and/or his dismissal from this case has no probative value and is wholly irrelevant.

11. Therefore, any attempt to introduce evidence, ask any question, or make any reference to Dr. Kush's involvement in this lawsuit would be irrelevant and merely an attempt to prejudice the Plaintiffs in the eyes of the jury.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant Plaintiffs' Motion and preclude Defendants and their Counsel from introducing evidence, asking any question, or making any insinuation regarding: (a) Plaintiffs' Motion to Dismiss or Ashtyn Hales' Case Without Prejudice; (b) Ashtyn Hale's injuries being more difficult to assess; and (c) Dr. Kush being named as a Defendant and/or his dismissal from this case.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE IRRELEVANT EVIDENCE** has been served on the 25th day of July 2007 to the following via facsimile and/or U.S. Mail:

**Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; ET AL. | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, to-wit, this _____ day of _____ 2007, it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff's Motion in Limine to Preclude Irrelevant Evidence is GRANTED. Defendants and their Counsel are precluded from introducing any evidence, asking any question, or making any insinuation regarding:

1. Plaintiffs' Motion to Dismiss Ashtyn Hale's Case Without Prejudice;
2. Ashtyn Hales' injuries being more difficult to assess; and
3. Dr. Kush being named as a Defendant and/or his dismissal from this case.

BY THE COURT:

_____,J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' MOTION IN LIMINE TO LIMIT EXPERT TESTIMONY**

Filed on Behalf of Plaintiffs

FILED NO CC
10:33 BY
JUL 27 2007
William A. Shaw
Prothonotary/Clerk of Courts

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

July 25, 2007

**JURY TRIAL DEMANDED**

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD ET AL, | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| | : | ***Consolidated at Case No.: 2005-364-CD*** |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; ET AL. | : | |
| Defendants. | : | |

**PLAINTIFFS' MOTION IN LIMINE TO LIMIT EXPERT TESTIMONY**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion:

1. This bifurcated case is set to commence trial on September 17, 2007.

2. In this case, Plaintiffs allege that the Defendant obstetrician and Defendant nursing staff breached the standard of care by failing to recognize and treat mother-Plaintiff's preterm labor, thereby allowing the premature delivery of the minor-Plaintiffs at 28 weeks gestation.

3. The first trial will relate only to whether the defendants deviated from the standard of care "causing" a premature labor; and all parties acknowledge the medical issues of the first trial will relate only to obstetrics and nursing.

4. Plaintiffs have produced expert reports from **three (3) obstetricians and one (1) nurse** to comment on the Defendant obstetrician and the Defendant nursing staff. (Plaintiffs' reports are attached collectively hereto as Exhibit "A").

5. The Defendant obstetrician, Dr. Ott, produced expert reports from **four (4) different obstetricians**. (Defendant obstetrician's reports are attached hereto collectively as Exhibit "B").

6. The Defendant hospital produced expert reports from **one (1) obstetrician and one (1) nurse**. (Defendant hospital's reports are attached hereto collectively as Exhibit "C").

7. The Pennsylvania Rules of Evidence provide that evidence may be excluded if it is cumulative in nature. See Pa.R.E. Rule 403

8. To avoid cumulative experts and in the interest of judicial economy, each party should be limited to one expert witness on each issue: The Plaintiffs and Dr. Ott should each be limited to one expert obstetrician on the obstetrical negligence issue and the Plaintiffs and Dubois Hospital should each be limited to one expert nurse on the nursing negligence issue.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an order limiting the amount of experts each party shall use and also order that each party shall designate

in writing which expert they intend to use at trial prior to the Pre-Trial Conference.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

Exhibit A

Maternal Fetal Medicine, P.C.
**CURTIS L. CETRULO, M.D.**
OBSTETRICS & GYNECOLOGY
P.O. Box 755
Hingham, MA 02043-0755
Tel. (781) 749-6233 Fax (781) 740-2709

July 13, 2006

Todd D. Bowlus, Esq.
Harry S. Cohen & Associates
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

**Re: Angela Hale vs. Dubois Hospital**

Dear Mr. Bowlus:

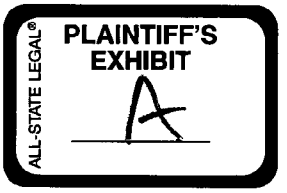
I have reviewed the following medical records:

1. Dubois Regional Medical Center Admission of 11/9/02;
   a. Fetal Strips;
2. Dubois Regional Medical Center Admission of 11/10/02;
   a. Fetal Strips;
3. Office Records of Dr. George R. Cherian, OB/Gyn;
4. Office Records of DRMC Maternal Fetal Medicine;
5. Punxsutawney Area Hospital Records - 1996
   (limited records of previous pregnancy);
6. Admission Dubois Regional Medical Center (limited records)
   Birth Admission for Reganne Hale 11/10/02;
7. Admission Dubois Regional Medical Center (limited records)
   Birth Admission for Ashtyn Hale 11/10/02; and
8. Children's Hospital – Limited records of Reganne.

Additionally, I have reviewed the following:

1. Deposition transcript of Gary D. Ott, MD;
2. Deposition transcript of Michael J. Kush, MD;
3. Deposition transcript of Kathyrn Raybuck, RN; and
4. Deposition transcript of Desiree Smith, RN.

In 2002, Angela Hale, age 26, was married with a 6-year old daughter and lived in Dubois, Pennsylvania. She had a history of a miscarriage at 4 weeks gestation in 1995 and in 1996 she had threatened preterm labor which was stopped at 8 months gestation



with tocolytics. Her obstetrician at that time was Dr. George Cherian.

In 2002, Mrs. Hale became pregnant with twins. Her OB was Dr. Gary Ott. Her EDC was 2/3/03.

On 11/9/02, Mrs. Hale developed a "light brownish-red vaginal discharge." She went Dubois Regional Medical Center ("DRMC") and Dr. Ott performed an exam. It was determined that she was not dilated and she remained at DRMC for about 2 hours. She was then discharged home.

On 11/10/02, Mrs. Hale arrived at DRMC with her husband at around 2:00 pm complaining of contractions, diarrhea, and back pain. On admission the nurse performed a vaginal exam and determined that Mrs. Hale's exam had not changed since 11/9/02. At about 7 or 8 pm Dr. Ott arrived at DRMC and reviewed the fetal monitor strips and saw the contractions. Dr. Ott then performed a vaginal exam that demonstrated that Mrs. Hale was dilated 4 ½ centimeters. She was given bethamethasone and magnesium sulfate for tocolysis which was unsuccessful.

Between 8-9 pm, Mrs. Hale was dilated around 7 ½ centimeters. Dr. Ott then decided to perform a cesarean section. The twins were 28 weeks gestation.

On 11/10/02, at 10:08 pm baby A, Reganne, was delivered in vertex presentation. At 10:09 pm baby B, Ashtyn, was delivered. Ashtyn was double footling breech presentation.

Reganne had a Grade I IVH, required intubation, had retinopathy of prematurity, reflux, and bronchopulmonary dysplasia. Both Reganne and Ashtyn remained in the NICU at DRMC. On 12/1/02, Reganne was transferred to Children's Hospital in Pittsburgh. Reganne at that time had possible NEC (later thought to be a staph infection in her colon). Her Grade I IVH developed into a Grade III IVH and she also developed hydrocephalus that required shunting. Reganne remained at CHP until discharged home on 12/24/02. Ashtyn was discharged to home on 1/11/03.

Dr. Ott deviated from the standard of care in the following respects:

On November 9, 2002, when Mrs. Hale presented to DRMC with complaints of a red/brown discharge and contractions on the monitor, even if her cervix was unchanged, Mrs. Hale should have been admitted and started on tocolysis and bethamethasone. Dr. Ott's failure to order extended observation of Mrs. Hale on this date and order tocolytics and corticosteroids contributed to the unfortunate outcome.

On November 10, 2002, it was also a breach in the standard of care for Dr. Ott to delay in ordering a therapeutic dose of tocolytic agents to delay the delivery of the twins. Dr. Ott's note written after the delivery - that he ordered terbutaline for pain management - makes no sense. Terbutaline may be administered under these circumstances to stop contractions to stop premature labor; however, it must be administered with supervision in proper doses. This was not done by Dr. Ott's phone order. It was no excuse for Dr.

Ott to merely assume that he would hear from the nurses when Mrs. Hale began preterm labor. There was apparent improper communication with nurses about assessing preterm contractions and the frequency of vaginal exams in a patient at risk for preterm labor.

At a minimum, the delay in tocolysis increased the risk that preterm delivery would occur. Steroids ideally should be given 24-48 hours prior to the anticipated delivery to be most effective. Bethamethasone was administered about 3 hours prior to delivery. Reganne suffered a Grade I progressing to a Grade III IVH. Bethamethasone is helpful in preventing IVH and promoting lung maturity in preterm babies.

As for the nursing staff at DRMC, they deviated from the standard of care when Mrs. Hale again presented to DRMC on November 10, 2002 with complaints of contractions. The nursing staff failed to promptly evaluate Mrs. Hale and failed to promptly notify Dr. Ott of Mrs. Hale's symptoms. Additionally, the failure of the nursing staff to conduct more frequent vaginal exams and reassess cervical status, after the initial exam at 1730, was a deviation in the standard of care, especially given Mrs. Hale's ongoing complaints of pain and contractions. The nursing staff also failed to promptly administer tocolysis and bethamethasone.

In summary, Dr. Ott and the nursing staff at DRMC deviated from acceptable standards of care. These deviations increased the risk that preterm delivery would occur.

Sincerely,

Curtis L. Cetrulo, M.D.
Professor of Obstetrics and Gynecology
Tufts University School of Medicine

CLC/msg

*Bennett S. Walstatter, MD, FACOG*
*4437 Oak Arbor Ct*
*Grand Rapids, MI 49525*
*616 754- 2944*
*bwalstatter@umha.org*

July 10, 2006

Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

Dear Mr. Cohen:

I have received all of the records that you sent to me regarding Angela Hale. It is my opinion that there were several breaches in the standard of care:

1. Dr. Ott failed to obtain previous medical records or ascertain whether or not Ms. Hale had actually experienced premature labor. He also failed to ascertain whether or not she had successfully been tocolysed during her previous pregnancy.

2. Dr. Ott failed to diligently observe Ms. Hale for premature labor during her hospitalization of November 10, 2002. Although the patient was contracting, he failed to have the patient re-evaluated for cervical dilation over a 3-hour period. The standard of care would be to have the patient re-evaluated no more than 1 hour from her previous exam.

3. Ms. Hale was given terbutaline for symptomatic relief. The contractions stopped but they restarted. At this time, the standard of care would require cervical evaluation. This would be due to the time factor and the presence of contractions.

4. The nurses failed to meet the standard of care by not appropriately assessing the patient for premature labor. The time between exams was far too great, and by the time premature labor was recognized it was too late to stop the labor.

It is my opinion that Dr. Ott's treatment of this high-risk, twin pregnancy was below the standard of care and led to the poor outcome of this pregnancy.

Very truly yours,

Bennett S. Walstatter, MD
F.A.C.O.G

CENTER FOR ADVANCED FETAL CARE
@ MERCY MEDICAL CENTER

Center for Women's Health & Medicine
AT MERCY

August 20, 2006

Harry Cohen and Associates
Harry Cohen, Esquire
Two Chatham Center, Suite 985
Pittsburgh, PA. 15219

**Maternal-Fetal Medicine**
Robert Atlas, M.D.
Jerome N Kopelman, M.D.
Christopher Harman, M.D.
Michelle Kush, M.D.
Ahmer Baschar, M.D.
Carl Weiner, M.D.

**Prenatal Genetics**
Jessica Scott, MGC

RE: Angela Hale

Dear Attorney Cohen,

I have had the opportunity to review the above case for you and am ready to give my opinion regarding the care of Angela Hale. In giving my opinion I have reviewed the following medical records provided to me:

1. Prenatal records- Dr. Gary Ott
2. Dubois Regional Medical Center Admission of 11/09/02
   a. Fetal monitor tracing
3. Dubois Regional Medical Center Admission of 11/10/02
   a. Fetal monitor tracing
4. Office Records of Dr. George R Cherian, OB/GYN (1996 pregnancy)
5. Office records of DRMC- MFM- Dr. Michael Kush
6. Punxsutawney Area Hospital Records- 1996 (previous Pregnancy
7. Admission Dubois Regional Medical Center (limited records)
   Birth admission for Reganne Hale 11/10/02
8. Admission Dubois Regional Medical Center (limited records)
   Birth admission for Ashyn Hale 11/10/02
9. Children's Hospital of Pittsburgh- (Reganne) D/C summaries

The following summarizes the care provided to Angela Hale. She is a 26 year old G4 P1021 who was noted to have a monchorionic Diamniotic twin gestation. Her past medical history is significant for irregular heart rate. Her past obstetrical history is significant a spontaneous abortion in 1995, full term infant in 1996 of a 6 pound 7 ounce female. That pregnancy was complicated by preterm labor. She went into preterm labor at 32 weeks gestation (1/90%) and was on tocolytics (terbutaline) until 36 weeks. She had a molar pregnancy in 1999.

This pregnancy was complicated by an abnormal triple screen with an elevated MSAFP of 2.46 MOM. An ultrasound revealed a twin gestation. The patient had

an infected tooth at 23 weeks gestation. Ultrasound exams were noted to be within normal limits with concordant fetal growth.

The patient presented to the labor and delivery unit on 11/09/02 with the complaint of contractions and pressure. She also complained of brown vaginal discharge. She was noted to be contracting every 3-5 minutes irregular with some irritability noted. Her cervical exam was noted to be closed and 3 cm long medium consistency. She was discharged to home.

She represented the following day with the same complaints along with back pain. She was again evaluated by the nurse and noted to be again long and closed by exam at 17:30. She continued to have complaints of back pain and groin pain. The patient was given a single dose of IV terbutaline and then an oral dose of terbutaline to treat symptomatic uterine contractions only. Dr. Ott then saw the patient three hours later and noted the patient to be 3-4 cm dilated, 90% effaced and 0 station. He immediately began IV tocolysis with Magnesium Sulfate. He also gave the patient betamethasone therapy. Angela was then reevaluated several hours later and was noted to be progressing to 7 cm dilated.

Dr. Ott therefore opted to deliver Angela via LCT C/S due to twin B being breech. He delivered Twin A with Apgars of 8, 9 weight 1136 gm. Twin B was delivered via breech extraction with Apgars of 4, 7 and a weight of 1228 gm.

Twin A had significant complications from Prematurity especially Necrotizing Enterocolitus and a Grade III Intraventricular Hemorrhage. She necessitated transfer to Children's Hospital of Pittsburgh.

Impression

In assessing the care provided to Angela Hale, I have several areas of concern.

1. On 11/9/02 the patient was assessed by Dr. Ott and the nurses. In their assessment, there is no indication that they assessed the uterine activity properly. They only state initially that there are irregular contractions noted. In my assessment there were contractions much more frequent then that.

In patients who are contracting preterm, these pregnancies are at marked increased risk of Prematurity. What puts this patient at much higher risk are two factors, the twin gestation and her history of preterm labor in her previous successful pregnancy.

Dr. Ott needed to assess the patient further. He needed to offer the patient a fetal Fibronectin, Transvaginal ultrasound of the cervix as this can predict preterm birth well.

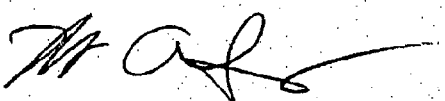
They also should have considered keeping the patient for a longer period of time to assess the patient further for preterm labor. Also, with the patient contracting with the twin gestation, corticosteroids should have been administered at this time since the patient is at risk of PTB.

2. On 11/10/02 the patient presented with the same complaints of preterm labor. The initial exam was noted to be the same (closed/3 cm), however, in three hours the exam markedly changed. I question the initial exam by the nurse and most likely was inaccurate.

Overall, I am concerned with the quality of care provided by Dr. Ott and Dubois Regional Medical Center as it appears that this patient presented in plenty of time to have the preterm labor abated. I believe within a medical degree of certainly, that the care provided to Angela Hale deviated from the standard of care.

All of my opinions are to a degree of medical certainty. If you have any questions, please do not hesitate to contact my office.

Sincerely,



Robert Atlas, MD
Chairman, Department of OB/GYN
Mercy Medical Center

*Patricia D. Fedorka, Ph.D., R.N.C.*
*Legal Nurse Consultant*

1529 Staunton Drive
Moon Township, PA 15108
Tax ID 192-42-5879

Phone (412) 264 - 7165
Fax (home) (412) 262 - 2516
E-mail Fedorka@rmu.edu

Mr. Harry S. Cohen & Associates. P.C.
Mr. Todd Bowlus
Two Chatham Center
Suite 985
Pittsburgh, PA 15219

May 1, 2006

Re: Hale

Dear Mr. Bowlus:

I have reviewed the following documents:

1. Office records of DMMC Maternal Fetal Medicine for Angela Hale
2. Punxsatawney Area Hospital records from 1996 for Angela Hale
3. Office records of Dr. George Cherian for Angela Hale, 1996
4. Dubois Regional Medical Center inpatient records for Angela Hale from 11/9/02 and 11/10/02, including fetal monitor tracings
5. Dubois regional Medical Center inpatient records for Reganne Hale
6. Dubois Regional Medical center inpatient records for Ashtyn Hale
7. Timeline of events 11/9/02-11/10/02
8. Deposition transcript of Dr. Gary Ott
9. Deposition transcript of Kathryn Raybuck, R.N.
10. Deposition transcript of Desiree Smith (Fremer), R.N.

In 2002, Angela Hale was a 26 year-old, married gravida 4, para 1 with an LMP of 4/28/02 and an EDD of 2/3/03. She had a history of a miscarriage at 4 weeks gestation in 1995, a vaginal delivery of a 6 pound, 7 ounce female at 38 weeks after treatment for preterm labor in 1996 and a molar pregnancy in 1999. She began prenatal care with Dr. Gary Ott on 6/13/02 at 6 weeks gestation. Height was 5 feet, 3 inches. Pre-pregnant weight was 190 pounds and weight at delivery was 214 pounds, for a total pregnancy weight gain of 24 pounds. Her past medical history included an irregular heartbeat. According to the 9/10/02 medical records of Dr. Michael Kush, maternal-fetal medicine, Angela also had a history of a heart murmur and was on medications for any dental work. Documented blood pressures during pregnancy ranged from 104-160/70-100. There were no complete prenatal records from Dr. Ott's office included in the records reviewed, only the copy included in Dr. Kush's records, which includes prenatal visits up to 16 weeks

gestation only. Documented prenatal labs included: blood type A negative, antibody screen negative, rubella immune, RPR non-reactive, hepatitis negative, H&H on 8/22/02 – 11.8 & 34.0. She had no reported history of drug, alcohol or tobacco use. Medications during pregnancy included prenatal vitamins, iron and folic acid. She had an elevated MAFP on 8/22/02 and was then referred to Dr. Kush, Maternal Fetal Medicine at Dubois Regional Medical Center for a Level II ultrasound.

On 9/11/02, at 19 weeks gestation by dates, Angela was seen by Dr. Kush. An ultrasound revealed a monochorionic/diamniotic twin gestation with appropriate growth for gestation. Both babies were female. On 10/14/02, Dr. Kush performed another U/S at 23 weeks gestation. Baby A was at that time breech with normal amniotic fluid and a heart rate of 153. Weight was in the 43rd percentile. Baby B was cephalic with a normal amniotic fluid volume and a heart rate of 158. Weight was in the 40th percentile. Angela's blood pressure at that visit was 160/84. Documentation states there was no c/o headache or nausea and vomiting. On 11/6/02, at 27 weeks gestation, sonar showed Baby A in the cephalic position with normal amniotic fluid volume, a heart rate of 164 and weight in the 33rd percentile. Baby B was in the cephalic position with normal amniotic fluid volume and a heart rate of 147. Weight was in the 34th percentile. Blood pressures on that visit were 152/100 and 130/88, repeated 15 minutes later. No edema or headache. There were no urine proteins documented at the maternal fetal medicine visits and no records of visits from Dr. Ott were included in the records reviewed.

At 1200 on 11/9/02, at 28 weeks gestation, Angela was seen at Dubois Regional Medical Center to r/o preterm labor. She complained of a brownish discharge and pressure in the lower abdomen. Dr. Ott was notified at 1215. A urinalysis was ordered which showed 3+ bacteria and negative protein. Results were called to Dr. Ott and a urine culture was obtained. (No results or documentation of treatment found in records reviewed.) NST was done and documented by a note of Dr. Ott's as reassuring. The RN documented "Small" variable decelerations for both babies. Irregular contractions were documented. SVE per Dr. Ott's note was closed/3 cm. long/medium firm/high/posterior. She was discharged at 1535 with instructions for bedrest with bathroom privileges and pelvic rest. She was to be seen by Dr. Ott on 11/12/02.

On 11/10/02 at 1645, Angela was again seen at Dubois Regional Medical Center complaint of every 5-minute contractions. External fetal monitoring (EFM) showed irregular contractions, mild to palpation. Angela was complaining of back pain and was "very fussy" according to the nurse's documentation. Fetal heart rate (FHR) of Baby A was 160-170 and Baby B, in the 150's.

At 1730, a SVE showed no change since the exam of 11/9/02. Dr. Ott was notified at 1805. At 1805, Terbutaline, sub-q and p.o. were given. Dr. Ott's H&P note states that the medications were given to treat symptomatic uterine contractions only." "The patient was given the medication in an attempt to bring comfort only as there was no indication for tocolysis given the absence of cervical change. At 1823, no contractions were seen on the monitor. At 1840, Angela continued to c/o back and groin discomfort. No contractions were seen on the monitor. At 2000, she requested pain medication. FHR of Baby A was

in the 110's-120's with average LTV and of Baby B was 150's-160's with avg. LTV and accelerations. Angela c/o q 3-4 minute contractions, evident on the monitor strip and documented on the nurse's notes at 2014. The RN did no further vaginal exams after 1730. Dr. Ott was called and arrived at 2014. A SVE by Dr. Ott at 2020 showed 3-4 cm dilation. IV fluids and a bolus of magnesium sulfate was started at 2028. Another dose of Terbutaline was also given sub-q. Angela was admitted as an inpatient.

An ultrasound showed Baby A in a vertex presentation and Baby B in a double footling breech presentation. Admission vital signs were 98.2, 120, 22, and 113/67. Dr. Ott's progress note of 2109 documented the patient having persistent painful contractions. If not able to stop contractions with tocolysis, C/S secondary to breech presentation (of Baby B). There are no further RN notes regarding the labor status or assessments. Notes were included on the fetal monitor tracings. At 2100, Betamethasone was given. Cervix was 6 cm. per Dr. Ott at 2116. Magnesium sulfate was discontinued at 2117. The EFM was turned off at 2140 and Angela was prepped for a C/Section. Before removal of the EFM, Baby A's FHR was in the 120's-130's and Baby B's, which had been tracing intermittently, was documented as audible in the 150's-160's.

A C/Section was performed under spinal anesthesia. NICU staff was present. Baby A, Reganne, was delivered at 2208 with Apgars of 7 & 8. Birthweight was 1136 grams. Intubated and received Survanta. She also received Dopamine and Indomethacin for a patent ductus arteriosus. She also developed a small left choroid plexus hemorrhage and necrotizing enterocolitis. She was transferred to Children's Hospital of Pittsburgh on 12/1/02.

Baby B, Ashtyn, was delivered at 2209 with Apgars of 4 and 7. Birth weight was 1228 grams. She was also treated with Survanta and a ventilator. Other complications included Stage I retinopathy of prematurity, reflux and bronchopulmonary dysplasia. She was discharged on 1/11/03.

Failures in nursing standards of care:

1. Failure to assess for preterm labor:

In the presence of a patient's complaint of ongoing back, pelvic and groin pain, even in the absence of noticeable contractions on the EFM, the nurse should have considered the possibility of cervical change and notified Dr. Ott and repeated the cervical exam. No evaluation of the cervix was done from the initial exam at 1730 until Dr. Ott's exam at 2020. This did not meet standards of care for a preterm patient whom was already at high risk for preterm labor due to her past history of preterm labor and her present twin gestation.

Preterm labor contractions are not of the same characteristics as term labor contractions. Preterm labor can present as backache or pain, pelvic pressure or groin pressure or pain

etc. An external toco may not pick up these contractions or it is possible that that the toco needed adjusted. There is no documented attempt by the nurse to palpate for contractions. This also did not meet standards of care for a preterm patient with a twin gestation and history of preterm labor in a previous pregnancy.

The only way to definitively diagnose labor, or the cessation of labor, is to evaluate for further cervical changes, especially with the patient's complaint of ongoing pain. The only way to determine effectiveness of the terbutaline was to re-assess the cervical status. This was not done and is below the standard of nursing care. Mrs. Hale stated that her symptoms upon presenting to the hospital on 11/10/02 were similar to what she experienced with her previous preterm labor

In conclusion, I can state within a reasonable degree of nursing certainty, that the care received by Mrs. Hale and her infants fell below the accepted standards of nursing practice and contributed to the outcome of the infants.

I reserve the right to amend or supplement this report in the light of additional discovery.

Sincerely,

Patricia D. Fedorka, Ph.D.,R.N.C.

halereporthardcopysent

Magee-Womens Hospital
*of University of Pittsburgh Medical Center*

300 Halket Street
Pittsburgh, PA 15213-3180

June 8, 2007

Mr. John W. Blasko
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

Dear Mr. Blasko:

I have reviewed the following documents relative to the Hale vs. Ott case:

- Ultrasound films from 11/6/02
- DuBois Regional Medical Center outpatient testing information and monitor strips from 11/9/02
- DuBois Regional Medical Center admissions 11/10/02 – 11/13/02

Mrs. Hale is a G3P0 who was at 28 weeks' gestation with twins. On 11/6/02, Dr. Kush performed an ultrasound examination to assess fetal growth. Twin A and twin B had estimated weights of 1054g and 1058g. These weights were commensurate with the 33rd percentile and 34th percentile, for gestational age, respectively. Cervical length was not evaluated on that examination.

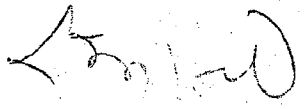
Mrs. Hale presented to DuBois Regional Medical Center on 11/9/02 with brownish discharge and lower abdominal pressure. Dr. Ott's examination indicated a cervix that was 2.5 cm long and closed and the vertex was high. The patient was observed until 1:35 pm. A repeat pelvic examination revealed a 3 cm long, closed, medium-firm posterior position cervix; the vertex remained high.

On 11/10/02 Mrs. Hale returned to DuBois Regional Medical Center complaining of increasing frequency of irregular, crampy pelvic pain. A cervical exam again revealed a closed cervix of adequate length with an unengaged vertex. The patient was treated with both subcutaneous, as well as, oral terbutaline. A repeat cervical examination 3 hours later indicated that the cervix was 3-4 cm dilated, 90% effaced and the vertex was at 0 station. The patient was, therefore, admitted for magnesium sulfate tocolyis of her pre-term labor. The patient's labor could not be inhibited and she subsequently had a cesarean section. Baby girl A weighed 1136g and had Apgar scores of 7 and 9 at 1 and 5 minutes, respectively. Baby girl B weighted 1228g and had Apgar scores at 4 and 7 at 1 and 5 minutes, respectively.

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Dr. Ott's cervical examination on the 11/10/02 admission was unchanged from the examination performed on 11/9/02. The cervical exam only began to change after her admission to the hospital on 11/10/02. It is with a reasonable degree of medical certainty that a transvaginal assessment of cervical length on 11/9/02 would not have added any additional information that would have prevented the patient's pre-term labor.

Sincerely,



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June 2, 2007

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**RE: Hale vs. Ott**

Following review of all the medical records, and given an in-depth understanding and personal experience with the spectrum of appropriate obstetric practice for patients with twin gestation in the United States, I write now to summarize my opinions and the bases for them.

**The Mother-Prenatal Care.** This case involves a patient, Angela Hale, who underwent a primary low transverse cesarean section of a twin gestation which delivered at 28 weeks despite tocolytic therapy. Ms. Hale was first seen by Dr. Ott on June 13, 2002. She had an obstetric history of a miscarriage at 4 weeks, a molar pregnancy at 3 ½ months, and a vaginal delivery of a full term child allegedly associated with episode(s) of non-progressive preterm uterine activity ("preterm labor"). Her estimated date of delivery was February 3, 2003. She had a quadruple screen drawn on August 22, 2002, which revealed a maternal serum AFP that was elevated for a singleton (2.46 MOM) but within normal range for an appropriately grown (for dates and size) monochorionic/diamnionic twin gestation per assessment by a maternal-fetal medicine sub-specialist (Dr. Kush). An amniocentesis for further evaluation was declined by the patient. Dr. Kush planned to do periodic growth scans every 3-4 weeks for this multiple gestation which is often done to evaluate the progress of twin growth and development. On October 14, 2002, Dr. Kush concluded that both twins were growing appropriately without any sign of twin to twin transfusion syndrome.

At the patient's next regularly scheduled prenatal care appointment three days after MFM Dr. Kush's evaluation, Dr. Ott's assessment of the patient's pregnancy progress was reassuring. One week later on October 24th the patient called Dr. Ott's office to complain of a yellowish discharge with an odor, itching and burning. Vaginal Metrogel was prescribed for presumptive bacterial vaginitis. Two weeks later on November 9th, Angela Hale presented to the obstetrics out-patient department with complaints of a brownish vaginal discharge and "pressure" in the lower abdomen. External fetal heart rate monitoring was initiated by nursing staff. Dr. Ott requested that

a urinalysis be performed and a cervical examination was. The cervix was closed/-3 station/long/ medium firm in consistency and posterior in position—basically normal and not suggestive at all of preterm labor. Fetal heart rates were 145-155 with accelerations as well as small variable decelerations to 130s (Fetus A) detected with very similar findings noted with Fetus B. No uterine activity, change in cervical exam, amnion rupture, urinalysis abnormalities or vaginal bleeding were detected during the period of observation. Given a completely normal set of findings and nothing to suggest incipient or established preterm labor, the patient was discharged to home with instructions for bed rest and to call Dr. Ott if there developed any non-reassuring findings such as vaginal bleeding, amnion rupture, uterine contractions, severe abdominal pain, decreased fetal movement, difficulty voiding, dysuria, or pelvic pressure. Despite lack of any evidence for preterm labor, the patient was advised conservatively to pursue modified bed rest at home (up for bathroom and meals only). Consistent with standard obstetric practice to administer steroids for fetal lung maturation only in the presence of compelling evidence that preterm delivery is highly likely to occur within the next 7 day period, appropriately it was not given.

**The Mother-Delivery.** The following day on November 10, 2002, Angela Hale returned to DRMC late in the afternoon at approximately 1645 hours with a complaint of irregular, crampy lower abdomino-pelvic discomfort. Cervico-vaginal examination performed soon thereafter at 1730 hours by the nurse revealed findings that were very similar to the previous day's exam with a closed/long cervix/unengaged first presenting twin vaginally. External fetal heart rate findings were reassuring. Despite the absence of any evidence of cervical change over the previous approximately 24-hour period, but because there were some irregular uterine contractions reported to him, Dr. Ott ordered the administration of one oral and one subcutaneous dose of terbutaline ostensibly to suppress what little uterine activity there was and presumably resolve the patient's symptoms. Any obstetrician would be expected to infer from these findings that preterm labor was unlikely, but further observation to substantiate this impression would be appropriate and evidence of careful, conservative management prior to discharge home. Like the day before, at this point there were no compelling findings to warrant tocolysis for preterm labor or corticosteroid administration for the enhancement of fetal lung maturation. Tocolytic agents are only to be used for patients in preterm labor and should be used judiciously because of their risks in pregnant multiples, especially when combined with steroids and intravenous fluids (increased risk of developing maternal pulmonary edema/respiratory distress).

After observation it was noted at approximately 8 PM that the patient was having some uterine activity and complained of pain. Dr. Ott came to the hospital and his examination revealed the surprising finding of considerable cervical change and progression (3-4 cm dilation, 90% effacement, O station). A diagnosis of preterm labor was now appropriately made for the first time in association with intact amnion and no visible bleeding. Management for preterm labor was expedited appropriately with tocolysis by magnesium sulfate and corticosteroids were given to enhance fetal lung maturation. In the absence of an underlying infection/abruption to cause tumultuous,

rapidly progressive pre-term labor that would not be expected to respond to such treatment, an OBGYN in this set of circumstances would reasonably anticipate a positive patient response to tocolysis/hydration with a cessation of uterine contractions.

Ultrasound confirmed Fetus A to be presenting vertex and Fetus B to be breech in presentation. Fetal heart rate monitoring for both fetuses was reassuring. If preterm labor would not respond to tocolysis, cesarean delivery was planned after appropriate counseling of the parents in lieu of one preterm twin malpresentation. The Hales were fully apprised of the risks, benefits and alternatives. Personnel in the Neonatal Intensive Care Unit were notified of the patient's admission. Consistent with the very rapid onset and progression of preterm labor, the patient progressed quite rapidly to a cervical dilation of 7cm at 2117 hours despite appropriately administered tocolytic therapy. Thus primary low segment cesarean delivery of the twin girls was undertaken, Twin A (Reganne) weighing 1,136 grams (Apgars 7,9) and Twin B (Ashtyn) weighing 1,228 grams (Apgars 4,7). An explanation such as overt infection or a placental abruption of sufficient severity for the tumultuous preterm labor was not evident at surgery.

**Neonate-Infant Twin A REGANNE.** Both twin newborns were immediately assessed and managed at birth by NICU personnel at DRMC. One twin fared worse than the other, suggesting that whatever placental disturbance was present affected the twins differently. Twin A (Reganne) was intubated and received surfactant after exhibiting grunting and labored respiration. She was also placed on a ventilator and administered dopamine for blood pressure support and indomethacin for closure of a patent ductus. Ventilator therapy was required until November 27, 2002. She was being fed both intravenously and through a transpyloric tube on December 1, 2002, when she exhibited signs of poor tissue perfusion. A diagnosis of necrotizing enterocolitis was made; re-intubation was necessary with transfer to the Children's Hospital of Pittsburgh. Discharge diagnoses at the time of transfer included prematurity, respiratory distress syndrome, jaundice of prematurity, a small left-sided carotid plexus hemorrhage and necrotizing enterocolitis.

On November 15, 2002, an ultrasound at Children's revealed a left-sided grade I intracranial hemorrhage. Unfortunately, follow-up sonography on December 6, 2002 revealed a Grade III intracranial hemorrhage on opposite right side. Subsequent follow-up ultrasounds on December 17, 2002 revealed no change, and, on December 20, 2002, it showed a resolving Grade III right-sided intracranial hemorrhaging and cystic PVL (periventricular leukomalacia) involving the left frontal and right frontal parietal regions. A neurosurgery consultation recommended no intervention in the absence of increasing head circumference. On December 24, 2002, Reganne was back-transferred to DRMC. Following further therapy for bronchopulmonary dysplasia (BPD) and stage 1 retinopathy of prematurity in the left eye, she was discharged on January 11, 2003, to be followed in the Developmental Clinic, and by Children's Hospital Neurology.

Reganne was seen as an outpatient at Children's Hospital on February 20, 2004 at which time she was considered to have mild spastic diplegic cerebral palsy as a likely consequence of her premature birth. Concern was expressed that Reganne might have other developmental delays which could not be accounted for by the mild degree of cerebral palsy. Presently she has development behavior problems consistent with a diagnosis of autistic spectrum disorder (ASD) complicated by cerebral palsy and limited communication skills. She exhibits more autistic behaviors on a regular basis than her twin sister Ashtyn.

**Neonate-Infant Twin B Ashtyn.** Twin Ashtyn like her sister was also admitted immediately at birth to the NICU on November 10, 2002 and placed on assisted ventilation. Surfactant was administered. Diagnoses for her admission included stage I retinopathy of prematurity, apnea, brochopulmonary dysplasia (BPD), gastroesophogeal reflux and closure of her patent ductus arteriosus. Ashtyn was discharged two months after admission with an apnea monitor and follow-up to include her pediatrician (Dr. Siar), the Development Clinic and the Apnea Reflux Clinic. Like Reganne, Ashtyn has developmental and behavior issues. She has been diagnosed with pervasive development disorder NOS which indicates that some of her behavior factors are also indicators of an autism spectrum disorder. She has problems in social skills, eye contact and reciprocal behavior, sensitivity to sounds, stress and commotions.

**Expert Opinions.** Based on the above, I hold the following opinions:

1. Dr. Ott's obstetrical practice for Ms. Hale's twin pregnancy and delivery was well within the spectrum of the standard of accepted and recommended care for the circumstances of this case—there is not a single standard in place.

2. As an appropriate response to the NIH recommendation for obstetric practice that all women *in preterm labor* (24-34 weeks) who have no contraindications to steroid use be given one course of steroids, Dr. Ott ordered this intervention and gave the first injection very soon after the diagnosis of preterm labor was first made.

3. Since only a small fraction of twin gestations in the United States deliver prior to 32 weeks gestation, and since Ms. Hale failed to meet criteria to merit a diagnosis of preterm labor prior to almost 2000 hours on the night of delivery, earlier administration of corticosteroids that day or the day preceding for fetal lung maturation purposes was neither recommended nor required to meet the standard of obstetric care for this pregnancy. As usually taught, the practitioner should anticipate that a patient is at sufficient risk of delivering within the next 7 day period to warrant initiation of steroids for the enhancement of fetal lung maturity.

4. Tocolytic therapy is generally indicated for patients with a diagnosis of preterm labor (good evidence of progressive cervical change such as dilation and effacement in association with repetitive uterine contractions), NOT preterm uterine activity. There is a considerable difference of opinion and difference of practice regarding the elective use of tocolytic agents in patients who do not meet criteria for the diagnosis of preterm labor. To assert that tocolytics should have been started earlier and to have not done so is a deviation from the standard of care is erroneous and misrepresentative of the lack on consensus on this issue. Obstetricians are properly warned that tocolytic therapy should be used judiciously in multiple gestations, especially since no evidence exists to support the use of tocolytic therapy in women with contractions but no cervical change.

5. The length of time for observation of a preterm multiple gestation patient possibly in the very early stages of uterine activity that might later merit a diagnosis of preterm labor is individualized to the patient and her circumstances, and not cast in stone. The point is to observe long enough to be assured that uterine activity and cervical change is non-progressive (ie, not in labor). Obviously this patient was not in labor on November 9, and obviously she was not in labor on November 10 until sometime between 1900 and 2000 hours when uterine activity increased and cervical change to a dilation of 4cms suddenly occurred. This would not be predicted based on the exam several hours earlier of an unripe cervix.

6. Although the obstetric care provided to this patient was identical for both twins, the outcomes were different. The same maternal therapies and timing were applicable to both twins. Clearly the factor(s) which led to the tumultuous preterm labor that was unresponsive to tocolysis and the complications suffered by both twins are related, suggesting to this evaluator that some form of placental insult/disturbance impacted both twins to different degrees. Dr. Ott's potential use of fetal fibronectin or ultrasound cervical length assessment would not reasonably alter the outcome of this case in which there was (1) a rapidly changing cervix and (2) a quickly accelerating labor process unresponsive to tocolysis administered at a stage when most patients would be expected to have a slowing and stoppage of preterm labor.

7. This patient had one definite risk factor for preterm labor: a twin gestation. The history of some alleged preterm uterine activity in a prior singleton pregnancy which was NOT associated with a preterm delivery is not universally considered a risk factor for preterm labor in a subsequent pregnancy. The identification of risk factors, whatever they are, so far has not lead to the development of effective protocols or therapies to prevent preterm delivery. What the individual obstetrician does with the knowledge of such risk factors is open to individual response and unique patient circumstances, not standard practice.

8. The finding of an unfavorable, unripe relatively undilated and uneffaced cervix in this patient's case prior to 1900-2000 hours on November 10th does not support a strong likelihood of subsequent preterm labor which would be expected to elicit a spectrum of response from any selected sampling of OB practicing physicians.

9. Use of an alternative tocolytic agent to magnesium sulfate would not reasonably be expected to alter the outcome of this twin gestation in tumultuous preterm active labor.

10. The findings of multifocal ischemic villous changes in the twin placentas with evidence of an ongoing obliterative vasculopathy are indicative of an established placental disease process that probably was (a) present and progressive for some time in order to be detected pathologically, (b) highly likely to be directly related to the onset of premature labor through a mechanism(s) of worsening uteroplacental blood flow to guarantee placental sufficiency, and (c) reasonably expected to be unaffected and unresponsive to any attempt at arrest or reversal by administering the mother medications to suppress uterine contractility (tocolysis).

11. It is VERY UNLIKELY that the autism disorders seen in these twins to variable degrees are related to the obstetric issues in this case. Autism is a neurodevelopmental disorder of unknown etiology. There is convincing evidence of genetic factors in the development of autism, a very complex disorder. Since the specific genetic and other relevant factors important to autism occurrence are incompletely understood, it is difficult to counsel couples about causation and recurrence issues—but there is no compelling evidence that I know of to associate obstetrics and autism as cause and effect. Any obstetric adversity such as premature delivery in this case either represents an epiphenomenon of the condition or derives from some shared factor(s).

I hold all of the above opinions to a degree of medical certainty, based on my considerable experience as an obstetrician and maternal-fetal medicine subspecialist for many years, my experience as a board examiner for ABOG, my knowledge which enables me to teach medical students, residents and fellows about the relevant issues of this case, and my continuing education involving current and applicable obstetric literature about these things.

Yours sincerely,

James N. Martin, Jr., MD

BRIGHAM AND WOMEN'S HOSPITAL

HARVARD MEDICAL SCHOOL

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Department of Obstetrics and Gynecol
Division of Maternal-Fetal Medicine

**Medical Opinion Regarding the Medical Care Provided in the Case of Hale vs Ott by Julian N. Robinson M.D., on behalf of Mr Blasko.**

**Case Summary.**

**Angela Hale.**
Date of birth: 8/9/76, 26 years old at estimated date of confinement and actual pre-term delivery date.

Obstetric History.
Gravida 4, para 1.
First trimester miscarriage in 1995 addressed with a dilatation and curettage.
Term vaginal delivery of a 6lb 7 oz baby in 1996. This pregnancy was complicated by preterm contractions at 33 weeks when the patient presented with uterine contractions and a finding of one cm dilated cervix. Tocolysis (terbutaline 1.25 mgs po q 4 hours) was given. Final delivery was at 38 weeks.
A molar pregnancy in 1999 was evacuated by dilatation and curettage.

Current pregnancy.
LMP 4/28/02.
EDD 2/3/03.

Prenatal Diagnosis:
Elevated maternal serum AFP. A consultation with a Maternal Fetal Medicine specialist (Dr Kush) was obtained. At this appointment (approximately 18 weeks) the pregnancy was found to a monochorionic, diamniotic twin gestation. Amniocentesis was offered and declined. The plan was for regular follow-up at 3-4 week intervals.

Antenatal Office Care:
Six antenatal office visits (6/13, 7/18, 8/22, 9/19, 10/17, & 10/31).
Weight gain: 25 lb cumulative weight gain at 31 weeks, appropriate for twins.
BP: 106-130 / 70-82.
Urinalysis: normal throughout.
Normal fetal heart tones and fundal height appropriate for twins at all visits.
The only significant complaint was a yellowish vaginal discharge with an odor and itching. treated with metronidazole

Antenatal Laboratory Investigations:

Blood group A Rh negative, negative antibodies, Rubella immune, RPR negative, HbsAg, negative, Pap. smear normal, UA negative.

Medication / Drug History.
Folate / Fe $SO_4$.
No known drug allergies

Past Medical History.
Unremarkable (history of irregular heart beat, sinus tachycardia on prior preterm delivery).

Past Surgical History.
Dilatation and curettage x 2.

Family History.
Diabetes in maternal aunts and uncle.
Cystic fibrosis screening declined.

Physical Examination.
Vital signs normal. Normal examination of chest, abdomen and pelvis at first antenatal visit (6/13/02).

Ultrasounds.
6/13/02: 5 week intrauterine pregnancy – too early for fetal poles to be seen.
9/11/02: Monochorionic, diamniotic twin gestations at 18 weeks with anterior placenta and normal anatomy survey for both twins.
10/9/02: 23 weeks, normal biometry with no signs of twin to twin transfusion.
11/07/01: 27+3 weeks, normal interval growth of both babies with no signs of twin to twin transfusion.
Cervical length in not recorded in the ultrasound reports in the record and cannot be elucidated by the poor quality reproductions of the images in the chart.

Preterm Labor and Delivery.

11/9/02:
The patient presented at 12:10 hours at 28 weeks with a twin pregnancy complaining of brownish discharge and pressure in the lower abdomen.
No subjective complaint of contractions.
Afebrile (T = 99.1°F), pulse = 110 – 115, BP = 115 – 149/76 – 91, Respiratory rate = 20.
Clean catch sent which was reported as cloudy, with moderate occult blood, 10-15 WBCs, negative for nitrites and leucocytes. Analysis showed 4-6 WBCs per HPF, 40-45 epithelial cells and 3+ bacteria. It was sent for culture. Final culture result showed 100,000 lactobacillus consistent with normal female uro-genital flora.

No contractions noted at first and irregular contractions noted while the patient was drinking and off monitoring. Small decelerations noted but 2-5 seconds long in otherwise reassuring fetal heart strips (not significant on review of the fetal heart strips).
12:10 hours: cervix 2.5 cms, closed and high (see screening visit record).
15:15 hours: no change in cervical examination Cervix closed and 3 cms long, medium firm, high and posterior (see screening visit record).
The patient was discharged home on modified bed rest with written instruction of signs and symptoms to look for. It is recorded that she was told to call her MD for follow-up appointment for Tuesday Nov 12th 2002

Review of cardiotocogram.
The fetal heart traces are appropriate for gestational age. The tocogram shows irregular contractions.

11/10/02:
The patient presented at 16.45 hours at 28 weeks gestational age, complaining of uterine contractions every 5 minutes.
Afebrile (T = 99°F), pulse = 96-116 – 115, BP = 130-137/80-86, Respiratory rate =18-20.
On palpation contractions mild and irregular. She was also complaining of back pain.
16.50 hours: verbal order from Dr Ott to give 0.25 mg terbutaline Sub Q and repeat x 1 (see physician order sheet for 11/10/02).
17:30 hours: on examination no change since the examination on 11/9/07 (cervix closed and 3 cms long, medium firm, high and posterior).
18.05 hours: terbutaline 5 mgs to be given po and repeat x 1 (see physician order sheet for 11/10/02)
19.46 hours: patient complaining of pain in back that radiates to lower abdomen (see admission sheet).
20.00 hours: patient requesting pain medication (see admission sheet).
20:20. hours: examination by Dr Ott revealed the patient to be 3-4 cms dilated, 90% effaced and at zero station (see admission sheet and dictated admission record).

Patient admitted to hospital.
$MgSO_4$ prescribed (6 mgs bolus, then 4 gms per hour i.v.[see order sheet]).
Steroids given (12.5 mgs now and to be repeated in 24 ours [see order sheet]).

21:17 hours: patient complaining of rectal pressure, the cervix was found to be 7 cms dilated, decision for caesarean delivery (see dictated note of 11/10/02 at 21;17).
22:15 babies delivered by caesarean delivery. Unremarkable operation regarding surgical events.

Twin A: female, 1136 gms Apgars 7 & 8.
Twin B: female; 1228 gms Apgars 4 & 7.

Review of cardiotocogram.
Feat heart traces (intermittently recorded) appropriate for gestational age and on $MgSO_4$ therapy). No signs of fetal distress. Tocogram shows very irregular uterine activity but throughout most of it uterine activity is nor recorded.

Placental pathology.
Hospital pathology report unremarkable.

Expert review states that there are histological findings suggestive of uteroplacental insufficiency of 2 to 3 days duration.

Post-partum Maternal Course.
Unremarkable.

**Salient Points.**
No cervical change between the vaginal examination at the first presentation on 11/9/02 at 12:10 hours and that on the following day at 17:30 hours, a total of 29 hours and 20 minutes with no cervical change.

Tocolysis with terbutaline 0.25 mgs Sub Q was first ordered at 16:50 (3 hours and 30 minutes before the first cervical change was noted. Terbutaline was ordered at a dose of 5 mgs po at 18.05 hours (still 2 hours and 15 minutes before cervical change was noted).

When cervical change was noted at 20:20 hours, tocolysis was commenced with $MgSO_4$ and steroids were given.

**Medical Opinion.**
I have reviewed the care provided by Dr Ott. I have not commented on the pediatric course as it is not within my area of expertise. It is my firm opinion that the medical care given by Dr Ott was well within the standard of care. I think this is optimally addressed by highlighting a few discussion points.

Firstly it is seen that the patient was managed appropriately when she first presented with a non-specific complaint ("vaginal discharge and pressure in the lower abdomen"). She was assessed, relevant investigations were carried out (examination, external fetal monitoring and urinalysis), and she was observed over a period of 3 hours and five minutes. She was discharged home with pertinent instructions and appropriate follow-up appointment.

When she presented the following day she again had appropriate assessment and observation and at this visit, preterm labor was diagnosed and treated appropriately (observation, tocolysis, administration of steroids and fetal monitoring). When she was established to be the active phase of labor a caesarean delivery was performed.

When is the most appropriate time to carry out tocolysis? Tocolysis is given with the diagnosis of preterm labor. It takes both the finding of uterine activity and cervical

change to give the diagnosis of preterm labor. To put this area in perspective, it should be noted that regular and even regular painful contractions are often normal in pregnancy (called Braxton-Hicks contractions after the Guy's Hospital obstetrician who documented the phenomenon over a century ago). The medical literature shows they occur in approximately 20 - 25% of normal pregnancies. The management of these contractions is vaginal examination to establish if there is cervical change and therefore distinguish whether they are physiological or pathological. In this case, on the first presentation and at the beginning of the second presentation, there was no cervical change and therefore the diagnosis of preterm labor was not made and administration of tocolysis would be unindicated. No drug is without side effects and all drugs should be used judiciously. I have numerous patients in my practice who contract regularly throughout their pregnancy with no cervical change. It would not only be poor practice to put all patients with regular contractions and no cervical change on tocolysis, it would put a considerable number of women and their babies at risk of complications of the drugs. In particular it is clearly recognized that tocolysis should be used carefully in twins as complications are more likely (maternal pulmonary edema in particular), especially when used in combination with steroids. In any case even if it is felt that tocolysis should have been used earlier, it is seen from the medical orders that terbutaline was in fact prescribed before cervical change was documented both 3 hours and thirty minutes (Sub Q) and again at 2 hours and 15 minutes (po) before cervical changes was demonstrated on vaginal examination. The observation that the terbutaline was ineffective is addressed later in a discussion of the lack of efficacy of all tocolytic drugs.

Should the patient have been treated differently as she had a history of preterm contractions in a prior pregnancy and a twin pregnancy this time? Certainly she was at higher risk of preterm labor, however the care given to her was entirely appropriate. Indeed this was a monochorionic twin pregnancy and therefore she was already being followed closely by both her primary obstetrician as well as a Maternal Fetal Medicine specialist. Neither prior preterm pregnancy nor a current twin gestation would change the clinical indication for tocolysis or administration of steroids.

Should she have been observed for longer on the first presentation of 11/9/02? Since there was no cervical change from her first assessment to her presentation the following day (a period of 29 hours and 20 minutes between examinations), a period of longer observation would have been futile.

Should steroids have been given earlier? It should be remembered that this event occurred in 2002. At this time there was a lot of debate about the potential complications of steroids. There was prominent medical research suggesting that recurrent use of steroids could lead to long term side effects for the offspring. The complication suggested was that of growth restriction, particularly of the head and brain. Indeed the National institute of Health held a consensus meeting in 2001 which recommended antenatal steroids should be used very cautiously and there administration should be limited to one course. This led to more parsimonious use of this drug at that time. In this light it is seen that it was entirely appropriate to wait for firm evidence of preterm labor, namely cervical change, before administration of steroids. Indeed it is interesting that there is

recent research that suggests that antenatal steroids may actually increase the risk of cerebral palsy in children who are exposed to the drug antenatally.

Should a test for fetal fibronectin have been performed to see if preterm delivery was more or less likely? Fetal fibronectin tests are commonly used today, however they were certainly not within the standard of care in 2002. They did not start to be used with any regularity in my own hospital until 2003. However, it should be recognized that even if used they only provide information on the likelihood of delivery and do not change the outcome in any way. It is important to realize that the presumption of the management of preterm labor is that there is an effective treatment. An evidence based medical review of the literature clearly concludes that we have no effective treatment to stop preterm labor. The use of tocolysis by physicians is merely a well meant attempt to be proactive in a setting where the outcome can be of devastating consequence. However, it is seen from the literature that no tocolytic treatment works. Evidence based review shows no benefit, randomized trials have shown no benefit and indeed despite the introduction of many tocolytic drugs the incidence of preterm labor and delivery has actually increased in the North of America over the last 30 years. I would be happy to present a plethora of literature to underline the last points and it is well recognized that the medical literature is replete with such evidence.

Should an ultrasound have been carried out to assess if there was cervical change? It is true that ultrasound can show shortening or opening of the cervix from within and can therefore be a more accurate predictor of preterm delivery. However again I do not consider it within the standard of care in 2002 (especially in the acute setting) and again in the absence of an effective treatment of preterm the investigation is redundant.

Another important point is to draw attention to the expert analysis of the placenta which suggests there was utero-placental insufficiency of significant duration. This is a notable finding. It can be simplistic to think that preterm labor is always a bad thing and must be treated. On some occasions it is actually an effective way of nature delivering the baby from a hostile environment. We see this when treatment of preterm labor is contraindicated in the presence of bleeding or fetal distress. It should be considered that the body's innate systems may have recognized utero-placental insufficiency and it is possible that labor was addressing this in an appropriate fashion.

In conclusion, I feel that the management of this case by Dr Ott was entirely appropriate and well within the standard of care. The outcome is indeed distressing, but unfortunately to date the medical community has no effective treatment for preterm labor and for this reason the condition continues to be the greatest challenge of modern obstetrics and is the subject of considerable research. I would be agreeable to providing further analysis of this case if desired.

6/14/07

# Magee-Womens Hospital

*of UPMC Health System*

Womancare Associates
*Allegheny*

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Deborah Sommer, M.D.
2635 Fountain Hills Dr.
Wexford, PA 15090
October 20, 2006

John W. Blasko, Esquire
811 University Dr.
State College, PA 16801-6699

Dear Attorney Blasko,

In response to your requests that I review the records of Hale vs. Ott and determine whether or not Dr. Ott met the proper standard of care for an obstetrician-gynecologist, I have reviewed the following information:

1. Records from D.R.M.C., Dr. Gary Ott, and Dr. Michael Kush
2. Depositions of Dr. Gary Ott, M.D., Dr Michael Kush, M.D., Kathryn Raybuck, R.N., and Desiree Fremer, R.N.
3. Medical Records from various sources of Reganne (Baby A), and Ashtyn (Baby B). D.R.M.C., and Children's Hospital of Pittsburgh (Reganne)
4. Expert Letters: Dr. Robert McDowell Jr., M.D., Dr. Robert Atlas, M.D., Dr. Mark Epstein, M.D., and Patricia Fedorka.

The following is a summary:

Angela Hale is a 26 year-old G4P1021 with a history of previous vaginal delivery at term who was seen for her initial obstetrical visit 6/13/02 at 6+ weeks gestation. Her pregnancy was complicated by a twin gestation, and elevation of MSAFP-Multiple Marker Screen. An amniocentesis was offered, and a level II ultrasound was scheduled with Dr. Kush for 9/10/02.

Dr. Kush, a Maternal Fetal Medicine Specialist, saw Mrs. Hale on 9/10/02, 10/9/02, and 11/7/02. He did a level II ultrasound on 9/10/02, found a monochorionic diamniotic twin gestation appropriately grown for gestational age and suggested periodic OB growth scans every 3-4 weeks. These were performed 10/9/02 and 11/7/02 (at 27 3/7 weeks gestation). His note of 11/7/02 states "The patient denies any significant problems or symptoms since her last visit approximately 3 weeks ago." Normal interval growth was noted, and a follow-up scan in 3-4 weeks was planned.

Angela's last office visit with Dr. Ott during her pregnancy was 11/3/06 and was unremarkable.

The patient was seen in D.R.M.C. on 11/9/02 presenting with "brownish discharge and pressure in the lower abdomen" at 28 weeks gestation. Her cervix was closed /3 cm. long/ medium firm, high, and posterior. She initially had irregular contractions. By 2 P.M. contractions were recorded as absent, the cervix was unchanged, a urine culture was sent and FHR tracings reactive. Angela was discharged to home for pelvic rest, bed rest with bathroom privileges, and given precautions as noted. She was to have a short term follow-up visit in the office 11/12/02.

Angela returned to D.R.M.C. the following day complaining of increasing frequency of irregular, cramps, and pelvic pain. Repeat cervical exam at 17:30 showed the cervix to still be closed with adequate length and an unengaged vertex (no change from the previous exam). The patient was given subcutaneous and oral terbutaline for symptomatic relief although there was no indication for tocolysis due to the absence of cervical change.

The plan was to discharge the patient to home but due to the patient's complaints of increasing intensity of contractions, she was "kept" and a repeat exam by Dr. Ott showed her cervix to be 3-4 cm. dilated, 90% effaced, and 0 station. Magnesium Sulfate to tocolysis was ordered as were betamethasone and IV fluid as per Dr. Ott's note at 9 PM. By 9:17 PM the patient complained of rectal pressure and was found to be 7 cm. dilated and a cesarean section was advised due to Baby B being in a breech position. A low transverse cesarean section was performed and the outcome was:

Baby A, vertex 1136 gms., apgars 7/9
Baby B, breech 1228 gms., apgars 4/9

The patient was discharged to home 11/13/02 after an uncomplicated post-op course and was subsequently seen by Dr. Ott 12/23/02: no problems were noted at that time.

Reganne (Baby A) was discharged 12/1/2002 and noted to have prematurity, respiratory distress syndrome, patent ductus, arteriosis-resolved, jaundice of prematurity, a small choroid plexus hemorrhage on the left and necrotizing enterocolitis. She was transferred to Children's Hospital due to necrotizing emterocolitis and was readmitted to D.R.M.C on 12/24/02, noted to have grade one intraventricular hemorrhage, paraventricular leukomalacia, had stable ultrasounds and was discharged to home 1/11/03 for out patient follow-up.

Ashtyn was discharged from D.R.M.C. on 1/11/03 with discharge diagnosis: prematurity, Stage I retinopathy of the premature, apnea of prematurity GE reflux, and patent ductus arteriosis-resolved.

After a review of the medical information I feel that although both Reganne and Ashtyn have both unfortunately had complications related to their prematurity, and may also have autism or a related disorder, that there were no breaches in the standard of medical care provided by Dr. Ott..

The patient had a twin gestation and delivered prematurely which is a known complication of twin gestations.

Although the patient was admitted and carefully monitored on 11/9/02, she had preterm contractions with no cervical change, so by definition this was not labor. She was given preterm labor precautions, advised bed rest with bathroom privileges and advised a short-term follow-up office visit. Dr. Ott did everything a conscientious physician should have done. There was no medical reason to admit her to the hospital on 11/9/02.

When the patient returned the next day, her cervix still had not changed, again confirming that at that time she was not in preterm labor. Labor by definition is contractions strong and regular enough to cause cervical change: dilation and effacement.

Again, Dr. Ott prescribed terbutaline, both subcutaneous and oral, to try to stop the contractions and help them subside to provide comfort for the patient. Despite this, the patient became more uncomfortable, was found to be in preterm labor as evidenced by cervical change to 3 cm. dilation, and tocolysis with magnesium sulfate was ordered. Despite this, labor progressed rapidly and Dr. Ott did a cesarean section as soon as the failed tocolysis was confirmed. Both babies were delivered with the neonatal staff present. Apgar scores were good and they were both taken to NICU.

In short, Dr. Ott certainly provided excellent medical care during Mrs. Hale's pregnancy, especially by referring her to Dr. Kush, an MFM specialist when her multiple marker screen was elevated; she had a consultation and follow-up ultrasounds performed by Dr. Kush. He also was very conscientious in regards to her assessments, labor, and delivery, and postpartum care.

I recently reviewed the expert letters above, and would like to add some additional responses to their comments.

1. Concerns by Dr. Atlas:

   On 11/9/02 contractions were not recorded appropriately. Sometimes monitoring is difficult, however, even if there were contractions there was no cervical change and therefore no preterm labor.

   He also mentions fetal fibrinectin and cervical length. Although the fetal fibrinectin is currently used, and cervical length occasionally, but certainly not routinely cervical assessment even in preterm patients is done by exam and this was done appropriately.

2. Longer observation on 11/09/02. This was not indicated. There was no evidence of dilation. Even when the patient came back the next day there still had been no cervical change.
3. Dr. Atlas questions the exam. There is no reason to think that an experienced nurse who routinely does cervical exams which are not would be "wrong".
4. Dr. Cetrulo opines: Ms. Hale should have been started on tocolytics simply because of contractions on the monitor without cervical change. He states both tocolysis and betamethasone were indicated. This is certainly not the case; tocolysis is only indicated for preterm labor with documented cervical change, not every person with preterm contractions. There is a potential morbidity to the mother with the use of these medications. In retrospect, we know there was no indication for prolonged monitoring, because as noted above there was no cervical change, even by the next day.
5. Dr. Cetrulo also states that the order for terbutaline for pain management makes no sense. In fact it makes sense because it was ordered to provide symptomatic relief (relief of discomfort or pain of contractions) and we do use it commonly as a subcutaneous/oral dose for this reason.
6. Dr. Cetrulo's comment that Dr. Ott should not merely have assumed he would have heard from the nurses is certainly incorrect. This is a stable patient with no cervical change from the previous day, and an exam which shows no dilation and no change would not necessitate a repeat exam in less than three hours.
7. Finally, regarding comments from Dr. Cetrulo regarding complications of prematurity unfortunately suffered by the twins. Steroids might have helped, however, they were not indicated on 11/9/02 and if given as they were on 11/10/02 they would not have had enough time to be effective.
8. In regards to Dr. Epstein's comment "had the birth been delayed by the use of tocolysis... etc." My comment would be that tocolysis was administered when it was medically indicated at three cm. dilation and it failed to stop the labor which rapidly progressed anyway. Unfortunately our NICU is filled with babies who delivered prematurely and unfortunately have subsequent problems related to complications of prematurity.

In my opinion, Dr. Ott's care of Mrs. Hale did not show a departure from good and accepted standards of medical care: I give my opinion with a reasonable degree of medical certainty.

Sincerely, Deborah Sommer MD

Deborah Sommer M.D.
Assistant Professor of Clinical Medicine
Medical University of Pgh. Medical Center.

Medical Professional Liability Action

| Date | | Judge |
|---|---|---|
| 3/16/2005 | New Case Filed. | No Judge |
| | Filing: Civil Complaint - Medical Professional Liability Action Paid by: Cohen, Harry S. (attorney for Hale, Angela) Receipt number: 1897626 Dated: 03/16/2005 Amount: $85.00 (Check) | No Judge |
| | Certificate of Merits to all Defendants in Complaint. | No Judge |
| 3/31/2005 | Praecipe For Entry of Appearance, filed on behalf of Defendant Gary D. Ott, M.D. by s/ John W. Blasko, Esquire. No CC | No Judge |
| 4/1/2005 | Certificate of Service, copy of Defendant Ott's Request for Production (set two) directed to plaintiffs, to Harry S. Cohen, Esquire, and David R. Johnson, Esquire, on March 31, 2005. Filed by s/ John W. Blasko, Esquire. No CC | No Judge |
| | Certificate of Service, copy of Defendant Ott's Expert Interrogatories directed to plaintiffs, to Harry S. Cohen, Esquire, and David R. Johnson, Esquire, on March 31, 2005. Filed by s/ John W. Blasko, Esquire. No CC | No Judge |
| | Certificate of Service, copy of Defendant Ott's Request for Production (set one) directed to plaintiffs, to Harry S. Cohen, Esquire, and David R. Johnson, Esquire, on March 31, 2005. Filed by s/ John W. Blasko, Esquire. No CC | No Judge |
| 4/8/2005 | Praecipe For Entry of Appearance, filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, filed by s/ David R. Johnson, Esquire. No CC | No Judge |
| 4/15/2005 | Plaintiff's Objection to Subpoenas, filed by s/Todd D. Bowlus, Esquire. No CC | No Judge |
| 4/18/2005 | Certificate of Service, Defendant Ott's Notice of Intent to Subpoena and Subpoenas directed to Children's Hospital of Pittsburgh, on the 12th day of April, 2005 to Harry S. Cohen, Esquire, and David R. Johnson, Esquire. Filed by s/ John W. Blasko, Esquire. No CC | No Judge |
| 4/19/2005 | Sheriff Return, March 18, 2005 Served The Within Complaint on Michael J. Kush, M.D. March 18, 2005 Served The Within Complaint on Maternal Fetal Medicine of DuBois Regional Medical Center. March 18, 2005 Served The Within Complaint on Gary D. Ott, M.D. March 31, 2005 Served The Within Complaint on Yoo, Tai, Y., M.D. March 18, 2005 Served The Within Complaint on DuBois Regional Medical Center. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm. | No Judge |
| 4/25/2005 | Notice of Praecipe to Enter Default Judgment Against Defendant Yoo, Tai Y., M.D., P.C., filed by s/Harry S. Cohen, Esq. No CC | No Judge |
| | Notice of Praecipe to Enter Default Judgment Against Defendant Maternal Fetal Medicine of DuBois Regional Medical Center, filed by s/Harry S. Cohen, Esq. No CC | No Judge |
| | Notice of Service of Plaintiffs' First Set of Interrogatories Directed to Defendant Michael J. Kush, M.D., filed by s/Harry S. Cohen, Esq. No CC | No Judge |
| | Notice of Service of Plaintiffs' First Set of Interrogatories Directed to Defendant Gary D. Ott, M.D., filed by s/Harry S. Cohen, Esq. No CC | No Judge |
| 4/26/2005 | Motion to Strike Plaintiffs' Objection to Subpoenas, filed by s/John W. Blasko, Esq. No CC | No Judge |

Medical Professional Liability Action

| Date | | Judge |
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| 4/29/2005 | ✓ Rule To Show Cause, AND NOW, this 28th day of April, 2005 a Rule is issued to show cause why the Defendant Gary Ott, M.D.'s motion to Strike Plaintiffs' Objection to Subpoenas should not be granted. Rule returnable the 18th day of May, 2005 in Courtroom 1 at 2:00. BY THE COURT /s/ Fredric J. Ammerman, President Judge. 1CC Atty Blasko | Fredric Joseph Ammerman |
| 5/11/2005 | ✓ Plaintiff's Answer to Defendant Gary D. Ott, M.D.'s Motion to Strike Plaintiffs' Objection to Subpoenas. filed by s/ Todd D. Bowlus, Esquire No CC | Fredric Joseph Ammerman |
| 5/16/2005 | ✓ Stipulation To Voluntarily Dismiss One Defendant and to Amend Caption, filed by s/Todd D. Bowlus, no cc. | Fredric Joseph Ammerman |
| 5/20/2005 | ✓ Order, NOW, this 18th day of May, 2005, following argument on Defendant Gary D. Ott, MD's Motion to Strike Plaintiffs' Objections to Subpoenas, it is hereby ORDERED as follows:<br>1. Plaintiffs' Objection to Defendants' subpoenas directed to the Children's Hospital of Pittsburgh and UPMC-Children's Hospital are hereby stricken; and<br>2. The defendant is hereby permitted to immediately serve said subpoenas and/or convene such record depositions as may be necessary to timely obtain the subpoenaed records. BY THE COURT: /s/ Fredric J. Ammerman, President Judge. 2CC Attys: Cohen, D. Johnson, Blasko, Bowles. 1CC Dr. Yoo | Fredric Joseph Ammerman |
| 5/23/2005 | ✓ Notice of Deposition of Defendant Gary D. Ott, MD with Subpeona Duces Tecum, filed by s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| | ✓ Certificate of Service, Answers to Plaintiff's First Set of Interrogatories served upon Harry S. Cohen, Esq., Todd D. Bowlus, Esq., David R. Johnson, Esq. Filed by John W. Blasko, Atty. No CC | Fredric Joseph Ammerman |
| 5/24/2005 | ✓ Affidavit of Service, Copy of Judge Ammerman's May 18, 2005 Order, served upon Harry S. Cohen, Esq. and Todd D. Bowlus, Esq., Harry S. Cohen & Associates, P.C. Filed By John W. Blasko, Esq. No CC | Fredric Joseph Ammerman |
| 6/1/2005 | ✓ Answer with New Matter to Plaintiffs' Complaint, filed by s/ John W. Blasco, Esquire. NO CC | Fredric Joseph Ammerman |
| 6/3/2005 | ✓ Notice of Service of Plaintiffs' First Request For Production of Documents to Defendant DuBois Regional Medical Center, on June 1, 2005 served upon John W. Blasko, Esquire, and David R. Johnson, Esquire. No CC | Fredric Joseph Ammerman |
| 6/8/2005 | ✓ Answer And New Matter, filed by s/ David R. Johnson, Essquire. No CC | Fredric Joseph Ammerman |
| 6/9/2005 | ✓ Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22, filed by s/ John W. Blasko, Esquire. No CC | Fredric Joseph Ammerman |
| 6/10/2005 | ✓ Plaintiffs' Reply to New Matter Filed on behalf of Def. Gary D. Ott, M.D. By s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| | ✓ Notice of Service of Plaintiffs' Answers to Defendant Michael J. Dush, M.D.'s First Set of Interrogatories, served on the 8th day of June, 2005 upon John W. Blasko, Esquire, and David R. Johnson, Esquire. Filed by s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| | ✓ Notice of Service of Plaintiffs' Responses to Defendant Michael J. Kush, M.D.'s First Request For Production of Documents, served on June 8, 2005 upon John W. Blasko, Esquire, and David R. Johnson, Esquire. Filed by s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |



Medical Professional Liability Action

| Date | | Judge |
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| 6/10/2005 | Notice of Service of Plaintiffs' Responses to Defendant Gary D. Ott, M.D.'s First Set of Interrogatories, on June 8, 2005 served upon John W. Blasko, Esquire, and David R. Johnson, Esquire. Filed by s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| | Notice of Service of Plaintiffs' Responses to Defendant Gary D. Ott, M.D.'s First Request For Production of Documents, on the 8th day of June, 2005 upon David R. Johnson, Esquire. Filed by s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| | Notice of Service of Plaintiffs' Anwers to Defendant Gary D. Ott, M.D.'s First Set of Expert Inrterrogatories, June 8, 2005 upon John W. Blasko, Esquire, and David R. Johnson, Esquire. Filed by s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| | Notice of Service Of Plantiffs' Responses to Defendant Gary D. Ott, M.D.'s Second Request for Production of Documents, on June 8, 2005 upon John W. Blasko, Esquire, and David R. Johnson, Esquire. No CC | Fredric Joseph Ammerman |
| 6/15/2005 | Plaintiffs' Reply to New Matter Filed on Behalf of Defendant Michael J. Kush, M.D. and Defendant DuBois Regional Medical Center, filed by s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| 7/15/2005 | Notice of Deposition of Defendant Michael J. Kush, MD with Subpoena Duces Tecum, filed by s/Todd D. Bowlus, Esq. No CC | Fredric Joseph Ammerman |
| 7/25/2005 | Request to Plaintiffs For Production of Expert Reports, filed by s/ David R. Johnson, Esquire. No CC | Fredric Joseph Ammerman |
| 8/10/2005 | Certificate of Service, filed. hereby certify that a true and correct copy of Defendant's Notice of Intent to Subpoena regarding Punxsuatwney Hospital to Harry S. Cohen Esquire, Todd D. Bowlus Esuire, and David R. Johnson Esquire, on August 4, 2005 filed by s/ John W. Blasko Esquire. No CC. | Fredric Joseph Ammerman |
| 8/17/2005 | Notice of Service of Plaintiffs' Second Request for Production of Documents Directed to Defendant DuBois Regional Medical Center on John W. Blasko Esq and David R. Johnson Esq on August 15, 2005, filed by s/ Todd D. Bowlus Esquire. No CC. | Fredric Joseph Ammerman |
| 8/18/2005 | Certificate Prerequisite to Service of a Subpoena Pursuant to Pa.R.C.P. 4009.22 filed by s/John W. Blasko Esq. No CC. | Fredric Joseph Ammerman |
| 9/21/2005 | Certificate of Service, filed. That a true and correct copy of the REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS in the above-refernced matter was mailed on the 20th day of September 2005 upon Harry S. Cohen Esq., Todd D. Bowlus Esq., and David R. Johnson Esq. filed by s/ John W. Blasko Esq. No CC. | Fredric Joseph Ammerman |
| 9/28/2005 | Third Notice of Deposition of Defendant Michael J. Kush, MD with Subpeona Duces Tecum, filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| 10/18/2005 | Notice of Service of Plaintiffs' First Request for Production of Documents Directed to Defendant Gary D. Ott M.D. filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| 10/27/2005 | Notice of Deposition of Desiree Smith, R.N. with Subopena Duces Tecum filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| | Notice of Deposition of Kathryn Raybuck R.N. with Subopena Duces Tecum, filed by Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |

Medical Professional Liability Action

| Date | | Judge |
|---|---|---|
| 11/3/2005 | Certificate of Service, filed. Hereby certify that DEFENDANT GARY D. OTT, M.D.'S RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS, on the 2nd say of November 2005 to Harry S. Cohen Esq and David R. Johnson Esq. filed by s/ John W. Blasko Esq. No CC. | Fredric Joseph Ammerman |
| 11/15/2005 | Notice of Service of Plaintiffs' Third Request for Production of Documents Directed to Defendant DuBois Regional Medical Center, filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| 12/8/2005 | Fourth Notice of Deposition of Defendant Michael J. Kush, MD with Subpeona Duces Tecum. filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| 12/12/2005 | Revised Notice of Deposition of Defendant Michael J. Kush, MD with Subpeona Duces Tecum,. filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| 2/2/2006 | Notice of Service of Plaintiffs' First Set of Interrogatories to Defendant DuBois Regional Medical Center, filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| 2/21/2006 | Notice of Service of Plaintiffs' Forth Request for Production of Documents directed to Defendant DuBois Regional Medical Center, filed by s/ Todd D. Bowlus Esq. NO CC. | Fredric Joseph Ammerman |
| 2/24/2006 | Notice of Service of Plaintiffs' FIfth Request for Production of Documents Directed to Defendant DuBois Regional Medical Center to John W. Blasko Esq., and David R. Johnson Esq., filed by s/ Harry S. Cohen Esq. No CC. | Fredric Joseph Ammerman |
| 3/17/2006 | Certificate of Service, copy of Defendant's Notice of Taking Oral Depositions of the Plaintiffs, Mailed by regular mail, first class on the 16th day of March, 2006 to: Harry S. Cohen, Esquire, and David R. Johnson, Esquire Filed by s/ John W. Blasko, Esquire. No CC | Fredric Joseph Ammerman |
| 3/23/2006 | Certificate of Service, copy of Defendant's Amended Notice of Taking Oral Depositions of the Plaintiffs, was mailed by 1st class mail on the 22nd day of March, 2006 to: Harry S. Cohen, Esquire, and David R. Johnson, Esquire. Filed by s/ John W. Blasko, Esquire. No CC | Fredric Joseph Ammerman |
| 4/24/2006 | Motion To Compel Production of Expert Reports, filed by s/ Jeanette E. Oliver, Esquire 3cc Atty | Fredric Joseph Ammerman |
| 4/28/2006 | Order of Court, NOW, this 27th day of April, 2006, it is Ordered that oral argument on defendants' motion to compel production of expert reports is scheduled for the 22nd day of May, 2006, at 10:00 a.m. before Judge Ammerman in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC to Atty. for Service | Fredric Joseph Ammerman |
| 5/4/2006 | Motion To Compel Plaintiffs to Produce Expert Reports, filed by s/ John W. Blasko, Esquire. No CC | Fredric Joseph Ammerman |
| 5/5/2006 | Rule To Show Cause, NOW this 4th day of May, 2006, a Rule is issued to show cause why Def. Gary D. Ott, M.D.'s Motion to Compel Plaintiffs to Produce Expert Reports should not be granted. Rule returnable the 22nd day of May, 2006 Courtroom 1 at 10:00 a.m. /s/ Fredric J. Ammerman, Pres. Judge. 6 CC atty. Blasko | Fredric Joseph Ammerman |
| 5/8/2006 | Affidavit of Service filed. That a true and correct copy of the Judge Ammerman's April 27, 2006, Scheduling Order, along with a true and correct copy of the Motion to Compel Production of Expert Reports in the above-captioned case was served upon Todd Bowlus Esq., filed by s/ Jeanette E. Oliver Esq. No CC. | Fredric Joseph Ammerman |
| 5/9/2006 | Affidavit of Service Re Motion to Compel Plaintiffs to Produce Expert Reports filed by s/ Allen P. Neely Esq. No CC. | Fredric Joseph Ammerman |

Medical Professional Liability Action

| Date | | Judge |
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| 5/17/2006 | ✓ Order of Court, NOW, this 17th day of May, 2006, Ordered the argument on Defendants' Motions to Compel Production of Expert Reports is continued from May 22, 2006 at 10:00 a.m. to the 7th day of June, 2006 at 3:00 p.m. in Courtroom No. 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Judge's Chambers - will fax to counsel of record. 1CC to Attys: Cohen Bowlus Johnson Blasko J. Oliver Neely 1CC Tai Yoo MD - 145 Hospital Ave. Ste. 315, DuBois PA 15801 | Fredric Joseph Ammerman |
| | ✓ Plaintiffs' Motion For Continuance of Argument Date on Defendants' Motion to Compel, filed by s/ Todd D. Bowlus, Esquire. 3CC Atty. Cohen | Fredric Joseph Ammerman |
| 6/12/2006 | ✓ Order AND NOW, this 7th day of June, 2006, following argument on the Motion to Compel Plaintiffs to Produce Expert report filed on behalf of both Defendant Gary M. Ott, M.D., Michael J. Kush M.D., and DuBois Regional Medical Center, it is the ORDER of this Court that the said motions be and are hereby granted to the extent that the Plaintiffs shall provide expert reports in regard to the issue of liability to Defense counsel within no more than seventy-five (75) days from this date. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Cohen, Bowlus, D. Johnson, J. Oliver, Blasko and Neely and 1CC Dr. Yoo at 145 Hospital Ave., Ste. 315, DuBois, PA 15801 | Fredric Joseph Ammerman |
| 6/14/2006 | ✓ Stipulation, filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| 7/24/2006 | ✓ Amended Stipulation, filed by s/ Harry S. Cohen Esq., David R. Johnson Esq. and John W. Blasko Esq. No CC. | Fredric Joseph Ammerman |
| 8/22/2006 | ✓ Certificate of Service, filed. That a true and correct copy of Defendant's Second Amended Notice of Taking Oral Depositions on the Plaintiffs, in the above-referenced matter to Harry S. Cohen Esq., Todd D. Bowlus Esq. and David R. Johnson Esq on the 21st day of August 2006, filed by s/ John W. Blasko Esq. No CC. | Fredric Joseph Ammerman |
| | ✓ Certificate of Service, filed. That a true and correct copy of Defendant's Notice of Taking Oral Deposition of Dr. Cherian, in the above-referenced matter on Harry S. Cohen Esq., Todd D. Bowlus Esq. and David R. Johnson Esq. on the 21st day of August 2006, filed by s/ John W. Blasko Esq. No CC. | Fredric Joseph Ammerman |
| 8/24/2006 | ✓ Notice of Service of Plaintiffs' Expert Reports, filed. Plaintiffs' Expert Reports have been served upon Counsel for Defendants on the 21st day of August 2006, filed by s/ Todd D. Bowlus Esq. NO CC. | Fredric Joseph Ammerman |
| 9/6/2006 | ✓ Plaintiffs' Request to Defendants for Production of Expert Reports, filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| 9/11/2006 | ✓ Objections to Plaintiffs' Request for Production of Expert Reports, filed by Atty. Blasko no cert. copies. | Fredric Joseph Ammerman |
| 9/13/2006 | ✓ Rule To Show Cause, NOW, this 12th day of Sept., 2006, a Rule is issued. Rule returnable the 27th day of Oct., 2006, Courtroom 1 at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Blasco | Fredric Joseph Ammerman |

Medical Professional Liability Action

| Date | | Judge |
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| 9/15/2006 | ✓ Affidavit of Service filed. A true and correct copy of Rule to Show Cause dated September 12, 2006 RE Defendant Gary Ott M.D.'s Objections to Plaintiffs' Request for Production of Expert Reports and signed by the Honorable Fredric J. Ammerman, in the above-captioned case was served on Harry S. Cohen Esq., Todd D. Bowlus Esq. and David R. Johnson Esq., filed by s/ Allen P. Neely Esq. No CC. | Fredric Joseph Ammerman |
| 9/28/2006 | ✓ Plaintiffs' Motion to Consolidate, filed by s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| | ✓ Plaintiffs' Motion to Compel Discovery, filed by s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| 9/29/2006 | ✓ Rule, NOW, this 28th day of Sept., 2006, a Rule is issued to show cause why Plaintiffs' Motion to Consolidate should not be granted. Rule returnable the 27th day of Oct., 2006, Courtroom 1 at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Cohen | Fredric Joseph Ammerman |
| | ✓ Rule To Show Cause, NOW, this 28th day of Sept., 2006, a Rule is issued to show cause why Plaintiffs' Motion to Compel Discovery should not be granted. Rule returnable the 27th day of October, 2006, Courtroom 1 at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Cohen | Fredric Joseph Ammerman |
| 10/4/2006 | ✓ Affidavit of Service filed. That a true and correct copy of a Rule to Show Cause dated September 28, 2006 RE Plaintiffs' Motion to Compel Discovery and signed by the Honorable Fredric J. Ammerman, in the above-captioned case was served upon John W. Blasko Esq., on the 2nd day of October 2006, filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| | ✓ Affidavit of Service filed. That a true and correct copy of a Rule to Show Cause dated September 28, 2006 RE Plaintiffs' Motion to Consolidate and signed by the Honorable Fredric J. Ammerman, in the above-captioned case was served on John W. Blasko Esq on the 2nd day of October 2006, filed by s/ Todd D. Bowlus Esq. No CC. | Fredric Joseph Ammerman |
| 10/31/2006 | ✓ Order, NOW, this 27th day of Oct., 2006, relative the Plaintiffs' and Defendants' Motions to Compel Expert Reports, with the parties being in agreement for the entry of a case management order, it is the Order of this Court as follows: (see original) By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Cohen, Bowlus, Johnson, Oliver, Blasko, Neely. Def. Yoo- 145 Hospital Ave. Ste 315, DuBois, PA 15801 | Fredric Joseph Ammerman |
| 11/1/2006 | ✓ Amended Order: Now, this 1st day of Nov., 2006, it is the Order of this Court that the Order entered on Oct., 27, 2006 is Amended as follows: (see original). By the Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Cohen, Johnson, Blasko, Bowlus, Oiner, Neely. 1CC Tai Y Yoo MD 145 Hospital Ave. Ste 315, DuBois, PA 15801 | Fredric Joseph Ammerman |
| 11/9/2006 | ✓ Order, NOW, this 27th day of Oct., 2006, this case and case number 06-936-CD are consolidated. Defendant DRMC must complet outstanding discovery requests within 30 days from this date. 1CC Attys: H. Cohen, T. Bowlus, D. Johnson, J. Oliver, J. Blasko, A. Neely. 1CC Dr. Yoo, 145 Hospital Ave., Ste 315, DuBois, PA 15801 | Fredric Joseph Ammerman |

Medical Professional Liability Action

| Date | | Judge |
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| 12/6/2006 | ✓ Order AND NOW, this 5th day of December 2006, it is the ORDER of the Court that Civil Jury Trial in the above matter has been scheduled for Monday, September 17 through and including, Wednesday, September 26, 2007, to commence each day at 9:00 a.m. before the Honorable John K. Reilly Jr., Senior Judge, Specially Presiding, in the Clearfield County Courthouse, Clearfield PA. Please report to the Court Administrator's Office. You will be directed from there where the trial will be held. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Cohen, Bowlus, D. Johnson, J. Oliver, J. Blasko, A. Neely and 1CC Dr. Tai Y. Yoo M.D. @ 145 Hospital Avenue, Ste 315, DuBois, PA 15801 | Fredric Joseph Ammerman |
| 12/22/2006 | ✓ Notice of Service of Plaintiffs' Second Set of Interrogatories Directed to Defendant DuBois Regional Medical Center, served on the 20th day of Dec. 2006, by First Class U.S. Mail, upon John W. Blasko, Esquire, and David R. Johnson, Esquire. Filed by s/ Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| 2/22/2007 | ✓ Certificate of Service, filed. That a true and correct copy of Defendant's Third Amended notice of Taking Oral Deposition of the Plaintiff (Mr. Hale), in the above-referenced matter was mailed on the 21st day of February 2007 to Harry S. Cohen Esq and David R. Johnson Esq., filed by s/ John W. Blasko Esq. No CC. | Fredric Joseph Ammerman |
| 2/23/2007 | ✓ Notice of Deposition of George Cherian M.D. with Subpeona Duces Tecum, filed by s/ Todd Bowlus Esq. | Fredric Joseph Ammerman |
| 3/9/2007 | ✓ Certificate of Service, filed. That a true and correct copy of Defendant's Fourth Amended Notice of Taking Oral Deposition of the Plaintiff (Mr. Hale), in the above-referenced matter was mailed on the 8th day of March 2007 to Harry S. Cohen Esq., Todd D. Bowlus Esq., and David R. Johnson Esq., filed by s/ John W. Blasko Esq. No CC. | Fredric Joseph Ammerman |
| 3/12/2007 | ✓ Second Notice of Deposition of George Cherian M.D. with Subpeona Duces Tecum, filed by s/ Todd Bowlus Esq. NO CC. | Fredric Joseph Ammerman |
| 3/21/2007 | ✓ Plaintiffs' Motion For Extension of Time to File Expert Reports or in The Alternative Motion For Trial Continuance, filed by s/ Harrry S. Cohen, Esquire. No CC | Fredric Joseph Ammerman |
| | ✓ Plaintiffs' Motion to Dismiss Case (2006-936-CD) Without Prejudice, filed by s/ Harry S. Cohen, Esquire. No CC Original to 06-936-CD | Fredric Joseph Ammerman |
| 4/4/2007 | ✓ Rule, NOW, this 26th day of March, 2007, a Rule is issued to show cause why Plaintiffs' Motion to Dismiss Case (2006-936-CD) Without Prejudice should not be granted. Rule Returnable the 14th day of May, 2007 in Clfd. Co. Courtroom 1 at 9:30 a.m. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Bowlus, Blasko, D. Johnson; 1CC T. Yoo - 145 Hospital Ave., Ste. 315, DuBois, PA 15801 | Fredric Joseph Ammerman |
| | ✓ Rule To Show Cause: Now, this 4th day of April, 2007, a Rule is issued to show cause why Plaintiffs' Motion for Extension of Time to File Expert Reports/Motion or Trial Continuance should not be granted. Rule returnable the 14th day of May, 2007, Courtroom 1 at 9:30 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Bowlus, Blasko, D. Johnson; 1CC Def. T. Yoo - 145 Hospital Ave. Ste. 315, DuBois, PA 15801 | Fredric Joseph Ammerman |
| 4/10/2007 | ✓ Motion for Continuance, filed by Atty. Blasko, no cert copies. | Fredric Joseph Ammerman |

Medical Professional Liability Action

| Date | | Judge |
|---|---|---|
| 4/13/2007 | Order of Court, NOW, this 13th day of April, 2007, upon consideration of Motion for Continuance of Argument Date, the argument on Plaintiffs' Motion for Extension of Time to File Expert Report/Motion for Trial Continuance, and Plaintiffs' Motion to Dismiss Case (2006-936-CD) without prejudice is continued and rescheduled for May 29, 2007 in Courtroom 1 at 9:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Blasko | Fredric Joseph Ammerman |
| 4/18/2007 | Affidavit of Service filed. Copy of the Order of Court dated April 13, 2007 was served upon counsel of record: Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, Harry S. Cohen & Associates, P.C., and David R. Johnson, Esquire, by regular mail, first class, on April 17, 2007. Filed by s/John W. Blasko, Esquire. 1CC to 06-936-CD | Fredric Joseph Ammerman |
| 4/19/2007 | Answer to Plaintiffs' Motion to Dismiss Case 2006-936-CD without Prejudice, filed by s/ John W. Blasko, Esquire. No CC | Fredric Joseph Ammerman |
| | Answer to Plaintiffs' Motion for Extension of Time to File Expert Reports or, in the Alternative, Motion for Continuance, filed by s/ John W. Blasko, Esquire. No CC | Fredric Joseph Ammerman |
| 4/26/2007 | Joinder In Answer to Plaintiffs' Motion to Dismiss Case 2006-936-CD Without Prejudice, filed by s/David R. Johnson, Esquire. No CC | Fredric Joseph Ammerman |
| | Joinder in Answer to Plaintiffs' Motion For Extension of Time to File Expert Reports or in The Alternative Motion For Continuance, filed by s/ David R. Johnson, Esquire. No CC | Fredric Joseph Ammerman |
| 5/2/2007 | Plaintiffs' Reply to New Matter in Defendant Gary D. Ott, MD's Answer to Motion For Extension of Time to File Expert Reports or in The Alternative Motion For Trial Continuance, filed by s/ Harry S. Cohen, Esquire. No CC | Fredric Joseph Ammerman |
| | Plaintiffs' Reply to New Matter in Defendant Gary D. Ott, MD's Answer to Motion to Dismiss Case (2006-936-CD) Without Prejudice, filed by s/ Harry S. Cohen, Esquire. No CC | Fredric Joseph Ammerman |
| 5/10/2007 | Plaintiffs' Motion For Continuance of Argument Date, filed by s/ Harry S. Cohen, Esquire. 1CC Atty. | Fredric Joseph Ammerman |
| 5/11/2007 | Order, NOW, this 11th day of May, 2007, it is Ordered that the argument on Plaintiffs' Motion for Extension of Time to File Expert Reports/motion for Trial Continuance, and, Motion to Dismiss Case (2006-936 CD) Without Prejudice is continued and rescheduled for the 11th day of May, 2007 in Courtroom 1 at 10:00 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Cohen | Fredric Joseph Ammerman |
| 5/14/2007 | Affidavit of Non-Involvement of Defendant, Tai Y. Yoo, M.D., P.C. Filed by s/ Toni M. Cherry, Esquire. 4CC Atty. T. Cherry | Fredric Joseph Ammerman |

Medical Professional Liability Action

| Date | | Judge |
|---|---|---|
| 5/14/2007 | ✓ Order, this 11th day of May, 2007, following argument and discussion as will appear of record this date, it is the Order of Court:<br>1. The Plaintiffs' Motion for Extension of Time to File Expert Reports is granted relative only to damage experts, In regard to any experts on the issued of negligence or causation, the Court's prior case management Order will continue to be in effect.<br>2. The Plaintiffs' Motion to Dismiss Case 2006-936-CD without prejudice is denied as is any request for continuance of the previously scheduled jury trial and the case of both minor Plaintiffs will proceed.<br>3. The parties have agreed that they will proceed to trial on Sept. 17, 2007, and that the matter be bifurcated. The jury trial scheduled to commence on said date shall be relative issued of alleged negligence and causation only. Any legal determination relative to damages shall be done, if necessary, at a later proceeding. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Cohen & Bowlus, Johnson & Oliver, Blasko & Nealy, T. Cherry | Fredric Joseph Ammerman |
| 7/2/2007 | ✓ Disclosure of Expert Reports, filed by s/David R. Johnson, Esq. No CC | Fredric Joseph Ammerman |
| | ✓ Motion for Summary Judgment on Behalf of Michael J. Kush, MD, filed by s/Brad R. Korinski, Esq. Three CC Attorney Korinski | Fredric Joseph Ammerman |
| 7/10/2007 | ✓ Order, Now, this 10th day of July, 2007, it is Ordered that oral argument on Dr. Kush's motion for summary judgment is scheduled for the 10th day of August, 2007, at 10:00 a.m. in Courtroom 1. by The Court, /s/ Fredric J. Ammerman, Pres. Judge. 3CC Atty. Korinski | Fredric Joseph Ammerman |
| 7/16/2007 | ✓ Notice of Service of Plaintiff's Sixth Request for Production of Documents Directed to Defendant DuBois Regional Medical Center, filed by s/ Todd Bowlus Esq. 1CC Atty. | Fredric Joseph Ammerman |
| 7/23/2007 | ✓ Notice to Attend Directed to Defendant Gary D. Ott, M.D. with Subpoena Duces Tecum, filed by s/ Todd D. Bowlus Esq. 1CC Atty. | Fredric Joseph Ammerman |
| | ✓ Notice to Attend Directed to Records Custodian Of Defendant DuBois Regional Medical Center with Subpoena Duces Tecum, filed by s/ Todd D. Bowlus Esq. 1CC Atty. | Fredric Joseph Ammerman |
| | ✓ Notice to Attend Directed to Kathryn Raybuck R.N., filed by s/ Todd D. Bowlus Esq. 1CC Atty. | Fredric Joseph Ammerman |
| | ✓ Notice to Attend Directed ti Desiree Smith R.N., filed by s/ Todd D. Bowlus Esq. 1CC Atty. | Fredric Joseph Ammerman |
| 7/27/2007 | ✓ Plaintiffs' Motion In Limine to Preclude Irrelevant Evidence, filed by s/ Harry S. Cohen, Esquire, and Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| | ✓ Plaintiffs' Motion In Limine to Limit Expert Testimony, filed by s/ Harry S. Cohen, Esquire, and Todd D. Bowlus, Esquire. No CC | Fredric Joseph Ammerman |
| | ✓ Order, NOW, this 27th day of July, 2007, it is Ordered that a Pre-Trial Conference in the above matter shall be held on the 24th day of August, 2007, in Chambers at 9:30 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Cohen and Bowlus; Johnson and Oliver; Blasko and Neely; T. Cherry | Fredric Joseph Ammerman |
| | ✓ Rule, this 27th day of July, 2007, a Rule is issued. Rule returnable the 10th day of August, 2007 Courtrom 1 at 10:00 a.m. By The Court, /s/ Fredric J. Ammermn, Pres. Judge. 3CC Atty. Bowlus | Fredric Joseph Ammerman |

7-27-07 ✓ Rule dated 7-27-07

Medical Professional Liability Action

| Date | | Judge |
|---|---|---|
| 7/30/2007 | Order, NOW, this 27th day of July, 2007, it is Ordered that any party filing any Motion or Petition of any type including but not limited to those regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same by no later than Augst 16, 2007. (see original). By The Court, /s/ Fredric J. Ammerman, pres. Judge. 1CC Attys: Cohen and Bowlus; Johnson and Oliver; Blasko and Neely; T. Cherry | Fredric Joseph Ammerman |
| 8/3/2007 | Affidavit of Service filed.That a true and correct copies of Rules to Show Cause dated July 27, 2007 Re: Plaintiffs' Motion in Limine to Preclude Irrelevant Evidence and Plaintiffs' Motion in Limine to Limit Expert Testimony and signed by the Honorable Fredric J. Ammerman, the above-captioned case was served upon John W. Blasko Esq., and David R. Johnson Esq., on the 1st day of August 2007 filed by s/ Todd D. Bowlus Esq. NO CC. | Fredric Joseph Ammerman |
| 8/7/2007 | Answer to Plaintiffs' Motion in Limine to Limit Expert Testimony, filed by s/John W. Blasko, Esq. No CC | Fredric Joseph Ammerman |
| | Answer to Plaintiffs' Motion in Limine to Preclude Irrelevent Evidence, filed by s/John W. Blasko, Esq. No CC | Fredric Joseph Ammerman |
| 8/13/2007 | Order, this 10th day of August, 2007, following argument on the Motion in Limine to Limit Expert Testimony and Motion in Limine to Preclude Irrelevant Evidence both filed on behalf of the Plaintiff and Motion for Summary Judgment filed on behalf of Defendant Michael J. Kush, M.D., it is the Order of this Court as follows: (see original). Michael J. Kush, M.D. is hereby removed as a party Defendant in the case. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: Cohen & Bowlus, T. Cherry, Johnson & Oliver, Blasko & Neely | Fredric Joseph Ammerman |
| 8/15/2007 | Motion in Limine to Preclude Testimony of Dr. George Cherian and/or Evidence Regarding Irrelevant and Inadmissible Matters, filed by s/Frederick Battaglia No CC | Fredric Joseph Ammerman |
| 8/22/2007 | Joinder In Motion In Limine to Preclude Testimony of Dr. George Cherian and/or Evidence Regarding Irrelevant and Inadmissible Matters, filed by Atty. Johnson no cert. copies. | Fredric Joseph Ammerman |
| | Order, this 20th day of august, 2007, argument on Motion in Limine to Preclude Testimony of Dr. George Cherian and/or Evidence Regarding Irrelevant and Inadmissible Matters is scheduled for the 31st day of August, 2007 at 1:30 p.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Attys: T. Cherry, D. Johnson Oliver, Cohen & Bowlus, Blasko & Neely | Fredric Joseph Ammerman |
| 8/27/2007 | Order, this 24th day of August, 2007, it is Ordered that: Jury Selection will be held on August 28, 2007 at 9:00 a.m. in Courtroom 1. Jury Trial is scheduled for Sept. 17 through and including Sept. 26, 2007, to commence each day at 9:00 a.m. in Courtroom 2. by the Court, /s/ Fredric J. Ammerman, Pres. Judge. CC to Attys: H. Cohen, T. Bowlus, J. Blasko, A. Neely, T. Cherry, D. Johnson, J. Oliver | Fredric Joseph Ammerman |
| 8/28/2007 | Praecipe to Discontinue as to Less Than All Parties Pursuant to PA.R.C.P. 229. Discontinue this action as it relates to Defendant Yoo, Tai, Y., M.D., a Pennsylvainia Corporation, and remove its name from the caption. Filed by s/ Todd D. Bowlus, Esquire. 1CC to Atty. | Fredric Joseph Ammerman |

Medical Professional Liability Action

| Date | | Judge |
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| 8/29/2007 | Order AND NOW, this 28th day of August 2007, it is the ORDER of this Court that argument on the Motion in Limine to Preclude Testimony be and is hereby scheduled for 11:00 a.m. on Friday, August 31, 2007, Courtrom No. 1, Clearfield County Courthouse. BY THE COURT: /s/ Fredric J. Ammerman, P. Judge. 1CC Attys: Cohne & Bowlus, Blasko & Neely, T. Cherry and Johnson & Oliver. | Fredric Joseph Ammerman |
| 8/30/2007 | Plaintiffs' Motion For Clarification of Court Order Dated August 10, 2007/Motion to Preclude Evidence, filed by s/ Todd D. Bowlus, Esquire, Harry S. Cohen, Esquire. No CC | Fredric Joseph Ammerman |
| | Plaintiffs' Response to Defendants' Response to Defendants' Motion in Limine to Preclude Testimony of Dr. George Cherian, filed by s/ Harry S. Cohen, Esquire. No CC | Fredric Joseph Ammerman |
| 9/4/2007 | Order, this 4th day of Sept., 2007, oral argument on Plaintiffs' Motion for Clarification of Court Order Dated August 10, 2007/Motion to Preclude Evidence is scheduled for the 10th day of Sept., 2007 Courtroom 1 at 9:30 a.m. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 2CC Attys: Cohen & Bowlus 9/4/07; Faxed by CA 9/4/07 | Fredric Joseph Ammerman |
| | Order, this 30th day of August, 2007, oral argument on Plaintiffs' Motion for Clarification of Court Order Dated August 10, 2007/Motion to Preclude Evidence is scheduled for the 31st day of august, 2007 in Courtroom 1 at 11:00 a.m. By The court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC Atty. Bowlus | Fredric Joseph Ammerman |
| 9/5/2007 | Answer to Plaintiffs' Motion for Clarification of Court Order of 8/10/07/Motion to Preclude Evidence, filed by s/ John W. Blasko Esq. No CC. | Fredric Joseph Ammerman |
| 9/10/2007 | Certificate of Service of Service of Court Order dated September 4, 2007 Re: Hearing Date for Plaintiffs' Motion for Clarification of Court Order/Motion to Preclude Evidence has been served on the 5th day of September 2007 to John W. Blasko Esq. and David R. Johnson Esq., filed by s/ Todd D. Bowlus Esq. NO CC. | Fredric Joseph Ammerman |
| 9/11/2007 | Transcript of Proceedings, filed. Argument on Dr. Kush's Motion for Summary Judgment and Motions in Limine, held before The Honorable Fredric J. Ammerman, Pres. Judge, on August 10, 2007. | Fredric Joseph Ammerman |
| 9/13/2007 | Order, filed, faxed and Cert. copies to Atty's Cohen, Blasko & Johnson NOW, this 10th day of September, 2007, Re: Plaintiff's Motion for Clarification of Court Order dated August 10, 2007, and Motion to Preclude Evidence, ORDER of this Court that the Motions be and are hereby denied. | Fredric Joseph Ammerman |
| | Order, filed, faxed and Cert. copies to Atty's Cohen, Blasko & Johnson NOW, this 13th day of September, 2007, Re: Argument and review of the briefs, ORDERED that Defendant's Motion to Preclude Testimony of Dr. Cherian is DENIED. | Fredric Joseph Ammerman |
| 9/17/2007 | Motion to Strike Plaintiffs' Untimely Expert Report and/or Preclude Inappropriate Expert Testimony, filed by s/ John W. Blasko, Esquire. | Fredric Joseph Ammerman |
| 9/21/2007 | Plaintiffs' Suggested Jury Charge, filed by s/ Todd D. Bowlus Esq. 2CC Atty Bowlus. | Fredric Joseph Ammerman |
| | Order, NOW, Sept 20, 2007, upon consideration of defense motion for compulsory nonsuit and on examination of the testimony of Dr. Cetrulo, it is Ordered that said motion is denied. By The Court, /s/John K. Reilly, Jr., Senior Judge. 1CC Attys: Cohen, Bowlus, Blasko, Neely, Johnson, Oliver | John K. Reilly Jr. |

Medical Professional Liability Action

| Date | | Judge |
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| 9/24/2007 | Plaintiffs' Additional Suggested Jury Charge, filed by Atty. Cohen no cert. copies. | Fredric Joseph Ammerman |
| | Points for Charge, filed by Atty. Blasko, no cert. copies. | Fredric Joseph Ammerman |
| | Special Verdict Questions, filed by Atty. Blasko no cert. copies | Fredric Joseph Ammerman |
| | Verdict, filed.<br>We, the jurors empanelled in the above entitled case, find as follows:<br>Question 1: Do you find the Defendant, Gary D. Ott, M.D., negligent in the care and treatment of Angela Hale? NO.<br>Question 3: Do you find the Defendant DuBois Regional Memorial Hospital negligent in the care and treatment of Angela Hale? NO<br>9/24/07 s/Brian David, Jury Foreman. | Fredric Joseph Ammerman |

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 05-364-CD

**COMPLAINT**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED Atty pd. 85.00
m/1:10 BR 5 CC Sheriff
MAR 16 2005

William A. Shaw
Prothonotary/Clerk of Courts

## NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take prompt action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally 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 claim or relief requested in these papers 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 OR KNOW A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

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

**DAVID S. MEHOLICK**
**CLEARFIELD COUNTY COURTHOUSE**
**ONE NORTH SECOND STREET**
**CLEARFIELD, PA 16830**
**(814) 765-2641**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**CERTIFICATE OF MERIT AS TO DEFENDANT MICHAEL J. KUSH, M.D.**

I, Harry S. Cohen, certify that:

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

or

_____ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from the acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

or

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

February 28, 2005

Harry S. Cohen, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**CERTIFICATE OF MERIT AS TO DEFENDANT MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation**

I, Harry S. Cohen, certify that:

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

or

✓ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from the acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

or

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

February 28, 2005

Harry S. Cohen, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**CERTIFICATE OF MERIT AS TO DEFENDANT GARY D. OTT, M.D.**

I, Harry S. Cohen, certify that:

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

or

_____ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from the acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

or

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

February 28, 2005

Harry S. Cohen, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**CERTIFICATE OF MERIT AS TO DEFENDANT YOO, TAI, Y., M.D.**

I, Harry S. Cohen, certify that:

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

or

__✓__ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from the acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

or

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

February 28, 2005

Harry S. Cohen, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**CERTIFICATE OF MERIT AS TO**
**DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

I, Harry S. Cohen, certify that:

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

or

✓ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from the acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

or

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

February 28, 2005

Harry S. Cohen, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**COMPLAINT IN CIVIL ACTION**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Complaint in Civil Action:

1. Plaintiff, Angela Hale ("Plaintiff") is an adult individual at all times material hereto, residing at 116 Wilson Avenue, Dubois, PA, 15801.

2. Plaintiff, Randy A. Hale ("Husband-Plaintiff") is an adult individual at all times material hereto, residing at 116 Wilson Avenue, Dubois, PA, 15801.

3. Plaintiffs are the natural parents and guardians of Reganne Hale, a minor, who at all times material hereto, resides with Plaintiffs at 116 Wilson Avenue, Dubois, PA, 15801.

4. At all timed material hereto, Plaintiffs were married as husband and wife.

5. Defendant Michael Kush, MD ("Dr. Kush") is a licensed professional with an office at 145 Hospital Avenue, Dubois, PA, 15801. Plaintiff is asserting a professional liability claim against this defendant.

6. Defendant Maternal Fetal Medicine of Dubois Regional Medical Center ("Defendant Maternal Fetal Medicine") is a Pennsylvania corporation at all material times having its principal place of business 145 Hospital Avenue, Suite 103, Dubois, PA, 15801. Plaintiff is asserting a vicarious professional liability claim against this defendant.

7. Defendant Gary Ott, MD ("Dr. Ott") is a licensed professional with an office at 635 B., Maple Avenue, Dubois, PA, 15801. Plaintiff is asserting a professional liability claim against this defendant.

8. Defendant Yoo, Tai, Y., MD ("Defendant Yoo Corporation") is a Pennsylvania corporation at all material times having its principal place of business Medical Arts Building, 145 Hospital Avenue, Suite 315, Dubois, PA, 15801. Plaintiff is asserting a vicarious professional liability claim against this defendant.

9. Defendant Dubois Regional Medical Center ("Defendant Hospital") is a Pennsylvania corporation at all material times having its principal place of business at 100 Hospital Avenue, Dubois, PA, 15801. Plaintiff is asserting a professional liability and vicarious professional liability claim claim against this defendant.

10. At all times material hereto, Dr. Kush was an employee of Defendant Maternal Fetal Medicine.

11. At all times material hereto Defendant Maternal Fetal Medicine acted by and through its agent, ostensible agent, and/or employee, Dr. Kush, acting within the course, scope and authority of his employment and agency.

12. At all times material hereto, Dr. Ott was an employee of Defendant Yoo Corporation.

13. At all times material hereto Defendant Yoo Corporation acted by and through its agent, ostensible agent, and/or employee, Dr. Ott, acting within the course, scope and authority of his employment and agency.

14. At all times material hereto Defendant Hospital acted by and through its' agents, ostensible agents, and/or employees, acting within the course, scope and authority of their employment and agency.

15. Plaintiff is a twenty-seven year-old female with a history of preterm labor in 1996 that was stopped at eight months gestation with tocolytics.

16. In 2002, Plaintiff became pregnant with twins, Reganne and Ashtyn.

17. Since Plaintiff had a history of preterm labor, was Rh negative, and had a positive AFP test, she was considered high risk and referred to Defendant Dr. Kush at Defendant Hospital at approximately 4½ months gestation.

18. Plaintiff's estimated date of confinement was February 1, 2003.

19. On November 9, 2002, at approximately 28 weeks gestation, Plaintiff developed a light brownish red vaginal discharge.

20. Plaintiff went to Defendant Hospital and Defendant Dr. Ott examined Plaintiff.

21. Defendant Dr. Ott determined that Plaintiff was not dilated and Plaintiff remained at Defendant Hospital for approximately two hours.

22. No ultrasound was performed and Plaintiff was then discharged home.

23. On November 10, 2002, Plaintiff felt like she was having contractions in the morning.

24. Plaintiff called Labor & Delivery at Defendant Hospital and was told to come to Defendant Hospital.

25. Plaintiff arrived at Defendant Hospital with her husband at around 2:00 p.m. complaining of contractions, diarrhea, and back pain similar to what she experienced as preterm labor with her previous pregnancy and she waited with her husband in the reception area.

26. She was admitted to the OB department outpatient testing area at 4:45 p.m.

27. At approximately 5:30 p.m., a nurse at Defendant Hospital reportedly performed a vaginal exam and determined that Plaintiff was 0 centimeters / 50% effaced / at -1 station, unchanged, since November 9, 2002.

28. The nurse also determined that the Plaintiff was not having any contractions on the external monitor.

29. Around 6:00 p.m., a nurse telephoned Defendant Dr. Ott with a report, and received verbal orders.

30. Defendant Dr. Ott arrived at Defendant Hospital at approximately 8:14 p.m., reviewed the fetal monitor strips, and saw the contractions that had been occurring.

31. Defendant Dr. Ott then performed a vaginal exam, the first time Plaintiff was seen by a physician since her admission, which demonstrated that Plaintiff was dilated 3 - 4 centimeters/ 90% effaced/ at 0 station.

32. Plaintiff was given Celestone and magnesium sulfate for preterm labor.

33. Between 8 and 9 p.m., Plaintiff was dilated around 7 centimeters and an ultrasound was performed.

34. At approximately 9:16 p.m., Defendant Dr. Ott stated that delivery was imminent, and ordered a cesarean section.

35. Dr. Stephen Regec assisted with the cesarean section.

36. On November 10, 2002 at 10:08 p.m., baby A, Reganne was delivered.

37. At 10:09 p.m., Ashtyn was delivered.

38. Reganne required intubation, developed a Grade I intraventricular hemorrhage, had retinopathy of prematurity, reflux, and bronchopulmonary dysplasia.

39. Both Reganne and Ashtyn remained in the NICU at Defendant Hospital for about two weeks.

40. On December 1, 2002, Reganne was then transferred to Children's Hospital in Pittsburgh.

41. Reganne at that time had possible necrotizing enterocolitis (later thought to be a staph infection in her colon).

42. Her Grade I intraventricular hemorrhage evolved into a Grade III intraventricular hemorrhage and she also developed hydrocephalus.

43. Reganne remained at Children's Hospital in Pittsburgh until discharged to Defendant Hospital on December 24, 2002.

44. Reganne was then discharged from Defendant Hospital on January 11, 2003 on an apnea/bradycardia monitor for three months.

45. Reganne is followed by a pediatric neurologist and the Cerebral Palsy Clinic through Children's Hospital in Pittsburgh. She was diagnosed with diplegic spastic cerebral palsy.

46. Reganne was also diagnosed with periventricular leukomalacia by CAT Scans and brain ultrasound performed at Defendant Hospital and Children's Hospital in Pittsburgh.

47. As a direct and proximate result of the negligence described herein, Minor-Plaintiff Reganne Hale, has and will incur the following injuries and damages:

a. Diplegic spastic cerebral palsy;

b. Periventricular leukomalacia;

c. Grade I intra-ventricular hemorrhage;

d. Grade III intra-ventricular hemorrhage;

e. Hydrocephalus;

f. Bronchopulmonary dysplasia;

g. Retinopathy of prematurity;

h. Reflux;

i. Neurological deficits;

j. Neuro-developmental problems;

k. Pain and suffering;

l. Loss of enjoyment of life;

m. Developmental delay;

n. Loss of income and impairment of earning power;

o. Partial and/or permanent disability;

p. Embarrassment and humiliation;

q. Emotional distress; and

r. The need to expend large sums of money for medical, therapeutic, and rehabilitative services.

## COUNT I – Professional Negligence

***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. Michael J. Kush, MD***

48. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

49. Defendant Dr. Kush was negligent in the following particulars:

a. By failing to closely follow Plaintiff's high risk pregnancy;

b. By failing to order growth ultrasounds;

c. By failing to evaluate Plaintiff's cervix;

d. By failing to recommend to Dr. Ott that Dr. Kush would manage the high risk pregnancy;

e. By failing to order extended observation of Plaintiff at Defendant Hospital on November 9, 2002;

f. By failing to order tocolytics and corticosteroids on November 9, 2002; and

g. By failing to diagnose and treat Plaintiff's preterm labor on November 10, 2002.

50. The negligence of Defendant Dr. Kush, as described herein, was the "legal cause" of Minor-Plaintiff Reganne Hale's injuries and damages, as described herein.

51. The negligence of Defendant Dr. Kush as described herein increased the risk that Minor-Plaintiff Reganne Hale would suffer the injuries and damages as described herein.

52. As a direct and proximate result of the negligence of Defendant Dr. Kush, as described herein, Minor-Plaintiff Reganne Hale suffered and Defendant Dr. Kush is liable to Plaintiffs for the within described injuries and damages.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant Dr. Kush, jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

**COUNT II – Vicarious Liability**

***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. Maternal Fetal Medicine of Dubois Regional Medical Center***

53. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

54. Defendant Maternal Fetal Medicine is responsible for the negligent acts and omissions of its agent, ostensible agent, and/or employee, Dr. Kush, as described herein.

55. The negligence of Defendant Maternal Fetal Medicine's agent, ostensible agent, and/or employee, as described herein, was the "legal cause" of Minor-Plaintiff Reganne Hale's injuries and damages, as described herein.

56. As a direct and proximate result of the negligence of Defendant Maternal Fetal Medicine's agent, ostensible agent, and/or employee, as set forth herein, Minor-Plaintiff Reganne Hale has incurred the injuries and damages, as described herein.

57. As a direct and proximate result of the negligence of Defendant Maternal Fetal Medicine's agent, ostensible agent, and/or employee, as described herein, Minor-Plaintiff Reganne Hale and Defendant Maternal Fetal Medicine is liable to Plaintiff for the within described injuries and damages.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant Maternal Fetal Medicine, jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

## COUNT III – Professional Negligence

***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. Gary D. Ott, MD***

58. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

59. Defendant Dr. Ott was negligent in the following particulars:

a. By failing to request that Dr. Kush manage the high risk pregnancy;

b. By failing to order growth ultrasounds;

c. By failing to evaluate Plaintiff's cervix;

d. By failing to order extended observation of Plaintiff at Defendant Hospital on November 9, 2002;

e. By failing to order tocolytics and corticosteroids on November 9, 2002;

f. By failing to order tocolytics and corticosteroids on November 10, 2002;

g. By failing to examine Plaintiff in a timely fashion on November 10, 2002;

h. By failing to order a transvaginal ultrasound to assess the Plaintiff's cervix;

i. By failing to diagnose and treat Plaintiff's preterm labor in a timely fashion on November 10, 2002;

j. By failing to properly order tocolytics in a timely manner on November 10, 2002;

k. By failing to properly order corticosteroids in a timely manner on November 10, 2002;

l. By failing to consult with the maternal fetal medicine specialist regarding Plaintiff's care on November 9, 2002; and

m. By failing to consult with the maternal fetal medicine specialist regarding Plaintiff's care on November 10, 2002.

60. The negligence of Defendant Dr. Ott, as described herein, was the "legal cause" of Minor-Plaintiff Reganne Hale's injuries and damages, as described herein.

61. The negligence of Defendant Dr. Ott, as described herein increased the risk that Minor-Plaintiff Reganne Hale would suffer the injuries and damages as described herein.

62. As a direct and proximate result of the negligence of Defendant Dr. Ott, as described herein, Minor-Plaintiff Reganne Hale suffered and Defendant Dr. Ott is liable to Plaintiffs for the within described injuries and damages.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant Dr. Ott, jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

**COUNT IV – Vicarious Liability**

***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. Yoo, Tai, Y., MD***

63. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

64. Defendant Yoo Corporation is responsible for the negligent acts and omissions of its agent, ostensible agent, and/or employee, Dr. Ott, as described herein.

65. The negligence of Defendant Yoo Corporation's agent, ostensible agent, and/or employee, as described herein, was the "legal cause" of Minor-Plaintiff Reganne Hale's injuries and damages, as described herein.

66. As a direct and proximate result of the negligence of Defendant Yoo Corporation's agent, ostensible agent, and/or employee, as set forth herein, Minor-Plaintiff Reganne Hale has incurred the injuries and damages, as described herein.

67. As a direct and proximate result of the negligence of Defendant Yoo Corporation's agent, ostensible agent, and/or employee as described herein, Minor-Plaintiff Reganne Hale and Defendant Yoo Corporation is liable to Plaintiff for the within described injuries and damages.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant Yoo Corporation, jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

**COUNT V - Corporate Negligence**

***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. Dubois Regional Medical Center***

68. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

69. Defendant Hospital was negligent in the following particulars:

a. In failing to promulgate and/or enforce rules, regulations, procedures and standards to ensure that patients threatening preterm labor are promptly evaluated and treated by competent staff;

b. In failing to promulgate and/or enforce rules, regulations, procedures and standards to ensure that high risk obstetrical patients are promptly evaluated and treated by competent staff;

c. In failing to ensure that the medical personnel are properly trained to recognize the signs and symptoms of preterm labor;

d. In failing to ensure that the medical personnel are properly trained to evaluate and treat high risk obstetrical patients;

e. In failing to properly supervise the physicians and medical staff that provided care to the Plaintiff during her admissions to Defendant Hospital;

f. In failing to select, retain or grant privileges to only competent physicians and medical staff, including, but not limited to Defendants;

g. In failing to properly train and supervise the obstetrical nursing staff in assessing high risk obstetrical patients;

h. In failing to properly train and supervise the obstetrical nursing staff in assessing patients in preterm labor;

i. In failing to properly train and supervise the obstetrical nursing staff in promptly and accurately communicating patients' status to the treating physicians;

j. In failing to monitor and correct the negligent procedure of physicians in not performing an assessment of a high risk obstetrical patient in a timely manner;

k. In failing to monitor and correct the negligent procedure of physicians in not providing appropriate tocolysis and treatment to patients for preterm labor; and

g. In failing to properly train/supervise its staff to recognize preterm labor in a multiple gestation pregnancy as an obstetrical emergency;

70. As a direct and proximate result of the negligence of Defendant Hospital, as set forth herein, Minor-Plaintiff Reganne Hale has incurred the injuries and damages described herein.

71. The negligence of Defendant Hospital, as described herein, was the "legal cause" of Minor-Plaintiff Reganne Hale's injuries and damages, as described herein.

72. The negligence of Defendant Hospital, as described herein and hereinafter, increased the risk that Minor-Plaintiff Reganne Hale would suffer the injuries and damages as described herein.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant Hospital, jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

**COUNT VI – Vicarious Liability**

***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. Dubois Regional Medical Center***

73. The foregoing paragraphs are incorporated herein by reference as though fully set forth below, at length.

74. Defendant Hospital is responsible for the negligent acts and omissions of its agents, ostensible agents, servants and/or employees, as described herein and as follows:

(a) By failing to admit Plaintiff and start her on tocolysis and corticosteroids when Plaintiff presented to Defendant on November 9, 2002;

(b) By failing to admit Plaintiff and start her on tocolysis and corticosteroids when Plaintiff presented to Defendant Hospital with complaints of preterm labor on November 10, 2002;

(c) By the nursing staff failing to promptly and accurately evaluate Plaintiff when she presented to Defendant Hospital on November 10, 2002 with complaints of contractions;

(d) By the nursing staff failing to promptly and accurately notify Dr. Ott and/or Dr. Kush of Plainitff's symptoms on November 10, 2002;

(e) In failing to properly monitor Plaintiff's high risk pregnancy and labor course;

(f) In failing to appreciate the emergency nature presented by Plaintiff; and

(g) By failing to recognize Plaintiff's high risk of preterm labor.

75. The negligence of Defendant Hospital's agents, ostensible agents, and/or employees, as described herein, was the "legal cause" of Minor-Plaintiff Reganne Hale's injuries and damages, as described herein.

76. As a direct and proximate result of the negligence of Defendant Hospital's agents, ostensible agents, and/or employees, as set forth herein, Minor-Plaintiff Reganne Hale has incurred the injuries and damages, as described herein.

WHEREFORE, Plaintiffs demand judgment in their favor and against Defendant Hospital, jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## VERIFICATION

I verify that the averments contained in the foregoing **COMPLAINT IN CIVIL ACTION** are true and correct to the best of my knowledge, information and belief. I understand that said averments are made subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

2/22/05
Date

By: Angela M. Hale
Angela Hale, Plaintiff

2/22/05
Date

By: Randy C. Hale
Randy Hale, Plaintiff

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

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs

vs.

MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D. a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

No: 05-364 CD

Type of Case: Civil Action

JURY TRIAL DEMANED

Type of Pleading:
PRAECIPE FOR ENTRY OF APPEARANCE

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this Party: JOHN W. BLASKO
Court I.D. No.: 06787

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Dated: 3/30/05

FILED NOCC
m/11:30 bl
MAR 31 2005 GW

William A. Shaw
Prothonotary/Clerk of Courts

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

**PRAECIPE FOR ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Please enter our appearance on behalf of the Defendant, Gary D. Ott, M.D., in the above-captioned matter.

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 3/30/05

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

| | | |
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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
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| Defendants. | ) | |

CERTIFICATE OF SERVICE

I hereby certify that the Praecipe for Entry of Appearance, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 30th day of March, 2005 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\312435\1

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br><br>Defendants. | No. 05-364 CD<br><br>Medical Professional Liability Action<br><br>JURY TRIAL DEMANDED |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Ott's Request for Production (Set Two) directed to plaintiffs, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 31st day of March, 2005 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

FILED
m/12:39 BK
APR 01 2005
William A. Shaw
Prothonotary/Clerk of Courts

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

By: John W. Blasko/CJT
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\312732\2

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br><br>Defendants. | No. 05-364 CD<br><br>Medical Professional Liability Action<br><br>JURY TRIAL DEMANDED |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Ott's Expert Interrogatories directed to plaintiffs, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 31st day of March 2005 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

FILED NOCC
m/12:30 BAK
APR 01 2005
William A. Shaw
Prothonotary/Clerk of Courts

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

By: John W. Blasko/COJ
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\312732\1

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br><br>Defendants. | No. 05-364 CD<br><br>Medical Professional Liability Action<br><br>JURY TRIAL DEMANDED |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Ott's Interrogatories and Request for Production (Set One) directed to plaintiffs, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 31st day of March, 2005 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

FILED NO CC
m/12:30 BY
APR 01 2005 GK
William A. Shaw
Prothonotary/Clerk of Courts

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

By: John W. Blasko/CJT
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\312732\1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION

No. 05-364-CD

Issue No.

PRAECIPE FOR APPEARANCE

Code: 007

Filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

Counsel of Record for These Parties:

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

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

(412) 232-3400

FILED NO CC
APR 08 2005
William A. Shaw
Prothonotary/Clerk of Courts

PRAECIPE FOR APPEARANCE

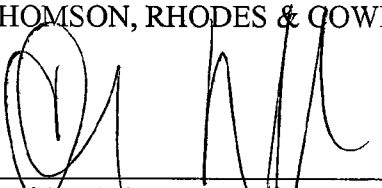
TO: PROTHONOTARY

Kindly enter our appearance on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two 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 6th day of April, 2005:

Harry S. Cohen, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' OBJECTION TO SUBPOENAS**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED

APR 15 2005 CW

m/12:30/c

William A. Shaw
Prothonotary

no c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**PLAINTIFFS' OBJECTION TO SUBPOENAS**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following

1. On April 12, 2005, via facsimile, Plaintiffs received a Notice of Intent to Serve Two (2) Subpoenas to Produce Documents and Things for Discovery Pursuant to 4009.21 from Defendant Gary D. Ott, M.D.

2. The subpoenas seek certain medical records and medical bills of Minor-Plaintiff Reganne Hale.

3. The first subpoena attached to the Notice is directed to non-party Children's Hospital of Pittsburgh and seeks a "complete copy of any and all medical records ..."

4. The second subpoena attached to the Notice is directed to non-party UPMC - Children's Hospital and seeks a "complete copy of any and all itemized bills ..."

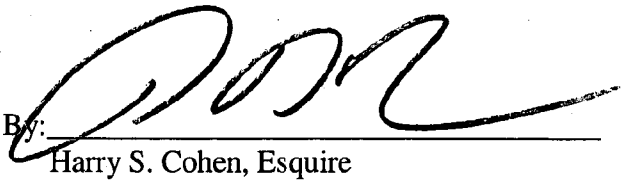
5. Plaintiff objects to the proposed subpoenas as local practice permits all requests for third-party medical records to go through the party whose records are being sought in order to permit counsel for that party to screen the records for objectionable, personal, or irrelevant information. The party obtaining the records must then produce the records to the requesting party, specifically stating whether any records were held and why they were withheld.

6. Plaintiff has never refused to provide Defendant Ott with Minor-Plaintiff Reganne Hale's medical records and/or medical bills.

WHEREFORE, Plaintiffs respectfully object to the subpoenas.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC



By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' OBJECTION TO SUBPOENAS** has been served via facsimile on the 13th day of April 2005 to the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

**Corinne Paul**
Litigation Solutions, Inc.
Gulf Tower, Suite 915
Pittsburgh, PA 15219

**Yoo, Tai, Y., MD**
Medical Arts Building
145 Hospital Avenue, Suite 315
Dubois, PA 15801

**Maternal Fetal Medicine of Dubois Regional Medical Center**
145 Hospital Avenue, Suite 103
Dubois, PA 15801

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| | ) | Medical Professional Liability Action |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

FILED
m/12:54 BY
APR 18 2005
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Ott's Notice of Intent to Subpoena and Subpoenas directed to Children's Hospital of Pittsburgh, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 12th day of April, 2005 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

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

DOCKET # 100308
NO: 05-364-CD
SERVICE # 1 OF 5
COMPLAINT

PLAINTIFF: ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, A minor
vs.
DEFENDANT: MICHAEL . KUSH, M.D.; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER; GARY D. OTT, MD; YOO, TAI, Y., MD; DUBOIS REGIONAL MEDICAL CENTER

**SHERIFF RETURN**

NOW, March 18, 2005 AT 12:10 PM SERVED THE WITHIN COMPLAINT ON MICHAEL J. KUSH, MD, An Adult Individual, RETIRED DEFENDANT AT 145 HOSPITAL AVE.,Suite 106, Med.Arts Bldg., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MAUREEN BARBER, OFFICE ASSISTANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

FILED NO CC
01 30 2601
APR 19 2005

William A. Shaw
Prothonotary/Clerk of Courts

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

DOCKET # 100308
NO: 05-364-CD
SERVICE # 2 OF 5
COMPLAINT

PLAINTIFF: ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, A minor
vs.
DEFENDANT: MICHAEL . KUSH, M.D.; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER; GARY D. OTT, MD; YOO, TAI, Y., MD; DUBOIS REGIONAL MEDICAL CENTER

## SHERIFF RETURN

NOW, March 18, 2005 AT 12:10 PM SERVED THE WITHIN COMPLAINT ON MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, A Penna. Corp. DEFENDANT AT 145 HOSPITAL AVE. STE. 103, Med.Arts Bldg., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MAUREEN BARBER, OFFICE ASSISTANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

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

DOCKET # 100308
NO: 05-364-CD
SERVICE # 3 OF 5
COMPLAINT

PLAINTIFF: ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, A minor
vs.
DEFENDANT: MICHAEL . KUSH, M.D.; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER; GARY D. OTT, MD; YOO, TAI, Y., MD; DUBOIS REGIONAL MEDICAL CENTER

**SHERIFF RETURN**

NOW, March 18, 2005 AT 1:30 PM SERVED THE WITHIN COMPLAINT ON GARY D. OTT, MD, An Adult Individual DEFENDANT AT 145 HOSPITAL AVE. SUITE 315, Med.Arts Bldg., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DIANE GRIENEISEN, NURSE A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

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

DOCKET # 100308
NO: 05-364-CD
SERVICE # 4 OF 5
COMPLAINT

PLAINTIFF: ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, A minor
vs.
DEFENDANT: MICHAEL . KUSH, M.D.; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER; GARY D. OTT, MD; YOO, TAI, Y., MD; DUBOIS REGIONAL MEDICAL CENTER

**SHERIFF RETURN**

NOW, March 31, 2005 AT 11:30 AM SERVED THE WITHIN COMPLAINT ON YOO, TAI, Y., MD, A Penna. Corp. DEFENDANT AT 145 HOSPITAL AVE. STE. 315 Med Arts Bldg., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO DIANE GRIENEISEN, R.N. FOR GARY D. OTT, M.D. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

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

DOCKET # 100308
NO: 05-364-CD
SERVICE # 5 OF 5
COMPLAINT

PLAINTIFF: ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, A minor
vs.
DEFENDANT: MICHAEL . KUSH, M.D.; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER; GARY D. OTT, MD; YOO, TAI, Y., MD; DUBOIS REGIONAL MEDICAL CENTER

## SHERIFF RETURN

NOW, March 18, 2005 AT 12:15 PM SERVED THE WITHIN COMPLAINT ON DUBOIS REGIONAL MEDICAL CENTER DEFENDANT AT 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO PAT ABELL, RISK MANAGEMENT ASSISTANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

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

DOCKET # 100308
NO: 05-364-CD
SERVICES 5
COMPLAINT

PLAINTIFF: ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, A minor
vs.
DEFENDANT: MICHAEL . KUSH, M.D.; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER; GARY D. OTT, MD; YOO, TAI, Y., MD; DUBOIS REGIONAL MEDICAL CENTER

## SHERIFF RETURN

RETURN COSTS

| Description | Paid By | CHECK # | AMOUNT |
|---|---|---|---|
| SURCHARGE | COHEN | 13513 | 50.00 |
| SHERIFF HAWKINS | COHEN | 13513 | 50.00 |
| SHERIFF HAWKINS | " | 13616 | 23.15 |

Sworn to Before Me This

_____ Day of _____ 2005

_____

So Answers,

by Marilyn Hamm

Chester A. Hawkins
Sheriff

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF PRAECIPE TO ENTER DEFAUL JUDGMENT AGAINST DEFENDANT YOO, TAI, Y., M.D., P.C.**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED

APR 25 2005
M 12:30 bl
William A. Shaw
Prothonotary
No C/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF PRAECIPE TO ENTER DEFAULT**
**JUDGMENT AGAINST DEFENDANT YOO, TAI, Y., M.D., P.C.**

To: **Yoo, Tai, Y., MD**
Medical Arts Building
145 Hospital Avenue, Suite 315
Dubois, PA 15801

**Date of Notice: April 21, 2005**

**IMPORTANT NOTICE**

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY AND ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS.

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

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

DAVID S. MEHOLICK
CLEARFIELD COUNTY COURTHOUSE
ONE NORTH SECOND STREET
CLEARFIELD, PA 16830
(814)765-2641

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By:_____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Two Chatham Center; Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that the within **NOTICE OF PRAECIPE TO ENTER DEFAULT JUDGMENT AGAINST DEFENDANT YOO, TAI, Y., M.D., P.C.** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by the first-class mailing or hand delivery of a true and correct copy to the party and address listed below on the 21st day of April 2005:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

***David R. Johnson, Esquire***
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

**Yoo, Tai, Y., MD**
Medical Arts Building
145 Hospital Avenue, Suite 315
Dubois, PA 15801

**Maternal Fetal Medicine of Dubois Regional Medical Center**
145 Hospital Avenue, Suite 103
Dubois, PA 15801

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF PRAECIPE TO ENTER DEFAUL JUDGMENT AGAINST DEFENDANT MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, P.C.**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED

APR 25 2005

12:30/c

William A. Shaw
Prothonotary

No C/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,

PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF PRAECIPE TO ENTER DEFAULT JUDGMENT AGAINST DEFENDANT MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, P.C.**

To: **Maternal Fetal Medicine of Dubois Regional Medical Center**
145 Hospital Avenue, Suite 103
Dubois, PA 15801

**Date of Notice: April 21, 2005**

**IMPORTANT NOTICE**

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY AND ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS.

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

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

DAVID S. MEHOLICK
CLEARFIELD COUNTY COURTHOUSE
ONE NORTH SECOND STREET
CLEARFIELD, PA 16830
(814)765-2641

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By:_____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Two Chatham Center; Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that the within **NOTICE OF PRAECIPE TO ENTER DEFAULT JUDGMENT AGAINST DEFENDANT MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, P.C.** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by the first-class mailing or hand delivery of a true and correct copy to the party and address listed below on the 21st day of April 2005:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

***David R. Johnson, Esquire***
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

**Yoo, Tai, Y., MD**
Medical Arts Building
145 Hospital Avenue, Suite 315
Dubois, PA 15801

**Maternal Fetal Medicine of Dubois Regional Medical Center**
145 Hospital Avenue, Suite 103
Dubois, PA 15801

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANT MICHAEL J. KUSH, M.D.**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED

APR 25 2005
m/12:30/cc
William A. Shaw
Prothonotary
No C/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANT MICHAEL J. KUSH, M.D.**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' First Set of Interrogatories Directed to Defendant Michael J. Kush, M.D. was served on the 21st day of April 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

**Yoo, Tai, Y., MD**
Medical Arts Building
145 Hospital Avenue, Suite 315
Dubois, PA 15801

**Maternal Fetal Medicine of Dubois Regional Medical Center**
145 Hospital Avenue, Suite 103
Dubois, PA 15801

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

FILED
APR 25 2005
William A. Shaw
Prothonotary

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANT GARY D. OTT, M.D.**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED

APR 25 2005
m/ 12:30/c
William A. Shaw
Prothonotary
w c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANT MICHAEL J. KUSH, M.D.**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' First Set of Interrogatories Directed to Defendant Gary D. Ott, M.D. was served on the 21st day of April 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

**Yoo, Tai, Y., MD**
Medical Arts Building
145 Hospital Avenue, Suite 315
Dubois, PA 15801

**Maternal Fetal Medicine of Dubois Regional Medical Center**
145 Hospital Avenue, Suite 103
Dubois, PA 15801

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

**RULE TO SHOW CAUSE**

AND NOW, this 28 day of April, 2005 a Rule is hereby issued to show cause why the Defendant Gary Ott, M.D.'s Motion to Strike Plaintiffs' Objection to Subpoenas should not be granted.

Rule returnable the 18th day of May, 2005, in Clearfield County Courthouse, Courtroom 1 at 2:00 o'clock.

FILED 1cc
01:01 BOI Atty Blasko
APR 29 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
MOTION TO STRIKE PLAINTIFFS' OBJECTION TO SUBPOENAS

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

FREDERICK BATTAGLIA
Court I.D. No. 91624

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Robert J. Tribeck, Esquire
Vincent L. Champion, Esquire

Dated: 4/25/05

FILED
APR 26 2005
m/12:15 l
William A. Shaw
Prothonotary/Clerk of Courts
No CC

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

***DEFENDANT GARY D. OTT, M.D.'s MOTION TO STRIKE PLAINTIFFS' OBJECTION TO SUBPOENAS***

AND NOW, comes the Defendant, Gary D. Ott, M.D., by and through his attorneys, McQuaide, Blasko, Schwartz, Fleming & Faulkner, Inc. and files the within Motion to Strike Plaintiffs' Objection to Subpoenas.

1. In the instant civil action, Plaintiffs allege professional negligence with respect to the obstetrical care provided to Plaintiff, Angela Hale, in connection with the labor and delivery of her daughter, Reganne Hale.

2. On April 12, 2005, pursuant to Pa.R.C.P. 4009.21, counsel for the Defendant served upon counsel for the Plaintiffs Notices of Intent to Serve Subpoenas upon the following entities:

a. Children's Hospital of Pittsburgh (for any and all medical records);

b. UPMC-Children's Hospital (for any and all itemized bills).

Copies of the Notice of Intent and Subpoenas are attached hereto and marked Exhibit "A."

3. On or about April 13, 2005, counsel for the Plaintiffs served objections to the proposed Subpoenas upon counsel for the Defendant, a copy of which Objections are attached hereto, marked Exhibit "B."

4. Counsel for the Plaintiffs did not identify a legal basis for their objection other than to baldly assert "local practice permits" Plaintiffs' counsel to suppress said records prior to releasing the information that Plaintiffs' counsel deems relevant to the request.

5. The requested records are properly discoverable by counsel for the Defendant and Plaintiffs' objection is without merit. The basis of Plaintiffs' objection is not recognized by the Pennsylvania Rules of Civil Procedure and is thereby invalid. Plaintiffs fail to indicate what they have instructed the above-identified entities not to produce and the nature of the documents not produced together with the basis for non-production.

6. Plaintiffs' meritless objection has prejudiced Defendant's ability to adequately prepare for trial in this matter.

7. Defendant respectfully requests that this Honorable Court enter an Order striking Plaintiffs' objection to Defendant's subpoenas and directing that counsel for the Defendant be permitted to immediately issue said subpoenas and/or take such records depositions as may be necessary to timely acquire the records sought.

WHEREFORE, Defendant Gary D. Ott, M.D. respectfully requests that this Honorable Court enter an Order striking Plaintiffs' Objection to Defendant's Subpoenas directed to the above-identified entities, and ordering that Defendant be permitted to immediately serve said Subpoenas and/or convene such records depositions as may be necessary to timely obtain the subpoenaed records.

Respectfully submitted,

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

BY _____

JOHN W. BLASKO
FREDERICK BATTAGLIA
Counsel for Defendant
Gary D. Ott, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: April 25, 2005

**PENNSYLVANIA COURT OF COMMON PLEAS**

**COUNTY OF CLEARFIELD**

**Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor**
**vs.**
**Michael J. Kush, M.D., an adult individual; Maternal Fetal Medicine of Dubois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott, M.D., an adult individual; Yoo, Tai, Y., M.D., a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation**

**Court of Common Pleas**

**05-364 CD**

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

| Provider: | Record Type: |
|---|---|
| Children`s Hospital of Pittsburgh<br>UPMC - Children´s Hospital | Medical<br>Financial / Billing |

TO: Harry Cohen

note: please see enclosed list of all other interested counsel

Litigation Solutions, Inc. ('LSI') on behalf of John Blasko, Esquire intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If the twenty day notice period is waived or if no objection is made, then the subpoena may be served.

Date of Issue: 4/12/2005

Litigation Solutions, Inc. on behalf of:

John Blasko, Esquire Defense

CC: John Blasko, Esquire - Court of Common Pleas

McQuaide & Blasko

If you have any questions regarding this matter, please contact:
Litigation Solutions, Inc. (412.263.5656)

Brentwood Towne Centre
101 Towne Square Way, Suite 251
Pittsburgh, PA 15227

**COUNSEL LISTING FOR ANGELA HALE AND RANDY A. HALE, AS PARENTS AND NATURAL GUARDIANS OF REGANNE HALE, A MINOR VS. MICHAEL J. KUSH, M.D., AN ADULT INDIVIDUAL; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, A PENNSYLVANIA CORPORATION; GARY D. OTT, M.D., AN ADULT INDIVIDUAL; YOO, TAI, Y., M.D., A PENNSYLVANIA CORPORATION; AND DUBOIS REGIONAL MEDICAL CENTER, A PENNSYLVANIA CORPORATION**

**County of Clearfield Court of Common Pleas**

| Counsel | Firm | Counsel Type |
|---|---|---|
| Cohen, Harry 412-281-3000(ph) | Two Chatham Center Suite 585 Pittsburgh PA 15219 | Opposing Counsel |
| Johnson, Esquire, David 412-232-3400 | 1010 Two Chatham Center Pittsburgh PA 15219 | Other |

**COMMONWEALTH OF PENNSYLVANIA**

**COUNTY OF CLEARFIELD**

**Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor**
**vs.**
**Michael J. Kush, M.D., an adult individual; Maternal Fetal Medicine of Dubois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott, M.D., an adult individual; Yoo, Tai, Y., M.D., a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation**

**Court of Common Pleas**

**05-364 CD**

## Request For Records Copies Related To Subpoena Document Request

| Provider: | Copy Sets Requested: |
|---|---|
| Children`s Hospital of Pittsburgh | _____ |
| UPMC - Children´s Hospital | _____ |

Please return this completed form to Litigation Solutions, Inc. in the attached self-addressed envelope. Please be advised that Litigation Solutions, Inc. requires prepayment for all requested records above. Therefore, once the requested records are obtained an invoice for prepayment will be generated and sent directly to your attention. This prepayment includes a $5.00 administrative fee. Once payment has been received the records will be promptly forwarded to your attention.

If you should happen to have any questions or concerns regarding this matter, please don't hesitate to contact Nicole Lower at 412.253.1107.

Date of Issue: 4/12/2005

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Angela Hale and Randy A. Hale as parents and natural guardians of Reganne Hale, a minor, Plaintiff(s) *

Vs. * No. 2005-00364-CD

Michael J. Kush MD, an adult individual; Maternal Fetal Medicine of DuBois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott MD., an adult individual; Yoo, Tai, Y., MD a Pennsylvania corporation; and DuBois Regional Medical Center, a Pennsylvania corporation, Defendant(s) *

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

TO: Children's Hospital of Pittsburgh
(Name of Person or Entity)

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

PLEASE SEE ATTACHED RIDER

Litigation Solutions Inc 101 Towne Square Way Ste 251 Pittsburgh PA 15227
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

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

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

NAME: John Blasko, Esquire
ADDRESS: 811 University Drive
State College PA 16801
TELEPHONE: 814-238-4926
SUPREME COURT ID # 6787
ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Monday, April 11, 2005
Seal of the Court

Deputy

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

**Rider to Subpoena**

**Explanation of Required Documents and Things**

**TO: CUSTODIAN OF RECORDS FOR:**

Children`s Hospital of Pittsburgh
3705 5th Avenue
Pittsburgh PA 15213
Attention: Medical Records Correspondence

Patient: Hale, Reganne
SS#:
Date of Birth: 11/10/2002

**Requested Items:**
Please remit: a complete copy of any and all medical records, including records, charts, test results, reports, correspondence, office notes, and computerized records.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Angela Hale and Randy A. Hale as parents and natural guardians of Reganne Hale, a minor, Plaintiff(s) *

Vs. * No. 2005-00364-CD

Michael J. Kush MD, an adult individual; Maternal Fetal Medicine of DuBois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott MD., an adult individual; Yoo, Tai, Y., MD a Pennsylvania corporation; and DuBois Regional Medical Center, a Pennsylvania corporation, Defendant(s) *

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

TO: UPMC-Children's HOspital
(Name of Person or Entity)

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

PLEASE SEE ATTACHED RIDER

Litigation Solutions Inc 101 Towne Square Way Ste 251 Pittsburgh PA 15227
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

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

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

NAME: John Blasko, Esquire
ADDRESS: 811 University Drive
State College PA 16801
TELEPHONE 814-238-4926
SUPREME COURT ID # 6787
ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Monday, April 11, 2005
Seal of the Court

Deputy

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

## Rider to Subpoena

## Explanation of Required Documents and Things

**TO: CUSTODIAN OF RECORDS FOR:**

UPMC - Children's Hospital
3705 Fifth Avenue
Pittsburgh PA 15213
Attention: Billing Department

Patient: Hale, Reganne
SS#:
Date of Birth: 11/10/2002

**Requested Items:**
Complete copy of any and all itemized bills (include ICD9 & CPT codes), denials for inpatient and outpatient accounts, amount charged, amount paid by insurance or Medicare, amount written off, and any amount owed.

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' OBJECTION TO SUBPOENAS**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**PLAINTIFFS' OBJECTION TO SUBPOENAS**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following

1. On April 12, 2005, via facsimile, Plaintiffs received a Notice of Intent to Serve Two (2) Subpoenas to Produce Documents and Things for Discovery Pursuant to 4009.21 from Defendant Gary D. Ott, M.D.

2. The subpoenas seek certain medical records and medical bills of Minor-Plaintiff Reganne Hale.

3. The first subpoena attached to the Notice is directed to non-party Children's Hospital of Pittsburgh and seeks a "complete copy of any and all medical records ..."

4. The second subpoena attached to the Notice is directed to non-party UPMC - Children's Hospital and seeks a "complete copy of any and all itemized bills ..."

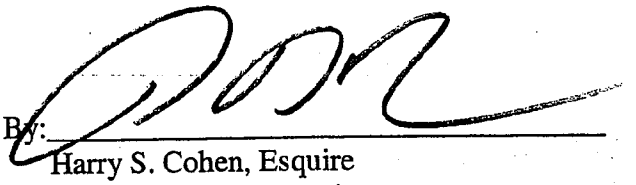
5. Plaintiff objects to the proposed subpoenas as local practice permits all requests for third-party medical records to go through the party whose records are being sought in order to permit counsel for that party to screen the records for objectionable, personal, or irrelevant information. The party obtaining the records must then produce the records to the requesting party, specifically stating whether any records were held and why they were withheld.

6. Plaintiff has never refused to provide Defendant Ott with Minor-Plaintiff Reganne Hale's medical records and/or medical bills.

WHEREFORE, Plaintiffs respectfully object to the subpoenas.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC



By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' OBJECTION TO SUBPOENAS** has been served via facsimile on the 13th day of April 2005 to the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

**Corinne Paul**
Litigation Solutions, Inc.
Gulf Tower, Suite 915
Pittsburgh, PA 15219

**Yoo, Tai, Y., MD**
Medical Arts Building
145 Hospital Avenue, Suite 315
Dubois, PA 15801

**Maternal Fetal Medicine of Dubois Regional Medical Center**
145 Hospital Avenue, Suite 103
Dubois, PA 15801

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the ***Defendant Gary D. Ott, M.D.'s Motion to Strike Plaintiffs' Objection to Subpoenas***, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 25th day of April, 2005 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\314290\1

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' ANSWER TO DEFENDANT GARY D. OTT, M.D.'S MOTION TO STRIKE PLAINTIFFS' OBJECTION TO SUBPOENAS**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED NO CC
m/2:00
MAY 11 2005
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**PLAINTIFFS' ANSWER TO DEFENDANT GARY D. OTT, M.D.'s MOTION TO STRIKE PLAINTIFFS' OBJECTION TO SUBPOENAS**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Todd D. Bowlus, Esquire, and set forth the following:

1. Defendant's Motion to Strike is wholly unnecessary.

2. **Defendant has already been provided with the full and complete set of medical records** from Children's Hospital and been advised that Plaintiffs will forward a complete set of medical bills upon receipt. (See April 27, 2005 correspondence attached hereto as Exhibit "A").

3. Moreover, Defendant has been advised that:

(a) The medical records provided were a full and complete set;

(b) No medical records were withheld or redacted;

(c) Plaintiffs do not anticipate they will ever withhold any records, nor it is their practice to; and

(d) In the event that any records are withheld, Plaintiffs would specify the reason why they were withheld so that the issue could be taken up with this Honorable Court.

(See Affidavit attached hereto as Exhibit "B").

4. Thereafter, on May 3, 2005, Defendant represented during a phone conversation, wherein he was requesting a second extension of time to file an Answer to Plaintiffs' Complaint, that since they had a complete set of the medical records and since Defendant's Motion is now moot, he will file a Praecipe to Quash the instant Motion.

5. On May 4, 2005, the day after Plaintiffs granted an extension, Defendant then advised that even though they have a full and complete set of the medical records, he would still move forward with the instant Motion.

6. **Defendant's relief requested in his Motion is moot. The medical records have been provided and there is no need for Court intervention at this time.**

7. Furthermore, Defendant failed to comply with Local Rule 206(f), which provides that the petitioning party shall serve the Court Order on all parties, as it was not until the May 4, 2005 phone conversation that Plaintiffs were even made aware that a Rule to Show Cause was issued by this Honorable Court. Upon Plaintiffs' request, Defendant then faxed a copy of the signed and issued Rule to Show Cause.

WHEREFORE, Plaintiffs respectfully request that Defendant's Motion be denied.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

EXHIBIT A

Harry S. Cohen & Associates, P.C.
LAW OFFICES

April 27, 2005

John W. Blasko, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**Re: Angela Hale and Randy A. Hale, parents and natural guardians of Reganne Hale, a minor, v. Michael J. Kush, M.D., and adult individual; Maternal Fetal Medicine of Dubois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott, M.D., and adult individual; Yoo, Tai, Y., M.D., a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation**
**Case No.: 2005-364-CD**

Dear Mr. Blasko:

Enclosed herein you will find a complete set of Minor-Plaintiff Reganne Hale's medical records from Children's Hospital. To date, we have not received the medical bills from Children's Hospital; however, upon receipt, I will forward the same to you.

Since you are now in possession of the full set of medical records from Children's Hospital, I see no reason to proceed with your Motion to Quash.

Please advise.

Yours very truly,

**HARRY S. COHEN & ASSOCIATES, PC**

Todd D. Bowlus, Esquire

TDB:jb
Enclosure(s)
cc: David R. Johnson (w/enc)

Two Chatham Center • Suite 985 • Pittsb[illegible]–3000 • Fax: (412) 232–6688
E-mail: hcohen@med[illegible]edmall.com

EXHIBIT "A"

EXHIBIT B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | : | |

**AFFIDAVIT**

I, Todd D. Bowlus, Esquire, being duly sworn, hereby affirm and attest the following:

1. On April 27, 2005, Plaintiffs provided to Defendants the full and complete set of medical records from Children's Hospital;

2. Defendant has been advised that:

   (a) The medical records provided were a full and complete set;

   (b) No medical records were withheld or redacted;

   (c) Plaintiffs do not anticipate they will ever withhold any records, nor it is their practice; and

   (d) In the event that any records are withheld, Plaintiffs would specify the reason why they were withheld so that the issue could be taken up with this Honorable Court.

By:_____
Todd D. Bowlus, Esquire

Sworn to and subscribed before me
this 5th day of May 2005

Notary Public

My commission expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Sherry Pugliano, Notary Public
City Of Pittsburgh, Allegheny County
19, 2008
Of Notaries

EXHIBIT
tabbies
B

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**VERIFICATION**

I verify that the averments contained in the foregoing **PLAINTIFFS' ANSWER TO DEFENDANT GARY D. OTT, M.D.'s MOTION TO STRIKE PLAINTIFFS' OBJECTION TO SUBPOENAS** are true and correct to the best of my knowledge, information and belief. I understand that said averments are made subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

5-5-05
Date

By: Randy C. Hale
Randy Hale, Plaintiff

5-5-05
Date

By: Angela M. Hale
Angela Hale, Plaintiff

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' ANSWER TO DEFENDANT GARY D. OTT, M.D.'s MOTION TO STRIKE PLAINTIFFS' OBJECTION TO SUBPOENAS** has been served via hand delivery or first class mail on the 10th day of May 2005 to the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

HARRY S. COHEN & ASSOCIATES, PC

By:_____
Todd D. Bowlus, Esquire

Order

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

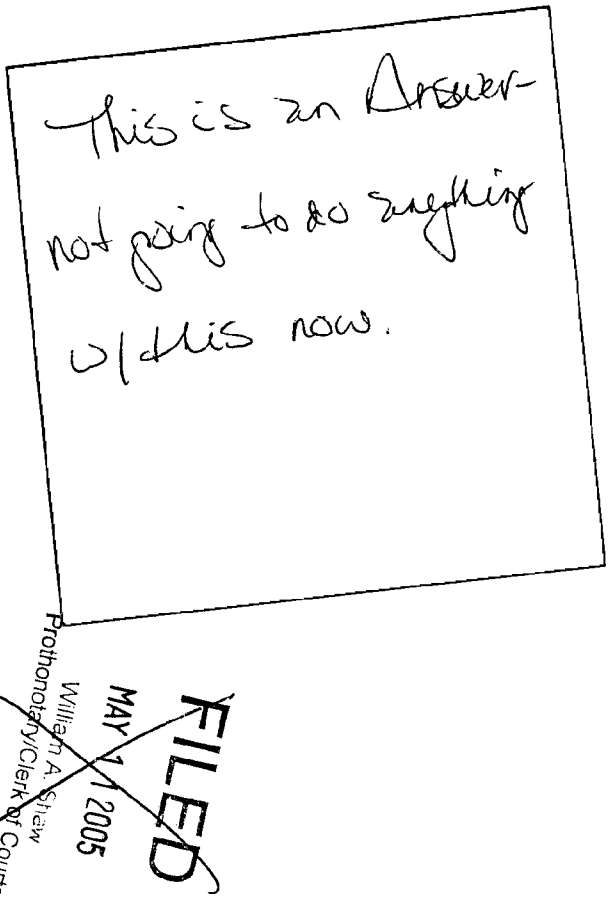
**ORDER OF COURT**

AND NOW, to wit, this _____ day of _____ 2005, it is hereby ORDERED, ADJUDGED, and DECREED that Defendant Gary D. Ott, M.D.'s Motion to Strike Plaintiffs' Objection to Subpoenas is DENIED with prejudice.

BY THE COURT:

_____

J.


This is an Answer-
not going to do anything
w/ this now.
FILED
MAY 11 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**STIPULATION TO VOLUNTARILY DISMISS ONE DEFENDANT AND TO AMEND CAPTION**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED

MAY 16 2005

M/11:45/
William A. Shaw
Prothonotary
No C/C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**STIPULATION TO VOLUNTARILY DISMISS**
**ONE DEFENDANT AND TO AMEND CAPTION**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, PC by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, the Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center, through their attorneys of record, Thomson, Rhodes & Cowie, PC, by David R. Johnson, Esquire and the Defendant Gary D. Ott, M.D., through his attorneys of record, McQuaide Blasko, by John W. Blasko, Esquire and jointly stipulate as follows:

WHEREAS, it is admitted that at all times material to the allegations set forth in Plaintiffs' Complaint that Defendant Michael J. Kush, M.D. was an employee of Defendant Dubois Regional Medical Center and acted within the course and scope of his employment;

WHEREAS, it is admitted that Defendant Maternal Fetal Medicine of Dubois Regional Medical Center is a department within Defendant Dubois Regional Medical Center;

It is hereby stipulated that Plaintiffs agree to voluntarily dismiss their cause of action against Defendant Maternal Fetal Medicine of Dubois Regional Medical Center and that Defendant Maternal Fetal Medicine of Dubois Regional Medical Center shall be removed from the caption. Therefore, the caption shall read as follows:

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

Respectfully submitted,

**HARRY S. COHEN & ASSOCIATES**

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Attorneys for Plaintiffs

**THOMSON, RHODES & COWIE, PC**

By: _____

David R. Johnson, Esquire
Two Chatham Center, Tenth Floor
Pittsburgh, PA 15219
Attorneys for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center

**MCQUAIDE BLASKO**

By: _____

John W. Blasko, Esquire
811 University Drive
State College, PA 16801-6699
Attorneys for Defendant Gary D. Ott, M.D.

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor | : | |
| -vs- | : | No. 05-364-CD |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation | : | |

FILED
MAY 20 2005
William A. Shaw
Prothonotary/Clerk of Courts

2cc Attys: Cohen, Johnson, Blasko, Bowles
1cc Dr. Yoo
145 Hospital Ave.
Ste. 315
DuBois, PA 15801

ORDER

NOW, this 18th day of May, 2005, following argument on Defendant Gary D. Ott, MD's Motion to Strike Plaintiffs' Objections to Subpoenas, it is hereby ORDERED as follows:

1. Plaintiffs' Objection to Defendants' subpoenas directed to the Children's Hospital of Pittsburgh and UPMC-Children's Hospital are hereby stricken; and

2. The Defendant is hereby permitted to immediately serve said subpoenas and/or convene such record

depositions as may be necessary to timely obtain the subpoenaed records.

BY THE COURT,

Judge J Zimmerman

President Judge

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF DEPOSITION OF DEFENDANT GARY D. OTT, MD WITH SUBPEONA DUCES TECUM**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED
m/ 11:32 BY NO CC
MAY 23 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF DEPOSITION OF**
**DEFENDANT GARY D. OTT, MD WITH SUBPEONA DUCES DECUM**

TO: Gary D. Ott, MD
c/o John W. Blasko, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**PLEASE TAKE NOTICE** that the Deposition of Defendant Gary D. Ott, MD will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oath in the conference room at the Medical Art's Building, adjacent to Dubois Hospital on the **12th day of July at 11:00 a.m.,** at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

**SUBPOENA DUCES TECUM**

You are hereby instructed to bring the following with you:

1. The complete medical chart in your possession with regard to Plaintiffs Angela Hale and Reganne Hale, Minor.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF DEPOSITON OF DEFENDANT GARY OTT, MD WITH SUBPEONA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing or hand delivery of a true and correct copy to the party and address listed below on the 19th day of May 2005:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219

**Johnson & Mimless Court Reporting**
1334 Fifth Avenue
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
CERTIFICATE OF SERVICE FOR ANSWERS TO FIRST SET OF INTERROGATORIES

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

FREDERICK BATTAGLIA
Court I.D. No. 91624

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Robert J. Tribeck, Esquire
Vincent L. Champion, Esquire

Dated: May 20, 2005

FILED
m/ 1:28 BY NO CC
MAY 23 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br><br>Defendants. | Civil Action-Medical Professional Liability Action<br><br>No. 05-364 CD<br><br>JURY TRIAL DEMANDED |

CERTIFICATE OF SERVICE

I hereby certify that Defendant Gary D. Ott, M.D.'s Answers to Plaintiffs' First Set of Interrogatories, in the above-referenced matter were mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 20th day of May, 2005 to:

***Original***

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

***Copy***

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
FREDERICK R. BATTAGLIA
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\314538\1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
AFFIDAVIT OF SERVICE FOR ORDER OF MAY 18, 2005-JUDGE AMMERMAN

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

FREDERICK BATTAGLIA
Court I.D. No. 91624

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Dated: May 23, 2005

FILED no cc
m/11:48 BA
MAY 24 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | Civil Action-Medical Professional Liability Action |
| Plaintiffs, vs. | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | JURY TRIAL DEMANDED |
| Defendants. | |

***AFFIDAVIT OF SERVICE***

Before me, the undersigned authority, personally appeared John W. Blasko, Esquire, who, being duly sworn, deposes and says that a true and correct copy of Judge Ammerman's May 18, 2005, Order, in the above-captioned case was served upon counsel of record: Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, Harry S. Cohen & Associates, P.C., Two Chatham Center, Suite 985, Pittsburgh, PA 15219 and David R. Johnson, Esquire, Two Chatham Center, 10th Floor, Pittsburgh, PA 15219 by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, on May 23, 2005.

McQUAIDE, BLASKO, FLEMING
& FAULKNER, INC.

BY _____
JOHN W. BLASKO
Counsel for Defendant
Gary D. Ott, M.D.

Sworn to and subscribed before me
this 23rd day of May, 2005.

Nancy A. Swisher
Notary Public

NOTARIAL SEAL
NANCY L. SWISHER, NOTARY PUBLIC
STATE COLLEGE BORO., CENTRE COUNTY
MY COMMISSION EXPIRES FEB. 17, 2007

::ODMA\PCDOCS\DOCSLIB2\315655\1

IN THE COURT OF COMMON PLEAS

OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor | : | |
| -vs- | : | No. 05-364-CD |
| MICHAEL J. KUSH, MD; an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation | : | |

O R D E R

NOW, this 18th day of May, 2005, following argument on Defendant Gary D. Ott, MD's Motion to Strike Plaintiffs' Objections to Subpoenas, it is hereby ORDERED as follows:

1. Plaintiffs' Objection to Defendants' subpoenas directed to the Children's Hospital of Pittsburgh and UPMC-Children's Hospital are hereby stricken; and

2. The Defendant is hereby permitted to immediately serve said subpoenas and/or convene such record

depositions as may be necessary to timely obtain the subpoenaed records.

BY THE COURT,

/s/ Fredric J. Ammerman

President Judge

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

MAY 20 2005

Attest.

Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
ANSWER WITH NEW MATTER
TO PLAINTIFFS' COMPLAINT

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

FREDERICK BATTAGLIA
Court I.D. No. 91624

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Dated: 5.31.05

FILED NO CC
m/11:26 BP
JUN 01 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

NOTICE TO PLEAD

TO: Plaintiffs

YOU ARE HEREBY notified to plead to the within Answer with New Matter within twenty (20) days from the date of service hereof or a default judgment may be entered against you.

McQUAIDE, BLASKO, FLEMING,
& FAULKNER, INC.

By: _____
JOHN W. BLASKO
FREDERICK BATTAGLIA
Attorneys for Defendant
Gary D. Ott, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 5.31.05

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

***ANSWER AND NEW MATTER OF DEFENDANT GARY D. OTT, M.D. TO PLAINTIFFS' COMPLAINT***

1. The averments of Paragraph 1 are denied in that Answering Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief as to the truth of the same.

2. The averments of Paragraph 2 are denied in that Answering Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief as to the truth of the same.

3. The averments of Paragraph 3 are denied in that Answering Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief as to the truth of the same.

4. The averments of Paragraph 4 are denied in that Answering Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief as to the truth of the same.

5. The averments of Paragraph 5 are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure.

6. The averments of Paragraph 6 are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure.

7. The averments of Paragraph 7 are admitted in part and denied in part. It is admitted that Plaintiffs are asserting a professional liability claim against Answering Defendant, who is a licensed medical professional. It is denied that Answering Defendant's office address is 635B Maple Avenue, DuBois, PA 15801. The correct address is 145 Hospital Avenue, Suite 315, DuBois, PA 15801.

8. The averments of Paragraph 8 are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure.

9. The averments of Paragraph 9 are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure.

10. The averments of Paragraph 10 are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure.

11. The averments of Paragraph 11 are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure.

12. The averments of Paragraph 12 are denied. At all times relevant to Plaintiffs' cause of action, Answering Defendant was employed as an independent contractor.

13. The averments of Paragraph 13 are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure. By way of further response, it is denied that at all times material hereto Answering Defendant was an employee, agent or ostensible agent of Defendant Yoo Corporation.

14. The averments of Paragraph 14 are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure.

15-18. The averments of Paragraphs 15 through 18, inclusive, are responded to as follows. Answering Defendant hereby incorporates the Plaintiff/wife's medical records which document the care and treatment rendered to Plaintiff/wife throughout the time period referenced. To the extent the averments of Paragraphs 15 through 18, inclusive, differ from that set forth herein, and/or that reflected within the relevant medical records, said averments are denied per Pa.R.C.P. 1029(e).

19. The averments of Paragraph 19 are admitted in part and denied in part. It is admitted only that on November 9, 2002, at approximately 28 weeks gestation, Plaintiff/wife purportedly developed a vaginal discharge. It is specifically denied that that said discharge was "light brownish red." The Obstetrics Department Outpatient Testing note dated November 9, 2002 documented Plaintiff/wife's complaint of "brownish discharge." Furthermore, a urinalysis test of November 9, 2002 reported Plaintiff/wife's urine color as "straw."

20-22. The averments of Paragraphs 20 through 22, inclusive, are responded to as follows. Answering Defendant hereby incorporates the Plaintiff/wife's medical records which document the care and treatment rendered to Plaintiff/wife throughout the time period referenced. To the extent the averments of Paragraphs 20 through 22, inclusive, differ from that set forth

herein, and/or that reflected within the relevant medical records, said averments are denied per Pa.R.C.P. 1029(e).

23. The averments of Paragraph 23 are denied in that Answering Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief as to the truth of the same.

24-28. The averments of Paragraphs 24 through 28, inclusive, are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure. To the extent that a response would be deemed required, Answering Defendant hereby incorporates Plaintiff/wife's medical records which document the care and treatment rendered to Plaintiff/wife throughout the time period referenced. To the extent that the averments of Paragraphs 24 through 28, inclusive, differ from that set forth herein and/or that reflected within the relevant medical records, said averments are denied per Pa.R.C.P. 1029(e).

29-40. The averments of Paragraphs 29 through 40, inclusive, are responded to as follows. Answering Defendant hereby incorporates the Plaintiff/wife's medical records which document the care and treatment rendered to Plaintiff/wife throughout the time period referenced. To the extent the averments of Paragraphs 29 through 40, inclusive, differ from that set forth herein, and/or that reflected within the relevant medical records, said averments are denied per Pa.R.C.P. 1029(e).

41-46. The averments of Paragraphs 41 through 46, inclusive, are denied in that Answering Defendant, after reasonable investigation, is without sufficient knowledge or information to form a belief as to the truth of the same.

47. The averments of Paragraph 47, inclusive of the subparagraphs thereunder, set forth conclusions of law and/or statements of Plaintiffs' legal position and thus no response is

required under the Rules of Civil Procedure. To the extent that a response is required, the averments of Paragraph 47, inclusive of the subparagraphs thereunder, are denied per Pa.R.C.P. 1029(e). Furthermore, it is specifically denied that any injury and/or loss which may have been sustained by minor/plaintiff was the direct or proximate result of any action or inaction by or on behalf of this Answering Defendant.

***Count I-Professional Negligence***
***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. Michael J. Kush, M.D.***

48. Answering Defendant hereby incorporates Paragraphs 1 through 47, inclusive, of this Answer with New Matter as if the same were set forth at length herein.

49-52. The averments of Paragraphs 49 through 52, inclusive of the subparagraphs thereunder, are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure. To the extent that a response is required, said averments are denied per Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Gary D. Ott, M.D., respectfully requests this Honorable Court to enter judgment in his favor and against the Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

***Count II-Vicarious Liability***
***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. Maternal Fetal Medicine of DuBois Medical Center***

53. Answering Defendant hereby incorporates Paragraphs 1 through 52, inclusive, of this Answer with New Matter as if the same were set forth at length herein.

54-57. The averments of Paragraphs 54 through 57, inclusive, are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil

Procedure. To the extent that a response is required, said averments are denied per Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Gary D. Ott, M.D., respectfully requests this Honorable Court to enter judgment in his favor and against the Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

***Count III-Professional Negligence***
***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. Gary Ott, M.D.***

58. Answering Defendant hereby incorporates Paragraphs 1 through 57, inclusive, of this Answer with New Matter as if the same were set forth at length herein.

59-62. The averments of Paragraphs 59 through 62, inclusive of the subparagraphs thereunder, set forth conclusions of law and/or statements of Plaintiffs' legal position and thus no response is required under the Rules of Civil Procedure. To the extent that a response is required, the averments of Paragraphs 59 through 62, inclusive of the subparagraphs thereunder, are denied per Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Gary D. Ott, M.D., respectfully requests this Honorable Court to enter judgment in his favor and against the Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

***Count IV-Vicarious Liability***
***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. Yoo, Tai, Y., M.D.***

63. Answering Defendant hereby incorporates Paragraphs 1 through 62, inclusive, of this Answer with New Matter as if the same were set forth at length herein.

64. Paragraph 64 is denied for at all times relevant to the Plaintiffs' alleged cause of action, the Answering Defendant was a sole proprietor of his medical practice, and, was in no

way associated with Yoo Corporation which had been out of business for years prior to Plaintiffs' alleged cause of action.

65. Paragraph 65 is denied for at all times relevant to the Plaintiffs' alleged cause of action, Yoo Corporation had no agents, ostensible agents and/or employees. In further response, the allegations of Paragraph 64 are incorporated herein.

66-67. In response to Paragraphs 66 and 67 the allegations of Paragraphs 64 and 65 are incorporated herein.

WHEREFORE, Defendant, Gary D. Ott, M.D., respectfully requests this Honorable Court to enter judgment in his favor and against the Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

***Count V-Corporate Negligence***
***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. DuBois Regional Medical Center***

68. Answering Defendant hereby incorporates Paragraphs 1 through 67, inclusive, of this Answer with New Matter as if the same were set forth at length herein.

69-72. The averments of Paragraphs 69 through 72, inclusive of the subparagraphs thereunder, are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure. To the extent that a response is required, said averments are denied per Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Gary D. Ott, M.D., respectfully requests this Honorable Court to enter judgment in his favor and against the Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

***Count VI-Vicarious Liability***
***Angela Hale and Randy Hale, as parents and natural guardians of Reganne Hale, a minor vs. DuBois Regional Medical Center***

73. Answering Defendant hereby incorporates Paragraphs 1 through 72, inclusive, of this Answer with New Matter as if the same were set forth at length herein.

74-76. The averments of Paragraphs 74 through 76, inclusive of the subparagraphs thereunder, are directed to a Defendant other than Answering Defendant and thus no response is required under the Rules of Civil Procedure. To the extent that a response is required, said averments are denied per Pa.R.C.P. 1029(e).

WHEREFORE, Defendant, Gary D. Ott, M.D., respectfully requests this Honorable Court to enter judgment in his favor and against the Plaintiffs, and that the Complaint against him be dismissed, with prejudice.

***NEW MATTER***

77. Answering Defendant hereby incorporates Paragraphs 1 through 76, inclusive, of this Answer with New Matter as though the same were set forth at length herein.

78. Answering Defendant raises all affirmative defenses of the Medical Care Availability and Reduction of Error Act of March, 2002, 40 P.S. §1301.101, et seq., as amended.

79. There was no negligence or other actionable conduct committed by or on behalf of Answering Defendant and therefore, this action should be dismissed.

80. Any alleged actions or omissions of the Answering Defendant which are alleged to constitute negligence were not a substantial cause or factual cause of any harm resulting to or sustained by the Plaintiffs.

81. Answering Defendant, Gary D. Ott, M.D. was not at any time relevant to Plaintiffs' cause of action an employee of Defendant Yoo Corporation, but rather was an independent contractor.

82. The investigation into this case is ongoing and discovery is continuing; therefore, in order to avoid waiver of any potentially applicable affirmative defenses, Answering Defendant hereby pleads the defenses of estoppel, release, res judicata, statute of limitations and comparative/contributory negligence, insofar as same may be applicable.

WHEREFORE, Defendant Gary D.Ott, M.D. respectfully requests this Honorable Court to enter judgment in his favor and against Plaintiffs, and that the Complaint against be dismissed, with prejudice.

Respectfully submitted,

McQUAIDE, BLASKO, FLEMING,
& FAULKNER, INC.

BY_____

JOHN W. BLASKO
FREDERICK BATTAGLIA
Counsel for Defendant
Gary D. Ott, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated 5-31-05

Hale vs. Ott

VERIFICATION

The undersigned verifies that as a Defendant, he is authorized to make this verification in the within action; and that the Answer with New Matter to Plaintiffs' Complaint is true and correct to the best of his knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904, related to unsworn falsification to authority.

5-25-05

GARY D. OTT, M.D.

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | Civil Action-Medical Professional Liability Action |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Answer with New Matter of Gary D. Ott, M.D. to Plaintiffs' Complaint, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 31st day of May, 2005 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
FREDERICK R. BATTAGLIA
Attorneys for Defendant
Gary D. Ott, M.D.

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED

JUN 03 2005
m/ 1:30
William A. Shaw
Prothonotary/Clerk of Courts
no c/c

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' First Request for Production of Documents Directed to Defendant Dubois Regional Medical Center was served on the 1st day of June 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION

No. 05-364-CD

Issue No.

ANSWER AND NEW MATTER

Code: 007

Filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

Counsel of Record for These Parties:

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

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

(412) 232-3400

NOTICE TO PLEAD:

To: Plaintiffs

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

Attorneys for defendant.

FILED NO CC
m/11:46 bl
JUN 08 2005
William A. Shaw
Prothonotary/Clerk of Courts

## ANSWER AND NEW MATTER

NOW COME, Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following answer and new matter in response to plaintiffs' complaint.

## ANSWER

1. Defendants are advised and therefore believe and aver that the Pennsylvania Rules of Civil Procedure do not require them to set forth their 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, these defendants lack sufficient information or knowledge upon which to form a belief as to the truth of the averments therein.

3. Each of the paragraphs of this answer should be read so as to incorporate by reference each of the other paragraphs of this answer.

4. The following paragraphs of the complaint are denied for the reason that, after a reasonable investigation, these defendants have insufficient information or

knowledge to form a belief as to the truth of the averments therein: 1, 2, 3, 4, 23, 24, 29, 42, 43, 44, 45 and 46.

5. Paragraph 5 of the complaint is admitted in part and denied in part. It is admitted that Dr. Kush has been properly identified and that plaintiff is asserting a professional liability action; however, any statement, suggestion or implication that Dr. Kush deviated from the standard of care is denied.

6. Paragraph 6 of the complaint is denied insofar as there is no entity called "Maternal Fetal Medicine of DuBois Regional Medical Center."

7. The following paragraphs of the complaint refer solely to other defendants for which reason no response is required: 7.

8. Paragraphs 8 and 18 of the complaint are denied.

10. Paragraph 9 of the complaint is denied as stated. To the contrary, defendant is a non-profit healthcare institution located at the address specified in the complaint. It is admitted that a professional liability claim has been made with vicarious liability allegations; however, any statement, suggestion or implication that the hospital or any agent thereof deviated from the standard of care is denied.

11. Paragraph 10 of the complaint is denied because Dr. Kush was not an employee of "Maternal Fetal Medicine;" more particularly, there is no entity named "Maternal Fetal Medicine."

12. Paragraphs 11, 13 and 39 of the complaint are denied.

13. The following paragraphs of the complaint refer solely to other defendants for which reason no response is required: 12. In further response, upon information and belief there existed at relevant times no corporation identified as Yoo Corporation.

14. Paragraph 14 of the complaint is denied for the reason that, after a reasonable investigation, these defendants have insufficient information or knowledge to form a belief as to the truth of the averments therein, because the identity of the alleged agents, servants and/or employees of these defendants is not specified or disclosed.

15. Paragraphs 15, 17, 19, 21, 22, 25, 26, 27, 28, 30, 31, 32, 33, 34, 38, 41 of the complaint are denied for the reason that they incompletely, inaccurately and/or misleadingly describe events which occurred. While these paragraphs to some extent extract or reference words or phrases from the medical records, they do not reflect the context in which the notes were made and they ignore other words and phrases necessary to give fair meaning to the referenced language.

16. The following paragraphs of the complaint are admitted: 16, 20, 35, 36, 37, 40.

17. Paragraphs 47 (including sub-paragraphs (a) through (r)), 49 (including sub-paragraphs (a) through (g)), 50, 51, 52, 69 (including sub-paragraphs (a) through (g)), 70, 71, 72, 74 (including sub-paragraphs (a) through (g)), 75 and 76 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. In addition, all allegations of agency in Paragraphs 74 (including sub-paragraphs (a) through (g)), 75 and 76 are denied for the reason that, after a reasonable investigation, defendants have insufficient information or knowledge to form a belief as to the truth of the averments because the complaint does not identify the alleged agents, ostensible agents, servants and/or employees.

18. Paragraphs 48, 58, 63, 68, and 73 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, defendants incorporate by reference their answers to those paragraphs which have been incorporated by the plaintiffs.

19. Paragraphs 53 through 57 of the complaint pertain to a non entity for which no response is required.

20. Paragraphs 59, 60, 61 and 62 of the complaint refer solely to other defendants for which reason no response is required. These paragraphs also constitute conclusions of law, for which additional reason no response is required. If, nonetheless, a response is deemed necessary, these paragraphs are denied.

21. Paragraphs 63 through 67 of the complaint relate to a non-existing entity for which reason no response is required.

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of these defendants.

NEW MATTER

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

23. These defendants plead the applicability of the Pennsylvania Comparative Negligence Statute as an affirmative defense.

24. While denying all negligence and all liability, these defendants aver that if they are found to have been negligent in any respect, any liability resulting therefrom

would be diminished or barred by operation of the Pennsylvania Comparative Negligence Statute.

25. Plaintiffs' complaint fails to state any cause of action against these defendants.

26 Defendants plead the doctrines of intervening and superseding causes as affirmative defenses.

27. Defendants plead "payment" as an affirmative defense to the extent that any amount less than the amount billed for medical services to the plaintiffs after the alleged incident was accepted as payment in full.

28. Defendants are not liable for any pre-existing medical conditions which caused the claimed injuries and/or damages.

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

30. These defendants raise all affirmative defenses set forth or available as a result of the provisions of House Bill 1802 which became Pennsylvania law in 2002.

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

32. Defendants plead all applicable statutes of limitations as affirmative defenses.

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

WHEREFORE, plaintiffs' complaint should be dismissed and judgment should be entered in favor of these defendants.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

## VERIFICATION

I, Michael Kush, M.D., 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.

Michael Kush

Date: 5/24/05

**VERIFICATION**

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

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

Gregory J. Vole

Date: 6-1-05

**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 6 day of June, 2005:

Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendant.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

FREDERICK BATTAGLIA
Court I.D. No. 91624

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

FILED
m/11:03801
JUN 09 2005
William A. Shaw
Prothonotary/Clerk of Courts

John W. Blasko, Esquire

**COMMONWEALTH OF PENNSYLVANIA**

**COUNTY OF CLEARFIELD**

| | |
|---|---|
| Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor<br><br>vs.<br><br>Michael J. Kush, M.D., an adult individual; Maternal Fetal Medicine of Dubois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott, M.D., an adult individual; Yoo, Tai, Y., M.D., a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation | Court of Common Pleas<br><br>Case Number: 05-364 CD |

CERTIFICATE PREREQUISITE TO THE SERVICE OF A SUBPOENA PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Litigation Solutions, Inc. ('LSI') on behalf of John Blasko, Esquire of McQuaide Blasko certifies that:

(1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served;

(2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate;

(3) No objection to the subpoena has been received, and; (objections heard and ruled, subpoenas to be served) CJT

(4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 5/31/2005

Litigation Solutions, Inc. on behalf of

John Blasko, Esquire of McQuaide Blasko

Attorney for the Defense

CC:
John Blasko, Esquire
McQuaide Blasko
811 University Drive
State College PA 16801

**PENNSYLVANIA COURT OF COMMON PLEAS**

**COUNTY OF CLEARFIELD**

**Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor**
**vs.**
**Michael J. Kush, M.D., an adult individual; Maternal Fetal Medicine of Dubois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott, M.D., an adult individual; Yoo, Tai, Y., M.D., a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation**

**Court of Common Pleas**

**05-364 CD**

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

| Provider: | Record Type: |
|---|---|
| Children`s Hospital of Pittsburgh<br>UPMC - Children´s Hospital | Medical<br>Financial / Billing |

TO: Harry Cohen

note: please see enclosed list of all other interested counsel

Litigation Solutions, Inc. ('LSI') on behalf of John Blasko, Esquire intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If the twenty day notice period is waived or if no objection is made, then the subpoena may be served.

Date of Issue: 4/12/2005

Litigation Solutions, Inc. on behalf of:

John Blasko, Esquire Defense

CC: John Blasko, Esquire - Court of Common Pleas

If you have any questions regarding this matter, please contact:
Litigation Solutions, Inc. (412.263.5656)

Brentwood Towne Centre
101 Towne Square Way, Suite 251
Pittsburgh, PA 15227

**COUNSEL LISTING FOR ANGELA HALE AND RANDY A. HALE, AS PARENTS AND NATURAL GUARDIANS OF REGANNE HALE, A MINOR VS. MICHAEL J. KUSH, M.D., AN ADULT INDIVIDUAL; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, A PENNSYLVANIA CORPORATION; GARY D. OTT, M.D., AN ADULT INDIVIDUAL; YOO, TAI, Y., M.D., A PENNSYLVANIA CORPORATION; AND DUBOIS REGIONAL MEDICAL CENTER, A PENNSYLVANIA CORPORATION**

**County of Clearfield Court of Common Pleas**

| Counsel | Firm | Counsel Type |
|---|---|---|
| Cohen, Harry 412-281-3000(fax) | Two Chatham Center Suite 585 Pittsburgh PA 15219 | Opposing Counsel |
| Johnson, Esquire, David 412-232-3400 | 1010 Two Chatham Center Pittsburgh PA 15219 | Other |

**COMMONWEALTH OF PENNSYLVANIA**
**COUNTY OF CLEARFIELD**

Angela Hale and Randy A. Hale as parents and natural guardians of Reganne Hale, a minor, Plaintiff(s) *

Vs. * No. 2005-00364-CD

Michael J. Kush MD, an adult individual; Maternal Fetal Medicine of DuBois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott MD., an adult individual; Yoo, Tai, Y., MD a Pennsylvania corporation; and DuBois Regional Medical Center, a Pennsylvania corporation, Defendant(s) *

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

TO: Children's Hospital of Pittsburgh
(Name of Person or Entity)

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

PLEASE SEE ATTACHED RIDER

Litigation Solutions Inc 101 Towne Square Way Ste 251 Pittsburgh PA 15227
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

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

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

NAME: John Blasko, Esquire
ADDRESS: 811 University Drive
State College PA 16801
TELEPHONE: 814-238-4926
SUPREME COURT ID # 6787
ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Monday, April 11, 2005
Seal of the Court

Deputy

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

**Rider to Subpoena**

**Explanation of Required Documents and Things**

**TO: CUSTODIAN OF RECORDS FOR:**

Children`s Hospital of Pittsburgh
3705 5th Avenue
Pittsburgh PA 15213
Attention: Medical Records Correspondence

Patient: Hale, Reganne
SS#:
Date of Birth: 11/10/2002

**Requested Items:**
Please remit: a complete copy of any and all medical records, including records, charts, test results, reports, correspondence, office notes, and computerized records.

**COMMONWEALTH OF PENNSYLVANIA**
**COUNTY OF CLEARFIELD**

Angela Hale and Randy A. Hale as parents and natural guardians of Reganne Hale, a minor, Plaintiff(s) *

Vs. * No. 2005-00364-CD

Michael J. Kush MD, an adult individual; Maternal Fetal Medicine of DuBois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott MD., an adult individual; Yoo, Tai, Y., MD a Pennsylvania corporation; and DuBois Regional Medical Center, a Pennsylvania corporation, Defendant(s) *

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

TO: UPMC-Children's HOspital
(Name of Person or Entity)

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

PLEASE SEE ATTACHED RIDER

Litigation Solutions Inc 101 Towne Square Way Ste 251 Pittsburgh PA 15227
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

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

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

NAME: John Blasko, Esquire
ADDRESS: 811 University Drive
State College PA 16801
TELEPHONE: 814-238-4926
SUPREME COURT ID # 6787
ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Monday, April 11, 2005
Seal of the Court

~~Deputy~~

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

**Rider to Subpoena**

**Explanation of Required Documents and Things**

**TO: CUSTODIAN OF RECORDS FOR:**

UPMC - Children's Hospital
3705 Fifth Avenue
Pittsburgh PA 15213
Attention: Billing Department

Patient: Hale, Reganne
SS#:
Date of Birth: 11/10/2002

**Requested Items:**
Complete copy of any and all itemized bills (include ICD9 & CPT codes), denials for inpatient and outpatient accounts, amount charged, amount paid by insurance or Medicare, amount written off, and any amount owed.

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' REPLY TO NEW MATTER FILED ON BEHALF OF DEFENDANT GARY D. OTT, M.D.**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED NO CC
m/1:20 BL
JUN 10 2005 (K)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**PLAINTIFFS' REPLY TO NEW MATTER**
**FILED ON BEHALF OF DEFENDANT GARY D. OTT, M.D.**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Reply to New Matter:

1. The averments set forth in paragraph 77 of Defendant's New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 77 are specifically denied.

2. The averments set forth in paragraph 78 of Defendant's New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 78 are specifically denied.

3. The averments set forth in paragraph 79 of Defendant's New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 79 are specifically denied.

4. The averments set forth in paragraph 80 of Defendant's New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 80 are specifically denied.

5. The averments set forth in paragraph 81 of Defendant's New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 81 are specifically denied.

6. The averments set forth in paragraph 82 of Defendant's New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 82 are specifically denied.

WHEREFORE, Plaintiffs demand judgment in their favor and against all Defendants, jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**VERIFICATION**

I verify that the averments contained in the foregoing **PLAINTIFFS' REPLY TO NEW MATTER FILED ON BEHALF OF DEFENDANT GARY D. OTT, M.D.** are true and correct to the best of my knowledge, information and belief. I understand that said averments are made subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

6-3-05
Date

By: Randy Hale
Randy Hale, Plaintiff

6-3-05
Date

By: Angela M Hale
Angela Hale, Plaintiff

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO NEW MATTER FILED ON BEHALF OF DEFENDANT GARY D. OTT, M.D.** was served by U.S. Mail, postage pre-paid, on this 6th day of June 2005 to the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' ANSWERS TO DEFENDANT MICHAEL J. KUSH, M.D.'S FIRST SET OF INTERROGATORIES**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED NO CC
m/11:20 BK
JUN 10 2005 (GK)
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' ANSWERS TO DEFENDANT MICHAEL J. KUSH, M.D.'S FIRST SET OF INTERROGATORIES**

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

I hereby certify that a true and correct copy of Plaintiffs' Answers to Defendant Michael J. Kush, M.D.'s First Set of Interrogatories was served on the 8th day of June 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' RESPONSES TO DEFENDANT MICHAEL J. KUSH, M.D.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED NO CC
m/11:20/BN
JUN 10 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' RESPONSES TO DEFENDANT MICHAEL J. KUSH, M.D.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

I hereby certify that a true and correct copy of Plaintiffs' Answers to Defendant Michael J. Kush, M.D.'s First Request for Production of Documents was served on the 8th day of June 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' RESPONSES TO DEFENDANT GARY D. OTT, M.D.'S FIRST SET OF INTERROGATORIES**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED No cc
m/1:20/01
JUN 10 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF**
**PLAINTIFFS' RESPONSES TO DEFENDANT**
**GARY D. OTT,M.D.'S FIRST SET OF INTERROGATORIES**

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

I hereby certify that a true and correct copy of Plaintiffs' Answers to Defendant Gary D. Ott, M.D.'s First Set of Interrogatories was served on the 8th day of June 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' RESPONSES TO DEFENDANT GARY D. OTT, M.D.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED
m/11:20/BN NO CC
JUN 10 2005 GP
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' RESPONSES TO DEFENDANT GARY D. OTT, M.D.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

I hereby certify that a true and correct copy of Plaintiffs' Responses to Defendant Gary D. Ott, M.D.'s First Set Request for Production of Documents was served on the 8th day of June 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' ANSWERS TO DEFENDANT GARY D. OTT, M.D.'S FIRST SET OF EXPERT INTERROGATORIES**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED NO CC
m/1:20BN
JUN 10 2005 GK
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' ANSWERS TO DEFENDANT GARY D. OTT, M.D.'S FIRST SET OF EXPERT INTERROGATORIES**

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

I hereby certify that a true and correct copy of Plaintiffs' Answers to Defendant Gary D. Ott, M.D.'s First Set of Expert Interrogatories was served on the 8th day of June 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' RESPONSES TO DEFENDANT GARY D. OTT, M.D.'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED No cc
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JUN 10 2005 @
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' RESPONSES TO DEFENDANT GARY D. OTT, M.D.'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS**

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

I hereby certify that a true and correct copy of Plaintiffs' Response to Defendant Gary D. Ott, M.D.'s Second Request for Production of Documents was served on the 8th day of June 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' REPLY TO NEW MATTER FILED ON BEHALF OF DEFENDANT MICHAEL J. KUSH, M.D. AND DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED

JUN 15 2005
m/ 11:55
William A. Shaw
Prothonotary/Clerk of Courts
No cent copies

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**PLAINTIFFS' REPLY TO NEW MATTER FILED ON BEHALF OF DEFENDANT MICHAEL J. KUSH, M.D. AND DUBOIS REGIONAL MEDICAL CENTER**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Reply to New Matter:

1. The averments set forth in paragraph 22 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 22 are specifically denied.

2. The averments set forth in paragraph 23 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 23 are specifically denied.

3. The averments set forth in paragraph 24 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 24 are specifically denied.

4. The averments set forth in paragraph 25 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 25 are specifically denied.

5. The averments set forth in paragraph 26 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 26 are specifically denied.

6. The averments set forth in paragraph 27 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 27 are specifically denied.

7. The averments set forth in paragraph 28 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 28 are specifically denied.

8. The averments set forth in paragraph 29 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed

required, which is denied, then in that alternative, the averments contained in paragraph 29 are specifically denied.

9. The averments set forth in paragraph 30 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, then in that alternative, the averments contained in paragraph 30 are specifically denied.

10. The averments set forth in paragraph 31 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, to the contrary Plaintiffs' claims have been filed within the applicable statute of limitations, and therefore, the averments contained in paragraph 31 are specifically denied.

11. The averments set forth in paragraph 32 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, to the contrary Plaintiffs' claims have been filed within the applicable statute of limitations, and therefore, the averments contained in paragraph 32 are specifically denied.

12. The averments set forth in paragraph 33 of Defendants' New Matter state conclusions of law, to which no response is required. In the alternative, if a response is deemed required, which is denied, to the contrary Plaintiffs' claims have been filed within the applicable statute of limitations, and therefore, the averments contained in paragraph 33 are specifically denied.

WHEREFORE, Plaintiffs demand judgment in their favor and against all Defendants, jointly, severally, and/or jointly and severally, in an amount in excess of the jurisdictional limits of compulsory arbitration, excluding costs and interest.

JURY TRIAL DEMANDED

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**VERIFICATION**

I verify that the averments contained in the foregoing **PLAINTIFFS' REPLY TO NEW MATTER FILED ON BEHALF OF DEFENDANT MICHAEL J. KUSH, M.D. AND DEFENDANT DUBOIS REGIONAL MEDICAL CENTER** are true and correct to the best of my knowledge, information and belief. I understand that said averments are made subject to the penalties of 18 Pa. C. S. § 4904 relating to unsworn falsification to authorities.

6-10-05
Date

By: Randy C. Hale
Randy Hale, Plaintiff

6-10-05
Date

By: Angela M. Hale
Angela Hale, Plaintiff

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO NEW MATTER FILED ON BEHALF OF DEFENDANT MICHAEL J. KUSH, M.D. AND DEFENDANT DUBOIS REGIONAL MEDICAL CENTER** was served by U.S. Mail, postage pre-paid, on this 13th day of June 2005 to the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

FILED

JUN 15 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF DEPOSITION OF DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES TECUM**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

ORIGINAL

FILED
JUL 15 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF DEPOSITION OF**
**DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES DECUM**

TO: Michael J. Kush, MD
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219

**PLEASE TAKE NOTICE** that the Deposition of Defendant Michael J. Kush, MD will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oath in the conference room to be determined at Dubois Regional Hospital on the **Tuesday, the 9th day of August at 11:00 a.m.,** at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

**SUBPOENA DUCES TECUM**

You are hereby instructed to bring the following with you:

1. The complete medical chart in your possession with regard to Plaintiffs Angela Hale and Reganne Hale, Minor.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF DEPOSITON OF DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing or hand delivery of a true and correct copy to the party and address listed below on the 13th day of July 2005:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowius, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION

No. 05-364-CD

Issue No.

REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS

Code: 007

Filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

Counsel of Record for These Parties:

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

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

(412) 232-3400

FILED no cc
m/ 1:46 bol
JUL 25 2005 (w)
William A. Shaw
Prothonotary/Clerk of Courts

REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS

NOW COME Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following request to plaintiffs for production of expert reports required by Rule 1042.28(a)(1) of the Pennsylvania Rules of Civil Procedure.

TO: Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, plaintiffs

FROM: Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants

Pursuant to Pennsylvania Rule of Civil Procedure 1042.28(b) you are requested within 180 days of service of this request to furnish to me, attorney for the defendants above named, expert reports summarizing the expert testimony that you will offer to support the claims of professional negligence that you have made against the defendants above named. You are required to serve copies of all expert reports on all other parties.

Dated: July 22, 2005

David R. Johnson, Esquire

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS has been served upon the following counsel of record and same placed in the U.S. Mails on this 22nd day of July, 2005:

Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

CERTIFICATE OF SERVICE

I hereby certify that and true and correct copy of Defendant's Notice of Intent to Subpoena regarding Punxsutawney Hospital, in the above-referenced matter was mailed by regular mail, first class, through Litigation Solutions on the 4th day of August, 2005 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

By: John W. Blasko/CST
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

FILED NO CC
m/ 11:18 BA
AUG 10 2005
William A. Shaw
Prothonotary/Clerk of Courts

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ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED no cc
m/10:54 BK
AUG 17 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' Second Request for Production of Documents Directed to Defendant Dubois Regional Medical Center was served on the 15th day of August 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
CERTIFICATE PREREQUISITE TO SERVICE OF A SUBPOENA

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

FREDERICK BATTAGLIA
Court I.D. No. 91624

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

FILED NO CC
m/12:56
AUG 18 2005
William A. Shaw
Prothonotary/Clerk of Courts

John W. Blasko/cst
John W. Blasko, Esquire

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor

vs.

Michael J. Kush, M.D., an adult individual; Maternal Fetal Medicine of Dubois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott, M.D., an adult individual; Yoo, Tai, Y., M.D. a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation

Court of Common Pleas

Case Number: 05-364 CD

CERTIFICATE PREREQUISITE TO THE SERVICE OF A SUBPOENA PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Litigation Solutions, Inc. ('LSI') on behalf of John Blasko, Esquire of McQuaide Blasko certifies that:

(1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served;

(2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate;

(3) No objection to the subpoena has been received, and;

(4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 8/11/2005

Litigation Solutions, Inc. on behalf of

John Blasko, Esquire of McQuaide Blasko

Attorney for the Defense

CC:
John Blasko, Esquire
McQuaide Blasko
811 University Drive
State College PA 16801

PENNSYLVANIA COURT OF COMMON PLEAS

COUNTY OF CLEARFIELD

| | |
|---|---|
| **Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor vs. Michael J. Kush, M.D., an adult individual; Maternal Fetal Medicine of Dubois Regional Medical Center, a Pennsylvania Corporation; Gary D. Ott, M.D., an adult individual; Yoo, Tai, Y., M.D. a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation** | **Court of Common Pleas 05-364 CD** |

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

| Provider: | Record Type: |
|---|---|
| Punxsutawney Area Hospital | Medical |

TO: Harry Cohen

note: please see enclosed list of all other interested counsel

Litigation Solutions, Inc. ('LSI') on behalf of John Blasko, Esquire intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If the twenty day notice period is waived or if no objection is made, then the subpoena may be served.

Date of Issue: 8/4/2005

Litigation Solutions, Inc. on behalf of:

John Blasko, Esquire Defense

CC: John Blasko, Esquire - Court of Common Pleas

McQuaide Blasko

If you have any questions regarding this matter, please contact:
Litigation Solutions, Inc. (412.263.5656)
Brentwood Towne Centre

101 Towne Square Way, Suite 251
Pittsburgh, PA 15227

**COUNSEL LISTING FOR ANGELA HALE AND RANDY A. HALE, AS PARENTS AND NATURAL GUARDIANS OF REGANNE HALE, A MINOR VS. MICHAEL J. KUSH, M.D., AN ADULT INDIVIDUAL; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, A PENNSYLVANIA CORPORATION; GARY D. OTT, M.D., AN ADULT INDIVIDUAL; YOO, TAI, Y., M.D. A PENNSYLVANIA CORPORATION; AND DUBOIS REGIONAL MEDICAL CENTER, A PENNSYLVANIA CORPORATION**

**County of Clearfield Court of Common Pleas**

| Counsel | Firm | Counsel Type |
|---|---|---|
| Cohen, Harry 412-281-3000 (PH) 412-232-6058 (FX) | Two Chatham Center Suite 585 Pittsburgh PA 15219 | Opposing Counsel |
| Johnson, Esquire, David 412-232-3400 (PH) 412-232-3498 (FX) | 1010 Two Chatham Center Pittsburgh PA 15219 | Other |

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Angela Hale *
Randy A. Hale
Reganne Hale
Plaintiff(s)

Vs. * No. 2005-00364-CD

Michael J. Kush MD *
Gary D. Ott MD
Tai Y. Yoo MD
DuBois Regional Medical Center
Defendant(s)

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

TO: Punxsutawney Area Hospital
(Name of Person or Entity)

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

PLEASE SEE ATTACHED RIDER

AT: Litigation Solutions Inc 101 Towne Square Way ste 251
Pittsburgh PA 15227
(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

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

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

NAME: John Blasko, Esquire
ADDRESS: 811 University Drive
StateCollege, PA 16801
TELEPHONE: 814-238-4926
SUPREME COURT ID # 6787
ATTORNEY FOR: DEFENDANT

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Wednesday, August 03, 2005
Seal of the Court

Deputy

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

## Rider to Subpoena

### Explanation of Required Documents and Things

**TO: CUSTODIAN OF RECORDS FOR:**

Punxsutawney Area Hospital
81 Hillcrest Drive
Punxsutawney PA 15767
Attention: Medical Records Correspondence

Patient: Hale, Angela
SS#: 177-62-1839
Date of Birth: 08/09/1976

**Requested Items:**
Please remit: a complete copy of any and all medical records from 08/09/1976 to the present, including records, charts, test results, reports, correspondence, office notes, and computerized records.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
CERTIFICATE OF SERVICE AND REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this Party: JOHN W. BLASKO
Court I.D. No.: 06787

FREDERICK BATTAGLIA
Court I.D. No. 91624

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Dated: Sept. 20, 2005

FILED NO CC
m/1:22 BA
SEP 21 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br><br>Defendants. | Civil Action-Medical Professional Liability Action<br><br>No. 05-364 CD<br><br>JURY TRIAL DEMANDED |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the ***REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS*** in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 20th day of September, 2005 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\323539\1

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**THIRD NOTICE OF DEPOSITION OF DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES TECUM**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED
m/ 1:45/BA
SEP 28 2005
William A. Shaw
Prothonotary/Clerk of Courts
No cc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**THIRD NOTICE OF DEPOSITION OF**
**DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES DECUM**

TO: Michael J. Kush, MD
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219

**PLEASE TAKE NOTICE** that the Deposition of Defendant Michael J. Kush, MD will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oath in the conference room to be determined at Dubois Regional Hospital on the **Thursday, November 10, 2005 at Dubois Regional Medical Center (conference room to be determined), 100 Hospital Ave., Dubois, Pennsylvania 15801 at 1:00 p.m.** at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

**SUBPOENA DUCES TECUM**

You are hereby instructed to bring the following with you:

1. The complete medical chart in your possession with regard to Plaintiffs Angela Hale and Reganne Hale, Minor.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

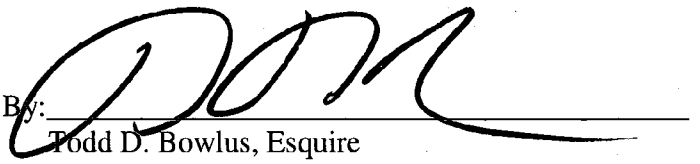
## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **THIRD NOTICE OF DEPOSITON OF DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing or hand delivery of a true and correct copy to the party and address listed below on the 26th day of September 2005:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

HARRY S. COHEN & ASSOCIATES, PC



By: _____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT GARY D. OTT, M.D.**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED NO CC
m/12:52/BK
OCT 18 2005
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT GARY D. OTT, M.D.**

TO: PROTHONOTARY OF CLEARFIELD COUNTY:

I hereby certify that a true and correct copy of Plaintiffs' First Request for Production of Documents Directed to Defendant Gary D. Ott, M.D. was served on the 14th day of October 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF DEPOSITION OF DESIREE SMITH, R.N. WITH SUBOPENA DUCES TECUM**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED no cc
m 11:42 BL
OCT 27 2005
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF DEPOSITION OF**
**DESIREE SMITH, R.N. WITH SUBPOENA DUCES TECUM**

TO: Desiree Smith, R.N.
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219

**PLEASE TAKE NOTICE** that the Deposition of Desiree Smith, R.N. will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oath in the conference room to be determined at Dubois Regional Hospital on the **Thursday, November 10, 2005 at Dubois Regional Medical Center (conference room to be determined), 100 Hospital Ave., Dubois, Pennsylvania 15801 at 11:00 a.m.** at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

**SUBPOENA DUCES TECUM**

You are hereby instructed to bring the following with you:

1. The complete medical chart in your possession with regard to Plaintiffs Angela Hale and Reganne Hale, Minor.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

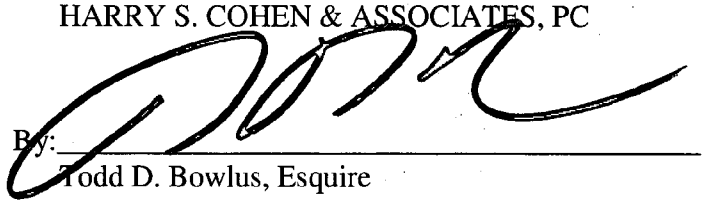
## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF DEPOSITION OF DESIREE SMITH, R.N. WITH SUBPOENA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing of a true and correct copy to the party and address listed below on the 25th day of October 2005:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

HARRY S. COHEN & ASSOCIATES, PC



By: _____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF DEPOSITION OF KATHRYN RAYBUCK, R.N. WITH SUBOPENA DUCES TECUM**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED NO CC
m 12:42
OCT 27 2005
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF DEPOSITION OF**
**KATHRYN RAYBUCK, R.N. WITH SUBPOENA DUCES TECUM**

TO: Kathryn Raybuck, R.N.
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219

**PLEASE TAKE NOTICE** that the Deposition of Kathryn Raybuck, R.N. will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oath in the conference room to be determined at Dubois Regional Hospital on the **Thursday, November 10, 2005 at Dubois Regional Medical Center (conference room to be determined), 100 Hospital Ave., Dubois, Pennsylvania 15801 at 10:00 a.m.** at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

**SUBPOENA DUCES TECUM**

You are hereby instructed to bring the following with you:

1. The complete medical chart in your possession with regard to Plaintiffs Angela Hale and Reganne Hale, Minor.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF DEPOSITION OF KATHRYN RAYBUCK, R.N. WITH SUBPOENA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing of a true and correct copy to the party and address listed below on the 25th day of October 2005:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
CERTIFICATE OF SERVICE FOR RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

FREDERICK BATTAGLIA
Court I.D. No. 91624

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Dated: November 2, 2005

FILED no cc
m/11:27 BK
NOV 03 2005
William A. Shaw
Prothonotary/Clerk of Courts

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | Civil Action-Medical Professional Liability Action |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

CERTIFICATE OF SERVICE

I hereby certify that ***DEFENDANT GARY D. OTT, M.D.'S RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR PRODUCTION OF DOCUMENTS***, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 2nd day of November, 2005 to:

***Original***
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

***Copy***
David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\312431\1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' THIRD REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED

NOV 15 2005
m/ 1:15( w
William A. Shaw
Prothonotary/Clerk of Courts
No C/C

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' THIRD REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' Third Request for Production of Documents Directed to Defendant Dubois Regional Medical Center was served on the 11th day of November 2005, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiff

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**FOURTH NOTICE OF DEPOSITION OF DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES TECUM**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED no cc
m/11:57/2cl
DEC 08 2005
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**FOURTH NOTICE OF DEPOSITION OF**
**DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES DECUM**

TO: Michael J. Kush, MD
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219

**PLEASE TAKE NOTICE** that the Deposition of Defendant Michael J. Kush, MD will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oath in the conference room to be determined at Dubois Regional Hospital on the **Wednesday, January 18, 2006 at Dubois Regional Medical Center (conference room to be determined), 100 Hospital Ave., Dubois, Pennsylvania 15801 at 1:00 p.m.** at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

## SUBPOENA DUCES TECUM

You are hereby instructed to bring the following with you:

1. The complete medical chart in your possession with regard to Plaintiffs Angela Hale and Reganne Hale, Minor.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **FOURTH NOTICE OF DEPOSITON OF DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing or hand delivery of a true and correct copy to the party and address listed below on the 6th day of December 2005:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**REVISED NOTICE OF DEPOSITION OF DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES TECUM**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED

DEC 12 2005
m/1:25
William A. Shaw
Prothonotary/Clerk of Courts
No C/C

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD, an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**REVISED NOTICE OF DEPOSITION OF**
**DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES DECUM**

TO: Michael J. Kush, MD
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219

**PLEASE TAKE NOTICE** that the Deposition of Defendant Michael J. Kush, MD will be taken for discovery purposes, pursuant to the Pennsylvania Rules of Civil Procedure, before a Notary Public duly authorized by law to administer oath in the conference room to be determined at Dubois Regional Hospital on the **Wednesday, January 18, 2006 at Dubois Regional Medical Center (Physician's Practice Room – Home Health Building), 100 Hospital Ave., Dubois, Pennsylvania 15801 at 10:00 a.m.** at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts of all matters upon which this cause of action is based.

**SUBPOENA DUCES TECUM**

You are hereby instructed to bring the following with you:

1. The complete medical chart in your possession with regard to Plaintiffs Angela Hale and Reganne Hale, Minor.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **REVISED NOTICE OF DEPOSITON OF DEFENDANT MICHAEL J. KUSH, MD WITH SUBPEONA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing or hand delivery of a true and correct copy to the party and address listed below on the 9th day of December 2005:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

HARRY S. COHEN & ASSOCIATES, PC

By:_____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D.#30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED
m/11:53 NO CC
FEB 02 2006
William A. Shaw
Prothonotary/Clerk of Courts
ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' First Set of Interrogatories Directed to Defendant Dubois Regional Medical Center was served on the 31st day of January 2006, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
*Attorneys for Plaintiff*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED NO CC
m/12:40 BY
FEB 21 2006
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' FOURTH REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' Fourth Request for Production of Documents Directed to Defendant Dubois Regional Medical Center was served on the 16th day of February 2006, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation;

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED NO CC
FEB 24 2006
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' FIFTH REQUEST FOR PRODUCTION OF DOCUMENTS DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' Fifth Request for Production of Documents Directed to Defendant Dubois Regional Medical Center was served on the 22nd day of February 2006, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiff

FILED
FEB 24 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

CERTIFICATE OF SERVICE

I hereby certify that and true and correct copy of Defendant's Notice of Taking Oral Depositions of the Plaintiffs, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 16th day of March, 2006 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: John W. Blasko /sj
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

FILED NO CC
m/12:18 BV
MAR 17 2006 (6K)

William A. Shaw
Prothonotary/Clerk of Courts

::ODMA\PCDOCS\DOCSLIB2\3127326

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

FILED
MAR 23 2006
m/ 11:30 c
William A. Shaw
Prothonotary/Clerk of Courts
no c/c

CERTIFICATE OF SERVICE

I hereby certify that and true and correct copy of Defendant's Amended Notice of Taking Oral Depositions of the Plaintiffs, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 22nd day of March, 2006 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: John W. Blasko/CT
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

:ODMA\PCDOCS\DOCSLIB2\312732\7

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION

No. 05-364-CD

Issue No.

MOTION TO COMPEL PRODUCTION OF EXPERT REPORTS

Code: 007

Filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

Counsel of Record for These Parties:

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

Jeanette E. Oliver, Esquire
PA. I.D. #201336

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

(412) 232-3400

FILED 3cc Atty
m/ 11:33 BL
APR 24 2006
William A. Shaw
Prothonotary/Clerk of Courts

MOTION TO COMPEL EXPERT REPORTS

NOW COMES Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following motion to compel expert reports for the reasons set forth below.

1. This is a medical malpractice case in which the plaintiffs allege that the defendants caused injury to the minor-plaintiff during childbirth.

2. DuBois Regional Medical Center and Michael J. Kush, M.D. have directed a request for production of expert reports to the plaintiffs. Attached as Exhibit "A" is a copy of the request for expert reports. Attached as Exhibit "B" is the letter filing same and serving the request on plaintiffs' attorney. Service occurred on July 21, 2005.

3. To date, plaintiffs have not furnished any expert reports.

4. This is clearly a matter in which plaintiffs are required to have expert testimony in which to pursue any claim of liability against DuBois Regional Medical Center and Michael J. Kush, M.D.

5. In order to prepare a defense to this case, or, in the alternative, to seek dismissal of the claims against it, the defendants need to acquire the expert reports of plaintiffs and, pursuant to the Pennsylvania Rules of Civil Procedure, plaintiffs are now obligated to provide same.

6. Defendants Michael J. Kush, M.D. and DuBois Regional Medical Center request entry of an order of court providing that plaintiffs shall be required to furnish the defendants with expert reports within 30 days and that, upon failure to do so, plaintiffs will be precluded from introducing any expert testimony against DuBois Regional Medical Center and Michael J. Kush, M.D.

WHEREFORE, Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants, respectfully request this Honorable Court to enter an order requiring plaintiffs to provide defendants with expert reports within 30 days of the date of entry of this order.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Jeanette E. Oliver, Esquire
Attorneys for DuBois Regional Medical Center, and
Michael J. Kush, M.D, two of the defendants.

Filed & Served by Mail 7-22-05

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION

No. 05-364-CD

Issue No.

REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS

Code: 007

Filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

Counsel of Record for These Parties:

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

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

(412) 232-3400

EXHIBIT A

REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS

NOW COME Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following request to plaintiffs for production of expert reports required by Rule 1042.28(a)(1) of the Pennsylvania Rules of Civil Procedure.

TO: Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, plaintiffs

FROM: Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants

Pursuant to Pennsylvania Rule of Civil Procedure 1042.28(b) you are requested within 180 days of service of this request to furnish to me, attorney for the defendants above named, expert reports summarizing the expert testimony that you will offer to support the claims of professional negligence that you have made against the defendants above named. You are required to serve copies of all expert reports on all other parties.

Dated: July 22, 2005

David R. Johnson, Esquire

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS has been served upon the following counsel of record and same placed in the U.S. Mails on this 22nd day of July, 2005:

Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

**THOMSON, RHODES & COWIE, P.C.**

Attorneys At Law

TWO CHATHAM CENTER, TENTH FLOOR
PITTSBURGH, PENNSYLVANIA 15219-3499

*Facsimile (412) 232-3498*
*www.trc-law.com*

Writer's Direct Dial
(412) 316-8662

David R. Johnson

E-mail: drj@trc-law.com

July 21, 2005

Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor vs. Michael J. Kush, M.D., an adult individual; Gary D. Ott, M.D., an adult individual; Yoo, Tai, Y., M.D., a Pennsylvania corporation; and DuBois Regional Medical Center, a Pennsylvania corporation. In the Court of Common Pleas of Clearfield County, Pennsylvania. Civil Division No. 2005-364-CD. Our File No. 14176.

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 request to plaintiffs for production of expert reports on behalf of Dr. Kush and DuBois Regional Medical Center, two of the defendants.

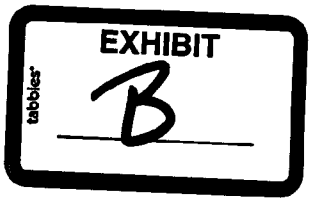
Thank you.

Very truly yours,

/s/David R. Johnson

David R. Johnson

DRJ/pko
Enclosure
cc: Todd Bowlus, Esquire
John W. Blasko, Esquire
(both w/enclosure)



No. 05-364-CD

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within MOTION TO COMPEL EXPERT REPORTS has been served upon the following counsel of record and same placed in the U.S. Mails on this 20th day of April, 2006:

Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Jeanette E. Oliver, Esquire
Attorneys for DuBois Regional Medical Center,
and Michael J. Kush, M.D, two of the defendants.

No. 05-364-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | CIVIL DIVISION |
| | ) | |
| | ) | No. 05-364-CD |
| Plaintiffs, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | ) | |
| | ) | |
| Defendants. | ) | |

ORDER OF COURT

AND NOW, this _____ day of _____, 2006 the motion to compel expert reports filed on behalf of DuBois Regional Medical Center and Michael J. Kush, M.D., two of the defendants, is GRANTED. Plaintiffs are required to serve defendants with any expert reports against them within 30 days. Upon failure to do so, plaintiffs shall be precluded from introducing expert testimony at time of trial against DuBois Regional Medical Center and Michael J. Kush, M.D.

BY THE COURT:

_____J.

CA

No. 05-364-CD

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | CIVIL DIVISION |
| | ) | |
| | ) | No. 05-364-CD |
| Plaintiffs, | ) | |
| | ) | |
| vs. | ) | |
| | ) | |
| MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | ) | |
| | ) | |
| Defendants. | ) | |

ORDER OF COURT

AND NOW on this 27 day of April, 2006, it is hereby ORDERED, ADJUGED and DECREED that oral argument on defendants' motion to compel production of expert reports is scheduled for the 22nd day of May, 2006, at 10:00 (a.m.)/p.m. before Judge Ammerman in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:

J.

FILED

APR 28 2006

William A. Shaw
Prothonotary/Clerk of Courts

3 cert to Atty
For Sen.

FILED
APR 28 2006
William A Shaw
Prothonotary/Clerk of Courts

FILED
APR 24 2006
William A Shaw
Prothonotary/Clerk of Courts

CA

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

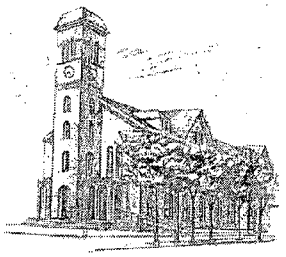
**RULE TO SHOW CAUSE**

AND NOW, this 4th day of May, 2006, a Rule is hereby issued to show cause why Defendant Gary D. Ott, M.D.'s Motion to Compel Plaintiffs to Produce Expert Reports should not be granted.

Rule returnable the 22nd day of May, 2006 in ~~McKean~~ Clearfield County Courthouse, Courtroom 1 at 10:00 o'clock. A.M.

FILED 6cc Atty Blasko
01:20BH
MAY 05 2006 (GK)

William A. Shaw
Prothonotary/Clerk of Courts



# Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw** Prothonotary/Clerk of Courts
**David S. Ammerman** Solicitor
**Jacki Kendrick** Deputy Prothonotary
**Bonnie Hudson** Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 5/5/06

__X__ You are responsible for serving all appropriate parties.

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

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

***ORDER OF COURT***

AND NOW, this _____ day of _____, 2006, the Motion to Compel Expert Reports filed on behalf of Gary D. Ott, M.D., Defendant is GRANTED. Plaintiffs are required to serve Defendant with any expert reports for Plaintiffs' experts, who will testify at trial, against him within thirty (30) days.

BY THE COURT,

_____

J.

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
MOTION TO COMPEL PLAINTIFFS TO PRODUCE EXPERT REPORTS

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Dated: May 3, 2006

FILED NO CC
m/11:19 BY
MAY 04 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

***DEFENDANT GARY D. OTT, M.D.'S MOTION TO COMPEL PLAINTIFFS TO PRODUCE EXPERT REPORTS***

Gary D. Ott, M.D., Defendant, by and through his attorneys, McQuaide, Blasko requests the Court to compel Plaintiffs to produce their expert report and represents the following:

1. On March 16, 2005, Plaintiffs filed a Complaint in this matter alleging medical malpractice occurred on or about November 9 and 10, 2002.

2. Plaintiffs filed a Certificate of Merit as to Gary D. Ott, M.D., Defendant dated February 28, 2005 certifying that an appropriate licensed professional had supplied a written statement to Plaintiffs' counsel that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by Dr. Ott in his treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was the cause in bringing about the harm.

3. The Plaintiffs deposed Defendant, Gary D. Ott, M.D. on July 12,2005, and various health care providers thereafter, including Defendant, Dr,. Kush and nurses of Defendant DRMC.

4. On September 20, 2005, the Defendant Gary D. Ott, M.D. through his attorneys served a Request on Plaintiffs' counsel for Production of Expert Reports pursuant to Pa.R.C.P. 1042.28(a)(1) which requires the expert reports be produced within 180 days from service of the Request under Pa.R.C.P. 1042.28(b). A copy of the Request is attached hereto and marked Exhibit "A."

5. The 180 days as required by Pa.R.C.P. 1042.28(b) expired on March 20, 2006.

6. The Plaintiffs failed to respond to Defendant's Request or provide any expert reports as requested.

7. Pa.R.C.P. 1042.31(a) provides:

> "A party who has not received an expert report required to be produced under these rules may upon motion obtain a court order compelling the production of the report. . . ."

8. The lawsuit has been pending for over a year for alleged malpractice occurring over 3 years ago and the Defendant Gary D. Ott, M.D. is severely restricted and prejudiced in the preparation of his defense of Plaintiffs' claims without having all of Plaintiffs' reports of any expert which may be called at the trial of this case.

WHEREFORE, it is requested that the Court enter an Order compelling the Plaintiffs to produce all reports of any expert, which will be called at the trial of this case within thirty (30) days of the date of this Order.

McQUAIDE, BLASKO
FLEMING & FAULKNER, INC.

BY _____

JOHN W. BLASKO
Counsel for Defendant
Gary D. Ott, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: May 3 2006

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

***REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS***

NOW COMES, the Defendant, Gary D. Ott, M.D., by his attorneys, McQuaide, Blasko, Fleming & Faulkner, Inc., and file the following request to Plaintiffs for production of expert reports required by Rule 1042.28(a)(1) of the Pennsylvania Rules of Civil Procedure.

TO: ANGELA HALE AND RANDY A. HALE, Plaintiffs
FROM: GARY D. OTT, M.D.

Pursuant to Pennsylvania Rule of Civil Procedure 1042.28(b) you are requested within 180 days of service of this request to furnish to me, attorney for the defendant above named, expert reports summarizing the expert testimony that you will offer to support the claims of professional negligence that you have made against the defendant above named. You are required to serve copies of all expert reports on all other parties.

McQUAIDE, BLASKO, FLEMING,
& FAULKNER, INC.

Dated: Sept. 20, 2005

BY _____
JOHN W. BLASKO
Counsel for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\323539\1

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | Civil Action-Medical Professional Liability Action |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the ***REQUEST TO PLAINTIFFS FOR PRODUCTION OF EXPERT REPORTS*** in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 20th day of September, 2005 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\323539\1

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br><br>Defendants. | Civil Action-Medical Professional Liability Action<br><br>No. 05-364 CD<br><br>JURY TRIAL DEMANDED |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the DEFENDANT GARY D. OTT, M.D.'S MOTION TO COMPEL PLAINTIFFS TO PRODUCE EXPERT REPORTS in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 3rd day of May, 2006 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: JWB by ARC
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION

No. 05-364-CD

Issue No.

**AFFIDAVIT OF SERVICE**

Code: 007

Filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

Counsel of Record for These Parties:

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

Jeanette E. Oliver, Esquire
PA. I.D. #201336

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

(412) 232-3400

FILED
MAY 08 2006
m/ 1:40/
William A. Shaw
Prothonotary/Clerk of Courts
no c/c

AFFIDAVIT OF SERVICE

Before me, the undersigned authority, personally appeared Jeanette E. Oliver, Esquire, who, being duly sworn, deposes and says that a true and correct copy of the Judge Ammerman's April 27, 2006, Scheduling Order, along with a true and correct copy the Motion to Compel Production of Expert Reports in the above-captioned case was served upon plaintiff's counsel, Todd Bowlus, Esquire, Harry S. Cohen & Associates, Two Chatham Center, Suite 985, Pittsburgh, Pennsylvania, 15219, by United States, first class, postage pre-paid mail on May 4, 2006.

THOMSON, RHODES & COWIE, P.C.

Jeanette E. Oliver, Esquire

Sworn to and subscribed before me

this 4th day of May, 2006.

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



Microsoft Word 8.0
W:\DRJ\14176\Pleadings\affidavit of service.doc

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 4th day of May, 2006:

Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Jeanette E. Oliver, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
AFFIDAVIT OF SERVICE RE MOTION TO COMPEL PLAINTIFFS TO PRODUCE EXPERT REPORTS

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Dated: May 8, 2006

FILED NO CC
m/1:53 BY
MAY 09 2006
William A. Shaw
Prothonotary/Clerk of Courts

CA

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br><br>Defendants. | Civil Action-Medical Professional Liability Action<br><br>No. 05-364 CD<br><br>JURY TRIAL DEMANDED |

**RULE TO SHOW CAUSE**

AND NOW, this 4th day of May, 2006, a Rule is hereby issued to show cause why Defendant Gary D. Ott, M.D.'s Motion to Compel Plaintiffs to Produce Expert Reports should not be granted.

Rule returnable the 22nd day of May, 2006 in ~~McKean~~ Clearfield County Courthouse, Courtroom 1 at 10:00 o'clock. A.M.

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

MAY 05 2006

Attest.

Prothonotary/
Clerk of Courts

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

***AFFIDAVIT OF SERVICE***

Before me, the undersigned authority, personally appeared Allen P. Neely, Esquire, who, being duly sworn, deposes and says that a true and correct copy of Judge Ammerman's May 4, 2006, Order re Defendant Ott's Motion to Compel Plaintiffs to Produce Expert Reports in the above-captioned case was served upon counsel of record: Harry S. Cohen, Esquire, Todd D. Bowlus, Esquire, Harry S. Cohen & Associates, PC, Two Chatham Center, Suite 985, Pittsburgh, PA 15219 and David R. Johnson, Esquire, 1010 Two Chatham Center, Pittsburgh, PA 15219 by first class, regular mail on May 8, 2006.

McQUAIDE, BLASKO, FLEMING
& FAULKNER, INC.

BY _____
JOHN W. BLASKO
ALLEN P. NEELY
Counsel for Defendant
Mary C. Kruszewski, D.O.

Sworn to and subscribed before me
this 8th day of May, 2006.

_____
Notary Public

NOTARIAL SEAL
NANCY L. SWISHER, NOTARY PUBLIC
STATE COLLEGE BORO., CENTRE COUNTY
MY COMMISSION EXPIRES FEB. 17, 2007

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, to-wit, this 17th day of May 2006, it is hereby ORDERED, ADJUDGED and DECREED that upon consideration of Plaintiffs' Motion for Continuance, the argument on Defendants' Motions to Compel Production of Expert Reports is continued from May 22, 2006 at 10:00 a.m. to the 7th day of June, 2006 at 3:00 p.m. before Judge Ammerman in Courtroom No. 1 of the Clearfield County Courthouse.

BY THE COURT:

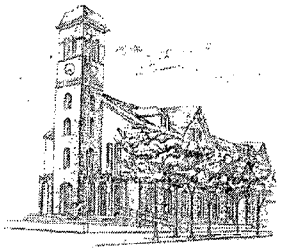
/s/ J.

FILED
01:57 BL
MAY 17 2006
William A. Shaw
Prothonotary/Clerk of Courts

cc to Judge's Chambers. will fax to counsel of record

cc Attys: Cohen Basilus Johnson Blasko J. Oliver Neely

cc Tai Yoo MD
145 Hospital Ave.
Ste. 315
DuBois, PA
15801



# Clearfield County Office of the Prothonotary and Clerk of Courts


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

**David S. Ammerman**
Solicitor

**Jacki Kendrick**
Deputy Prothonotary

**Bonnie Hudson**
Administrative Assistant


To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 5/17/06

_____You are responsible for serving all appropriate parties.

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

__X__Plaintiff(s)/Attorney(s)

__X__Defendant(s)/Attorney(s)

_____Other

_____Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' MOTION FOR CONTINUANCE OF ARGUMENT DATE ON DEFENDANTS' MOTION TO COMPEL**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED 3cc Atty Cohen
01:57 PM
MAY 17 2006
(LK)
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**PLAINTIFFS' MOTION FOR CONTINUANCE OF ARGUMENT DATE ON DEFENDANTS' MOTION TO COMPEL**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion for Continuance:

1. This is a professional negligence action alleging medical malpractice against Defendants which resulted in birth injuries to Minor-Plaintiff.

2. Defendants' filed Motions to Compel Expert Reports, and by Order of Court, oral arguments were scheduled for May 22, 2006 at 10:00 before the Honorable Fredric J. Ammerman.

3. However, counsel for Plaintiffs is scheduled to begin jury selection on a case in Allegheny County, Pennsylvania on Monday, May 22, 2006 (*Drakulic v. Bookwalter et al*, GD 03-24165, which is expected to continue into the following week also).

4. Plaintiffs have advised counsel for Defendants of the scheduling conflict in letters dated May 5th and May 9th, 2006 and requested them to consent to a continuance of their motions. (Copies of these letters are attached collectively as Exhibit "A").

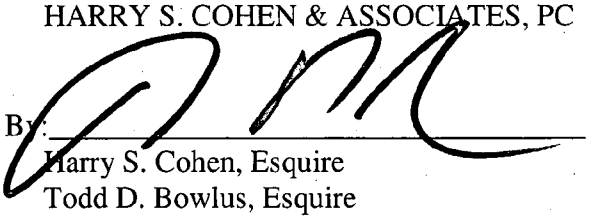
5. Although Plaintiffs have not heard back from John Blasko, counsel for Dr. Ott, David Johnson, counsel for Defendants Dr. Kush and Dubois Regional Medical Center, has consented to a continuance of this argument date.

6. Since there is a scheduling conflict that cannot be avoided, Plaintiffs pray that this Honorable Court continue the argument date and re-schedule argument for another date.

WHEREFORE, Plaintiffs move that this Court enter an Order continuing the argument date on Defendants' Motions to Compel.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC



By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

Harry S.
Cohen
&
Associates, P.C.
LAW OFFICES

May 5, 2006

Jeanette E. Oliver, Esquire
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219

**Re: Angela Hale and Randy A. Hale, parents and natural guardians of Reganne Hale, a minor, v. Michael J. Kush, M.D., and adult individual; Gary D. Ott, M.D., and adult individual; Yoo, Tai, Y., M.D., a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation**
**Case No.: 2005-364-CD**

Dear Ms. Oliver:

I am in receipt of your letter and Order of Court scheduling argument on your Motion to Compel Production of Expert Reports for May 22, 2006 at 10:00 a.m. before Judge Ammerman. However, Harry and I are scheduled to begin jury selection on a case in Allegheny County on Monday, May 22, 2006 (*Drakulic v. Bookwalter et al*, GD 03-24165). Therefore, please advise if you are willing to consent to a postponement of the May 22nd argument date.

Thank you. I look forward to hearing from you.

Yours very truly,

**HARRY S. COHEN & ASSOCIATES, PC**

Todd D. Bowlus, Esquire

TDB:jb
cc: John W. Blasko, Esquire

EXHIBIT
A
ALL-STATE LEGAL®

Two Chatham Center • Suite 985 • P 12) 281-3000 • Fax: (412) 232-6688
E-mail: hcohen@ ww.medmal1.com

Harry S. Cohen & Associates, P.C.
LAW OFFICES

May 9, 2006

John W. Blasko, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**Re: Angela Hale and Randy A. Hale, parents and natural guardians of Reganne Hale, a minor, v. Michael J. Kush, M.D., and adult individual; Gary D. Ott, M.D., and adult individual; Yoo, Tai, Y., M.D., a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation**
**Case No.: 2005-364-CD**

Dear Mr. Blasko:

I am in receipt of your letter and Order of Court scheduling argument on your Motion to Compel Production of Expert Reports for May 22, 2006 at 10:00 a.m. before Judge Ammerman. However, as I advised counsel for Dr. Kush, Harry and I are scheduled to begin jury selection on a case in Allegheny County on Monday, May 22, 2006 (*Drakulic v. Bookwalter et al*, GD 03-24165). Therefore, please advise if you are willing to consent to a postponement of the May 22nd argument date.

Counsel for Dr. Kush has already advised that they are willing to postpone their argument.

Thank you. I look forward to hearing from you.

Yours very truly,

**HARRY S. COHEN & ASSOCIATES, PC**

Todd D. Bowlus, Esquire

TDB:jb
cc: Jeanette E. Oliver, Esquire

Two Chatham Center • Suite 985 • Pittsburgh, PA 15219 • Tel: (412) 281-3000 • Fax: (412) 232-6688
E-mail: hcohen@medmal1.com • http://www.medmal1.com

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR CONTINUANCE OF ARGUMENT DATE ON DEFENDANTS' MOTION TO COMPEL** has been served on the 15th day of May 2006 to the following via facsimile and/or U.S. Mail:

**Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor | : | |
| VS. | : | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation | : | |

O R D E R

AND NOW, this 7th day of June, 2006, following argument on the Motion to Compel Plaintiffs to Produce Expert report filed on behalf of both Defendant Gary M. Ott, M.D., Michael J. Kush, M.D., and DuBois Regional Medical Center, it is the ORDER of this Court that the said motions be and are hereby granted to the extent that the Plaintiffs shall provide expert reports in regard to the issue of liability to Defense counsel within no more than seventy-five (75) days from this date.

BY THE COURT,

President Judge

FILED
12:34 BN
JUN 12 2006
William A. Shaw
Prothonotary/Clerk of Courts

1cc Attys: Cohen
Bowlus
D. Johnson
J. Olives
Blasko
Neely

1cc Dr. Yoo
145 Hospital Ave., Ste 315
DuBois, PA 15801

FILED

JUN 12 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 6/12/06

_____ You are responsible for serving all appropriate parties.

__X__ The Prothonotay's office has provided service to the following parties:

_____ Plaintiff(s) __X__ Plaintiff(s) Attorney _____ Other

__X__ Defendant(s) __X__ Defendant(s) Attorney
Dr. Yoo

_____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**STIPULATION**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED No CC.
m/11:35 cm
JUN 14 2006 (cm)

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**STIPULATION**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, Defendants Michael J. Kush, M.D and Dubois Regional Medical Center, through their attorneys of record, Thomson, Rhodes & Cowie, PC, by David R. Johnson, Esquire, and Defendant Gary D. Ott, M.D., through his attorneys of record, McQuaide Blasko, by John W. Blasko, Esquire, and jointly stipulate as follows:

It is hereby stipulated that:

1. Defendant Dubois Regional Medical Center admits that Defendant Michael J, Kush, MD, at the time referred to in Plaintiffs' Complaint, was an employee and agent of Defendant Dubois Regional Medical Center;

2. Defendant Dubois Regional Medical Center admits that it is vicariously liable for the acts and omissions of Defendant Michael J, Kush, MD should Defendant Michael J, Kush, MD be found to be negligent and the legal cause of Plaintiffs' harm; and

3. There will be no need to file further pleadings to establish the content of this Stipulation.

Respectfully submitted,

**HARRY S. COHEN & ASSOCIATES, PC**

By:_____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs

**THOMSON, RHODES & COWIE, PC**

By:_____
David R. Johnson, Esquire
Attorney for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center

**MCQUAIDE BLASKO**

By:_____
John W. Blasko, Esquire
Attorney for Defendant Gary D. Ott, M.D.

Respectfully submitted,

**HARRY S. COHEN & ASSOCIATES, PC**

By:_____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs

**THOMSON, RHODES & COWIE, PC**

By:_____
David R. Johnson, Esquire
Attorney for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center

**MCQUAIDE BLASKO**

By:_____
John W. Blasko, Esquire
Attorney for Defendant Gary D. Ott, M.D.

Respectfully submitted,

**HARRY S. COHEN & ASSOCIATES, PC**

By:_____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs

**THOMSON, RHODES & COWIE, PC**

By:_____
David R. Johnson, Esquire
Attorney for Defendants Michael J. Kush, M.D and
Dubois Regional Medical Center

**MCQUAIDE BLASKO**

By:_____
John W. Blasko, Esquire
Attorney for Defendant Gary D. Ott, M.D.

Harry S. Cohen & Associates, P.C.
LAW OFFICES

June 12, 2006

Court Administrator
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**Re: Angela Hale and Randy A. Hale, parents and natural guardians of Reganne Hale, a minor, v. Michael J. Kush, M.D., and adult individual; Gary D. Ott, M.D., and adult individual; Yoo, Tai, Y., M.D., a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation**
**Case No.: 2005-364-CD**

Dear Sir or Madam:

Enclosed is the **original**, and three (3) copies of the cover sheet, of a Stipulation with regard to the above-referenced case, which has been executed by all counsel of record.

Kindly file the original, time stamp each cover sheet, and return the same to me in the enclosed self-addressed stamped envelope I have provided.

Should you have any questions, please do not hesitate to contact me. Thank you for your anticipated cooperation in this regard.

Yours very truly,

**HARRY S. COHEN & ASSOCIATES, PC**

Sherry Pugliano
Paralegal to Todd D. Bowlus, Esquire

:sp
Enclosure(s)
cc: David R. Johnson, Esquire (w/o enc)
John W. Blasko, Esquire (w/o enc)

Two Chatham Center • Suite 985 • Pittsburgh, PA 15219 • Tel: (412) 281-3000 • Fax: (412) 232-6688
E-mail: hcohen@medmal1.com • http://www.medmal1.com

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**AMENDED STIPULATION**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED NO CC
JUL 24 2006
William A. Shaw
Prothonotary/Clerk of Courts

RECEIVED
JUL 21 2006
COURT ADMINISTRATOR'S OFFICE

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**AMENDED STIPULATION**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, Defendants Michael J. Kush, M.D and Dubois Regional Medical Center, through their attorneys of record, Thomson, Rhodes & Cowie, PC, by David R. Johnson, Esquire, and Defendant Gary D. Ott, M.D., through his attorneys of record, McQuaide Blasko, by John W. Blasko, Esquire, and move to amend the Stipulation filed with this Court on June 14, 2006 and jointly stipulate as follows:

It is hereby stipulated that:

1. At all material times hereto, Defendant Michael J. Kush, M.D. was an employee and agent of Defendant Dubois Regional Medical Center; and

2. There will be no need to file further pleadings to establish the content of this Stipulation.

Respectfully submitted,

**HARRY S. COHEN & ASSOCIATES, PC**

By:_____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs

**THOMSON, RHODES & COWIE, PC**

By:_____
David R. Johnson, Esquire
Attorney for Defendants Michael J. Kush, M.D and
Dubois Regional Medical Center

**MCQUAIDE BLASKO**

By:_____
John W. Blasko, Esquire
Attorney for Defendant Gary D. Ott, M.D.

Respectfully submitted,

**HARRY S. COHEN & ASSOCIATES, PC**

By:_____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs

**THOMSON, RHODES & COWIE, PC**

By:_____
David R. Johnson, Esquire
Attorney for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center

**MCQUAIDE BLASKO**

By:_____
John W. Blasko, Esquire
Attorney for Defendant Gary D. Ott, M.D.

Respectfully submitted,

**HARRY S. COHEN & ASSOCIATES, PC**

By:_____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs

**THOMSON, RHODES & COWIE, PC**

By:_____
David R. Johnson, Esquire
Attorney for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center

**MCQUAIDE BLASKO**

By:_____
John W. Blasko, Esquire
Attorney for Defendant Gary D. Ott, M.D.

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

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br><br>Defendants. | Civil Action-Medical Professional Liability Action<br><br>No. 05-364 CD<br><br>JURY TRIAL DEMANDED |

FILED NO CC
m/1:21 BH
AUG 22 2006
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that and true and correct copy of Defendant's Second Amended Notice of Taking Oral Depositions of the Plaintiffs, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 21st day of August, 2006 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: John W. Blasko /CJ
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\312732\7

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

FILED NO CC
m 11:21 BY
AUG 22 2006
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that and true and correct copy of Defendant's Notice of Taking Oral Depositions of Dr. Cherian, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 21st day of August, 2006 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: John W. Blasko/cg
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\312732\9

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' EXPERT REPORTS**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED NO CC
m/ 11:24/60
AUG 24 2006
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' EXPERT REPORTS**

TO: PROTHONOTARY:

I hereby certify that the following Plaintiffs' Expert Reports have been served upon Counsel for Defendants on the 21st day of August 2006, by facsimile and First Class U.S. Mail, postage prepaid:

1. Curtis L. Certulo, M.D., report dated July 13, 2006;
2. Bennett Walstatter, M.D., report dated July 10, 2006;
3. Robert O. Atlas, M.D., report dated August 20, 2006;
4. Robert L. McDowell, Jr., M.D., report dated June 6, 2006;
5. Mark A. Epstein, M.D., report dated July 1, 2006;
6. Patricia D. Fedorka, Ph.D., R.N.C., report dated May 1, 2006.

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' REQUEST TO DEFENDANTS FOR PRODUCTION OF EXPERT REPORTS**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D.#30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED
SEP 06 2006
m/2:06/noCC
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**PLAINTIFFS' REQUEST TO DEFENDANTS FOR PRODUCTION OF EXPERT REPORTS**

To: Defendant Gary D. Ott, MD
c/o John W. Blasko, Esquire
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

Defendant Dubois Regional Hospital
c/o David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

1. I, the Plaintiff named above, have furnished you, the Defendants named above, expert reports summarizing the expert testimony that I will offer to support the claims of professional negligence that I have made against you.

2. Pursuant to Pennsylvania Rule of Civil Procedure 1042.29(a)(2), you are requested within sixty (60) days of service of this request to furnish to me expert reports

summarizing the expert testimony that you will offer to support your defenses to the claims of professional negligence that I have made against you.

3. If you have made claims against any other parties pursuant to Pennsylvania Rule of Civil Procedure 2251 *et seq.* governing the joinder of additional defendants, your expert reports are required also to summarize the expert testimony that you will offer in support of these claims against those other parties.

4. You are required to serve copies of all expert reports on all other parties.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

September 1, 2006

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' REQUEST TO DEFENDANTS FOR PRODUCTION OF EXPERT REPORTS** has been served on the 1st day of September 2006 to the following U.S. First Class Mail:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; GARY D. OTT, M.D.; an adult individual; YOO TAI, M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
OBJECTIONS TO PLAINTIFFS' REQUEST FOR PRODUCTION OF EXPERT REPORTS

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

FREDERICK BATTAGLIA
Court I.D. No. 91624

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Dated: September 8 2006

FILED
SEP 11 2006
m/12:50/no
William A. Shaw
Prothonotary/Clerk of Courts
wo c/c

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

***OBJECTIONS OF DEFENDANT GARY D. OTT, M.D. TO PLAINTIFFS' REQUEST FOR PRODUCTION OF EXPERT REPORTS***

The Defendant, Gary D. Ott, M.D. by and through his attorneys, McQuaide, Blasko objects to Plaintiffs' Request for Production of Expert Reports and represents as follows:

1. On March 16, 2005, the Plaintiffs filed an action on behalf of Reganne Hale, a minor.

2. On November 10, 2002, Plaintiff Angela Hale gave birth to twins Reganne and Ashtyn Hale.

3. In the case of Reganne Hale, a minor, depositions of the Plaintiffs and a prior treating physician were scheduled for June 22, 2006.

4. On June 12, 2006, the Plaintiffs filed a Complaint against Defendants on behalf of the minor, Ashtyn Hale.

5. As a result of filing this second suit, the depositions of the Plaintiffs and prior treating physician were continued.

6. The Defendant, through his counsel, has attempted to rearrange the schedule of the Plaintiffs and the prior treating physician, and, due to the schedules of Plaintiffs' counsel and other counsel, the first day that was convenient to them was December 13, 2006.

7. The Plaintiffs filed the instant Request for Production of Expert Reports which required a response within sixty (60) days or on or before October 31, 2006.

8. Under the circumstances of the case, and, the delay in rescheduling the Plaintiffs' depositions as well as the previous treating physician, it would be unfair for Defendant to have expert review without the testimony of the Plaintiffs and prior treating physician. The reviewing experts on behalf of the Defendant should have such information available to prepare their reports.

WHEREFORE, it is requested that the Plaintiffs' Request for Production of Expert Reports be postponed until sixty (60) after the Plaintiffs' depositions are taken on December 13, 2006.

Respectfully submitted,

McQUAIDE, BLASKO, FLEMING,
& FAULKNER, INC.

BY _____
JOHN W. BLASKO
Counsel for Defendant
Gary D. Ott, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated 9/8/06

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | Civil Action-Medical Professional Liability Action |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of ***OBJECTIONS OF DEFENDANT GARY D. OTT, M.D.TO PLAINTIFFS' REQUEST FOR PRODUCTION OF EXPERT REPORTS***, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 8th day of Sept., 2006 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

(A

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | Civil Action-Medical Professional Liability Action |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

**RULE TO SHOW CAUSE**

AND NOW, this 12 day of September, 2006 a Rule is hereby issued to show cause why the Defendant Gary Ott, M.D.'s Objections to Plaintiffs' Request for Production of Expert Reports should not be granted.

Rule returnable the 27th day of October, 2006, in Clearfield County Courthouse, Courtroom 1 at 9:00 o'clock. A.M.



FILED 1cc Atty Blasko
SEP 13 2006
William A. Shaw
Prothonotary/Clerk of Courts

FILED

SEP 13 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/13/06

X You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD, PENNSYLVANIA
CIVIL ACTION - LAW

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult, individual; GARY D. OTT, M.D., an adult individual, YOO TAI, M.D. a Pennsylvania Corporation, and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants

Type of Case: Civil Action-
Medical Professional Liability Action

No: 05-364 CD

Type of Pleading:
AFFIDAVIT OF SERVICE FOR RULE TO SHOW CAUSE OF SEPTEMBER 12, 2006

Filed on Behalf of Defendant:
GARY D. OTT, M.D.

Counsel of Record for this
Party: JOHN W. BLASKO
Court I.D. No.: 06787

ALLEN P . NEELY
Court I.D. No.: 65302

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel of Record for
Adverse Party:
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire

Dated: September 14, 2006

FILED
m 11:01 BY
SEP 15 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | Civil Action-Medical Professional Liability Action |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

***AFFIDAVIT OF SERVICE***

Before me, the undersigned authority, personally appeared Allen P. Neely, Esquire, who, being duly sworn, deposes and says that a true and correct copy of Rule to Show Cause dated September 12, 2006 RE Defendant Gary Ott, M.D.'s Objections to Plaintiffs' Request for Production of Expert Reports and signed by the Honorable Fredric J. Ammerman, in the above-captioned case was served upon counsel of record: Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, Harry S. Cohen & Associates, P.C., Two Chatham Center, Suite 985, Pittsburgh, PA 15219 and David R. Johnson, Esquire, Two Chatham Center, 10th Floor, Pittsburgh, PA 15219 by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, on September 14, 2006.

McQUAIDE, BLASKO, FLEMING
& FAULKNER, INC.

BY _____
JOHN W. BLASKO
ALLEN P .NEELY
Counsel for Defendant
Gary D. Ott, M.D.

Sworn to and subscribed before me
this 14th day of September, 2006.

Nancy L. Swisher
Notary Public

NOTARIAL SEAL
NANCY L. SWISHER, NOTARY PUBLIC
STATE COLLEGE BORO., CENTRE COUNTY
MY COMMISSION EXPIRES FEB. 17, 2007

::ODMA\PCDOCS\DOCSLIB2\316185\2

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | Civil Action-Medical Professional Liability Action |
| Plaintiffs, | ) | |
| vs. | ) | |
| | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

**RULE TO SHOW CAUSE**

AND NOW, this 12 day of September, 2006 a Rule is hereby issued to show cause why the Defendant Gary Ott, M.D.'s Objections to Plaintiffs' Request for Production of Expert Reports should not be granted.

Rule returnable the 27th day of October, 2006, in Clearfield County Courthouse, Courtroom 1 at 9:00 o'clock A.M.

/s/ Fredric J. Ammerman

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

SEP 13 2006

Attest. William L. Prothonotary/ Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' MOTION TO CONSOLIDATE**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

9-26-06
Date

FILED no cc
m/ 1:41 BA
SEP 28 2006 (6K)
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**PLAINTIFFS' MOTION TO CONSOLIDATE**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion to Consolidate:

1. The two above-referenced actions pending in this Court have identical questions of law and facts.

2. In actions pending in the same county involving a common question of law or fact, or arising from the same transaction or occurrence, the court is authorized to consolidate the actions to avoid unnecessary cost or delay, pursuant to Pa.R.Civ.P. 213(a).

WHEREFORE, Plaintiffs move this Honorable Court for an Order to Consolidate the two-above-referenced actions for discovery and trial at Docket Number 2005-364-CD.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION TO CONSOLIDATE** has been served on the 26th day of September 2006 to the following via facsimile and/or U.S. Mail:

**Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

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| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2006-936 CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, this ____ day of _____ 2006, it is hereby it is hereby ORDERED, ADJUDGED and DECREED that the above-referenced cases are consolidated, for the purposes of discovery and trial, at Docket No.: 2005-364-CD.

BY THE COURT:

_____,J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

9-26-06
Date

FILED NO CC
m/1:41/6/
SEP 28 2006
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion to Compel:

1. This is a professional negligence action alleging medical malpractice against Defendants which resulted in birth injuries to Minor-Plaintiff. The Complaint was filed on March 16, 2005.

2. On January 31, 2006, Plaintiffs served Defendant Dubois Regional Medical Center with Plaintiffs' First Set of Interrogatories Directed to Defendant Dubois Regional Medical Center (A copy of the Notice of Service is attached hereto as Exhibit "A").

3. After receiving no response, on June 14, 2006, Plaintiffs sent a letter to counsel for Defendant Dubois Regional Medical Center asking when Plaintiffs could expect to receive Defendant's answers (A copy of the correspondence is attached hereto as Exhibit "B".)

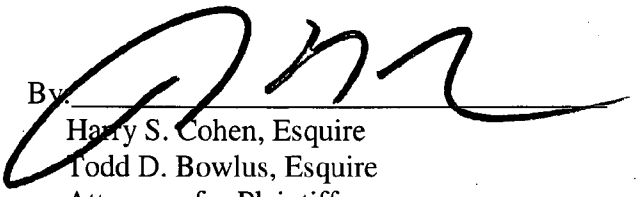
4. To date, Defendant has failed to answer said discovery.

5. Defendant's actions are delaying the discovery process in this case and Plaintiffs will be prejudiced in the presentation of their case without the discovery answers.

WHEREFORE, Plaintiffs move that this Court enter an Order compelling Defendant Dubois Regional Medical Center to serve its answers to Plaintiffs' First Set of Interrogatories Directed to Defendant Dubois Regional Medical Center within thirty (30) days or suffer further sanctions as this Court may Order.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC



By: _____
Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

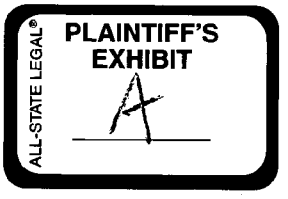
Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED COPY
FEB 02 2006
William A. Shaw
Prothonotary/Clerk of Courts
COPY



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' FIRST SET OF INTERROGATORIES DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' First Set of Interrogatories Directed to Defendant Dubois Regional Medical Center was served on the 31st day of January 2006, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Harry S. Cohen, Esquire
Todd D. Bowius, Esquire
*Attorneys for Plaintiff*

Harry S. Cohen & Associates, P.C.
LAW OFFICES

June 14, 2006

David R. Johnson, Esquire
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219

**Re: Angela Hale and Randy A. Hale, parents and natural guardians of Reganne Hale, a minor, v. Michael J. Kush, M.D., and adult individual; Gary D. Ott, M.D., and adult individual; Yoo, Tai, Y., M.D., a Pennsylvania Corporation; and Dubois Regional Medical Center, a Pennsylvania Corporation**
**Case No.: 2005-364-CD**

Dear Mr. Johnson:

On January 31, 2006, I forwarded Plaintiffs' First Set of Interrogatories Directed to Defendant Dubois Regional Medical Center. Please advise when I can expect to receive the answers.

Thank you.

Yours very truly,

**HARRY S. COHEN & ASSOCIATES, PC**

Todd D. Bowlus, Esquire

TDB:jb

PLAINTIFF'S EXHIBIT B
ALL-STATE LEGAL®

Two Chatham Center • Suite 985 • Pitt
E-mail: hcohen@m
) 281-3000 • Fax: (412) 232-6688
w.medmal1.com

## CERTIFICATE OF SERVICE

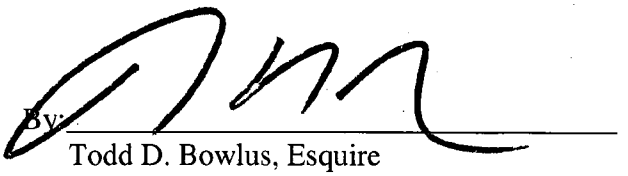
I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION TO COMPEL DISCOVERY** has been served on the 26th day of September 2006 to the following:

**Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC



By: _____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, to-wit, this _____ day of _____ 2006 it is hereby ORDERED, ADJUDGED and DECREED, upon consideration of Plaintiffs' Motion to Compel Discovery, it is hereby ordered that Defendant Dubois Regional Medical Center shall serve its answers to Plaintiffs' First Set of Interrogatories Directed to Defendant Dubois Regional Medical Center within thirty (30) days or suffer further sanctions as this Court may Order.

BY THE COURT:

_____,J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | : | |

FILED 1cc
01 10:43 BK Atty
SEP 29 2006 Cohen
William A. Shaw
Prothonotary/Clerk of Courts

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | : | |

**RULE TO SHOW CAUSE**

AND NOW, this 28th day of September 2006, a Rule is hereby issued to show cause why Plaintiffs' Motion to Consolidate should not be granted.

Rule returnable the 27th day of October 2006 in Clearfield County Courthouse, Courtroom 1 at 9:00 o'clock A.M.

BY THE COURT:

Frederic J. Ammerman, J.

FILED

SEP 29 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/29/06

X You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**RULE TO SHOW CAUSE**

AND NOW, this 28th day of September 2006, a Rule is hereby issued to show cause why Plaintiffs' Motion to Compel Discovery should not be granted.

Rule returnable the 27th day of October 2006 in Clearfield County Courthouse, Courtroom 1 at 9:00 o'clock. A.M.

BY THE COURT:

Fredric J. Ammerman, J.

FILED
01:40 PM
SEP 29 2006
ICC Atty Cohen
GK

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/29/06

X You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) ____ Plaintiff(s) Attorney ____ Other

____ Defendant(s) ____ Defendant(s) Attorney

____ Special Instructions:

FILED

SEP 29 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**AFFIDAVIT OF SERVICE FOR RULE TO SHOW CAUSE OF 9/28/06**
**Re: Motion to Consolidate**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED NO CC
m 12:45 BL
OCT 04 2006
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**AFFIDAVIT OF SERVICE**

Before me, the undersigned authority, personally appeared Todd D. Bowlus, Esquire, who being duly sworn, deposes and says that a true and correct copy of a Rule to Show Cause dated September 28, 2006 RE Plaintiffs' Motion to Consolidate and signed by the Honorable Fredric J. Ammerman, in the above-captioned case was served upon counsel of record: John W. Blasko, Esquire, McQuaide Blasko, 811 University Drive, State College, PA, 16801-6699 and David R. Johnson, Esquire, Thomson, Rhodes & Cowie, PC, 1010 Two Chatham Center, Pittsburgh, PA, 15219 by U.S. First Class Mail on the 2nd day of October 2006.

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

Sworn to and subscribed before me
This 2nd day of October 2006

_____
Notary Public

My commission expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Sherry Pugliano, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires May 19, 2008
Member, Pennsylvania Association Of Notaries

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

**JURY TRIAL DEMANDED**

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**AFFIDAVIT OF SERVICE FOR RULE TO SHOW CAUSE OF 9/28/06**
**Re: Motion Compel Discovery**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

FILED NO CC
m/12:45/01
OCT 04 2006
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**AFFIDAVIT OF SERVICE**

Before me, the undersigned authority, personally appeared Todd D. Bowlus, Esquire, who being duly sworn, deposes and says that a true and correct copy of a Rule to Show Cause dated September 28, 2006 RE Plaintiffs' Motion to Compel Discovery and signed by the Honorable Fredric J. Ammerman, in the above-captioned case was served upon counsel of record: John W. Blasko, Esquire, McQuaide Blasko, 811 University Drive, State College, PA, 16801-6699 and David R. Johnson, Esquire, Thomson, Rhodes & Cowie, PC, 1010 Two Chatham Center, Pittsburgh, PA, 15219 by U.S. First Class Mail on the 2nd day of October 2006.

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire
Attorneys for Plaintiff
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

Sworn to and subscribed before me
this 2nd day of October 2006

_____
Notary Public

My commission expires:

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Sherry Pugliano, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires May 19, 2008
Member, Pennsylvania Association Of Notaries

FILED
OCT 04 2006
William A. Shaw
Prothonotary/Clerk of Courts

FILED
012:35 BOL
OCT 31 2006
William A. Shaw
Prothonotary/Clerk of Courts

cc Attys: Cohen
Bowlus
Johnson
Oliver
Blasko
Neely
(610)

Def. Yoo-
145 Hospital Ave.
Ste. 315
DuBois, PA 15801

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor :

VS. : NO. 05-364-CD

MICHAEL J. KUSH, M.D., an adult ind; GARY D. OTT, M.D., an adult ind; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation :

O R D E R

AND NOW, this 27th day of October, 2006, relative the Plaintiffs' and Defendants' Motions to Compel Expert Reports, wit the parties being in agreement for the entry of a case management order, it is the ORDER of this Court as follows:

1. Plaintiffs shall produce their liability expert reports on behalf of Reganne Hale and Ashtyn Hale on or before March 31, 2006;

2. The Defendants shall produce their expert reports on or before June 30, 2006;

3. The case shall be placed on the Civil Trial List for the Fall 2006 Term of Court;

4. Call of the Civil List shall be held on July 26, 2007, at 11:00 a.m;

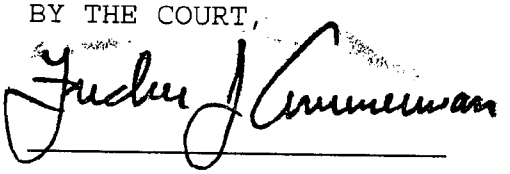
5. Pretrial Conference shall be held at a time to be determined on the 17th day of August, 2007, at a time to be

determined;

6. Jury Selection shall be held on 28th day of August, 2007, at 9:00 a.m;

7. Jury Trial of eight (8) days in length shall be scheduled at some time between September and December 2007.

BY THE COURT,



President Judge

FILED

OCT 31 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 10/31/06

___ You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) X Plaintiff(s) Attorney ___ Other

___ Defendant(s) X Defendant(s) Attorney

___ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor | : | |
| VS. | : | NO. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult ind; GARY D. OTT, M.D., an adult ind; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation | : | |

FILED
9:30cm
NOV - 1 2006
William A. Shaw
Prothonotary/Clerk of Courts

ICCAttys: Cohen Johnson Blasko Bowlus Oliver Neely
ICC Tai Y Yoo MD 145 Hospital Ave Ste 315 DuBois PA

O R D E R

AND NOW, this 1st day of November, 2006, it is the ORDER of this Court that the Order entered on October 27, 2006, be and is hereby AMENDED to read as follows:

O R D E R

AND NOW, this 27th day of October, 2006, relative the Plaintiffs' and Defendants' Motions to Compel Expert Reports, with the parties being in agreement for the entry of a case management order, it is the ORDER of this Court as follows:

1. Plaintiffs shall produce their liability expert reports on behalf of Reganne Hale and Ashtyn Hale on or before March 31, 2007;

2. The Defendants shall produce their expert reports on or before June 30, 2007;

3. The case shall be placed on the Civil Trial List for the Fall 2007 Term of Court;

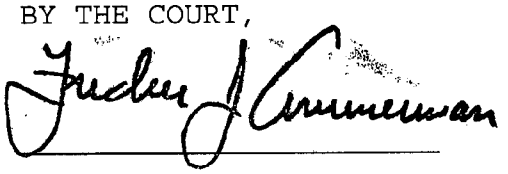
4. Call of the Civil List shall be held on July 26, 2007, at 11:00 a.m;

5. Pretrial Conference shall be held at a time to be determined on the 17th day of August, 2007;

6. Jury Selection shall be held on 28th day of August, 2007, at 9:00 a.m;

7. Jury Trial of eight (8) days in length shall be scheduled sometime between September and December 2007.

BY THE COURT,



President Judge

DATE: 11-1-2006

_____You are responsible for serving all appropriate parties.

__X__ The Prothonotay's office has provided service to the following parties:

____Plaintiff(s) __X__ Plaintiff(s) Attorney _____ Other

_____ Defendant(s) __X__ Defendant(s) Attorney

_____Special Instructions:

FILED

NOV - 1 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor

VS. NO. 05-364-CD

MICHAEL J. KUSH, M.D., an adult ind; GARY D. OTT, M.D., an adult ind; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation

O R D E R

AND NOW, this 27th day of October, 2006, relative the Plaintiffs' Motion to Consolidate the above-captioned case with the case filed to No. 06-936-CD; with the Court noting that counsel for the Defendants being in agreement with the Plaintiffs' requests, it is the ORDER of this Court that the cases be and are hereby consolidated.

Relative the Plaintiffs' Motion for Discovery, it is the ORDER of this Court that Defendant DRMC complete outstanding discovery requests within thirty (0) days from this date.

BY THE COURT,

President Judge

FILED
01:00 PM
NOV 09 2006
William A. Shaw
Prothonotary/Clerk of Courts

1cc Attys:
H. Cohen
T. Bartus
D Johnson
J. Oliver
J. Blasko
A. Neely
1cc
Dr. Yoo
145 Hospital Ave., Ste. 315
DuBois, PA 15801

FILED

NOV 09 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 11/9/06

____You are responsible for serving all appropriate parties.

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

____Plaintiff(s) __X__ Plaintiff(s) Attorney ____Other

__X__ Defendant(s) __X__ Defendant(s) Attorney

____Special Instructions: Yoo

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE as parents and natural guardians of REGANNE HALE, a minor, and ASHTYN HALE, a minor | : | |
| vs. | : | No. 05-364-CD |
| MICHAEL J. KUSH, M.D., an adult ind; GARY D. OTT, M.D., an adult ind; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation | : | |

**ORDER**

AND NOW, this 5th day of December, 2006, it is the ORDER of the Court that Civil Jury Trial in the above matter has been scheduled for **Monday, September 17, through and including, Wednesday, September 26, 2007, to commence each day at 9:00 A.M**, before the Honorable John K. Reilly, Jr., Senior Judge, Specially Presiding, in the Clearfield County Courthouse, Clearfield, PA. Please report to the Court Administrator's Office. You will be directed from there where this trial will be held.

FILED
019:00 BOL
DEC 06 2006
William A. Shaw
Prothonotary/Clerk of Courts

1CC Attys:
Cohen
Bowles
D. Johnson
J. Oliver
J. Blasko
A. Neely
1CC Dr. Tai Y. Yoo MD
145 Hospital Ave., Ste. 315
DuBois, PA 15801

BY THE COURT:

Fredric J. Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

DEC 06 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/6/06

____ You are responsible for serving all appropriate parties.

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

____ Plaintiff(s) __X__ Plaintiff(s) Attorney __X__ Other - Dr. Tai Yoo, MD

____ Defendant(s) __X__ Defendant(s) Attorney

____ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF SERVICE OF PLAINTIFFS' SECOND SET OF INTERROGATORIES DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

Filed on Behalf of Plaintiffs

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

FILED NO CC
DEC 22 2006
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| | : | |
| vs. | : | |
| | : | |
| MICHAEL J. KUSH, MD; an adult Individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, PC, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| | : | |
| Defendants. | : | |

**NOTICE OF SERVICE OF PLAINTIFFS' SECOND SET OF INTERROGATORIES DIRECTED TO DEFENDANT DUBOIS REGIONAL MEDICAL CENTER**

TO: PROTHONOTARY:

I hereby certify that a true and correct copy of Plaintiffs' Second Set of Interrogatories Directed to Defendant Dubois Regional Medical Center was served on the 20th day of December 2006, by First Class U.S. Mail, postage prepaid upon the following:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D. and Dubois Regional Medical Center)*

Respectfully submitted:

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

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

FILED NO CC
m/11:07/01
FEB 22 2007
William A. Shaw
Prothonotary/Clerk of Courts

| | |
|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation,<br><br>Defendants. | Civil Action-Medical Professional Liability Action<br><br>No. 05-364 CD<br><br>JURY TRIAL DEMANDED |

CERTIFICATE OF SERVICE

I hereby certify that and true and correct copy of Defendant's Third Amended Notice of Taking Oral Deposition of the Plaintiff (Mr. Hale), in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 21st day of February 2007 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO
FLEMING & FAULKNER, INC.

By: John W. Blasko (CD)
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\312732\10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**NOTICE OF DEPOSITION OF GEORGE CHERIAN, M.D. WITH SUBPEONA DUCES TECUM**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
*Consolidated at 2005-364-CD*

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

February 20, 2007

FILED NO CC
m/11:17 Bol
FEB 23 2007
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD<br>*Consolidated at 2005-364-CD* |

**NOTICE OF DEPOSITION OF**
**GEORGE CHERIAN, M.D. WITH SUBPEONA DUCES TECUM**

TO: George Cherian, M.D.
George Cherian, M.D., P.C.
803 West Mahoning Street
Punxsutawney, PA 15767

**PLEASE TAKE NOTICE** that the Deposition of George Cherian, M.D. will be taken for the purposes of discovery, pursuant to the Pennsylvania Rules of Civil Procedure, before a

Notary Public duly authorized by law to administer oath in the conference room to be determined at Dubois Regional Hospital on the **Wednesday, March 28, 2007 at George Cherian, M.D., P.C., 803 West Mahoning Street, Punxsutawney, Pennsylvania 15767 at 2:00 p.m.** at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts regarding the treatment of Angela Hale's 1996 pregnancy and to authenticate the medical records there from.

**SUBPOENA DUCES TECUM**

You are hereby instructed to bring the following with you:

1. The complete medical chart in your possession with regard to Plaintiff Angela Hale and her 1996 pregnancy.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **NOTICE OF DEPOSITION OF GEORGE CHERIAN, M.D. WITH SUBPEONA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing or hand delivery of a true and correct copy to the party and address listed below on the 20th day of February 20, 2007:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

**George Cherian, M.D.**
George Cherian, M.D., P.C.
803 West Mahoning Street
Punxsutawney, PA 15767

HARRY S. COHEN & ASSOCIATES, PC

By:_____
Todd D. Bowlus, Esquire

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

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | ) | |
| Plaintiffs, | ) | Civil Action-Medical Professional Liability Action |
| vs. | ) | No. 05-364 CD |
| MICHAEL J. KUSH, M.D., an adult individual; MATERNAL FETAL MEDICINE OF DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation; GARY D. OTT, M.D., an adult individual; YOO, TAI, Y., M.D., a Pennsylvania Corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania Corporation, | ) | JURY TRIAL DEMANDED |
| Defendants. | ) | |

FILED NO CC
MAR 09 2007
William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that and true and correct copy of Defendant's Fourth Amended Notice of Taking Oral Deposition of the Plaintiff (Mr. Hale), in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 8th day of March, 2007 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO
FLEMING & FAULKNER, INC.

By: John W. Blasko
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\312732\1 1

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**SECOND NOTICE OF DEPOSITION OF GEORGE CHERIAN, M.D. WITH SUBPEONA DUCES TECUM**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD
*Consolidated at 2005-364-CD*

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

March 7, 2007

FILED NO CC
m/12:56/61
MAR 12 2007
William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD<br>*Consolidated at 2005-364-CD* |

**SECOND NOTICE OF DEPOSITION OF**
**GEORGE CHERIAN, M.D. WITH SUBPEONA DUCES TECUM**

TO: George Cherian, M.D.
George Cherian, M.D., P.C.
803 West Mahoning Street
Punxsutawney, PA 15767

**PLEASE TAKE NOTICE** that the Deposition of George Cherian, M.D. will be taken for the purposes of discovery, pursuant to the Pennsylvania Rules of Civil Procedure, before a

Notary Public duly authorized by law to administer oath in the conference room to be determined at Dubois Regional Hospital on the **Thursday, March 29, 2007 at George Cherian, M.D., P.C., 803 West Mahoning Street, Punxsutawney, Pennsylvania 15767 at 10:30 a.m.** at which time and place you are invited to appear and take part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts regarding the treatment of Angela Hale's 1996 pregnancy and to authenticate the medical records there from.

**SUBPOENA DUCES TECUM**

You are hereby instructed to bring the following with you:

1. The complete medical chart in your possession with regard to Plaintiff Angela Hale and her 1996 pregnancy.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By:_____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **SECOND NOTICE OF DEPOSITION OF GEORGE CHERIAN, M.D. WITH SUBPEONA DUCES TECUM** has been served pursuant to Pennsylvania Rule of Civil Procedure 440 by first-class mailing or hand delivery of a true and correct copy to the party and address listed below on the 7th day of March 2007:

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699
*(Counsel for Defendant Gary D. Ott, M.D.)*

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
Two Chatham Center
Tenth Floor
Pittsburgh, PA 15219
*(Counsel for Defendants Michael J. Kush, M.D and Dubois Regional Medical Center)*

**George Cherian, M.D.**
George Cherian, M.D., P.C.
803 West Mahoning Street
Punxsutawney, PA 15767

**Johnson & Mimless**
*(via facsimile @ 412.765.3539)*

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

UA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | : | |

FILED
012:10 BA
APR 04 2007
William A. Shaw
Prothonotary/Clerk of Courts
ICC Attys: Bowlus
Blasko
D. Johnson

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | : | |

ICC Def. T. Yoo
145 Hospital Ave.
Ste. 315
DuBois, PA
15801

**RULE TO SHOW CAUSE**

AND NOW, this 4 day of April 2007, a Rule is hereby issued to show cause why Plaintiffs' Motion for Extension of Time to File Expert Reports/Motion or Trial Continuance should not be granted.

Rule returnable the 14th day of May 2007 in Clearfield County Courthouse, Courtroom 1 at 9:30 A.M. o'clock.

BY THE COURT:

_____, J.

DATE: 4/4/07

____You are responsible for serving all appropriate parties.

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

____Plaintiff(s) X Plaintiff(s) Attorney ____Other

X Defendant(s) X Defendant(s) Attorney

____Special Instructions: You

(envelopes for attys provided by Atty Cohen)

FILED

APR 04 2007

William A. Shaw
Prothonotary/Clerk of Courts

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORTS OR IN THE ALTERNATIVE MOTION FOR TRIAL CONTINUANCE**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

March 19, 2007

FILED NO CC
m 11:33 61
MAR 21 2007 (GK)

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD |

**PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORTS OR IN THE ALTERNATIVE MOTION FOR TRIAL CONTINUANCE**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale and Ashtyn Hale, minors, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion:

1. This matter is set for trial to begin on September 17, 2007.

2. This medical malpractice case involves the premature birth of twins, Reganne and Ashtyn Hale, and their resulting injuries.

3. On November 1, 2006, this Court entered an Order whereby Plaintiffs are to produce their liability expert reports on or before March 31, 2007.

4. An essential element of the case will be attempting to calculate the injuries that the girls will have throughout their lives and into adulthood. In fact, a life care planner will be required to write a report detailing the girls' future financial needs based on their projected injuries.

5. In an attempt to evaluate the girls and calculate their injuries, both girls, currently 4½-years old, have recently been examined by a pediatric neurologist and also by a pediatric psychologist.

6. Because of their deficits, which include attention disorders, the girls were very difficult to evaluate.

7. As such, both doctors have advised that writing a report on the girls and projecting their injuries would be extremely difficult at this time because of their age. Both doctors also advised that if the girls could be re-examined at a later date, maybe even 4-8 months from now, they would likely be able to more accurately define their injury and prognosis.

8. Plaintiffs have already provided Defendants with timely liability reports from an obstetrician, a maternal fetal medicine doctor, an obstetrical nurse, a neonatologist, and a pediatric neurologist.

9. Plaintiffs are now seeking an extension of time in which to file supplemental reports detailing the extent and severity of the girls' injuries and how the injuries relate to the

premature births, because, as discussed herein, this was extremely difficult to do by March 31, 2007, given the girls' age and the nature of their injuries.

WHEREFORE, Plaintiffs move this Honorable Court for an Order allowing Plaintiffs to file supplemental expert reports after March 31, 2007 and/or continue the trial of this matter and remove this case from the September 2007 trial list.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORTS OR IN THE ALTERNATIVE MOTION FOR TRIAL CONTINUANCE** has been served on the 19th day of March 2007 to the following via facsimile and/or U.S. Mail:

**Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

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| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, this ____ day of _____ 2007, it is hereby it is hereby ORDERED, ADJUDGED and DECREED that Plaintiffs may file supplemental expert reports detailing the extent and severity of the girls' injuries and how they relate to the premature births. Said reports must be filed by the ____ day of _____.

BY THE COURT:

_____,J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

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| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**ORDER OF COURT**

AND NOW, this ____ day of _____ 2007, it is hereby it is hereby ORDERED, ADJUDGED and DECREED that this case is continued for cause shown. The case will be re-listed for trial at a future date.

BY THE COURT:

_____,J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | : | |

FILED (6K)
012:20BY
APR 04 2007 1cc
William A. Shaw Atty's:
Prothonotary/Clerk of Courts Bowlus
Blasko
D. Johnson
1cc T. Yoo
145 Hospital Ave., Ste. 315
DuBois, PA 15801

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | : | |

**RULE TO SHOW CAUSE**

AND NOW, this 26 day of March 2007, a Rule is hereby issued to show cause why Plaintiffs' Motion to Dismiss Case (2006-936 CD) Without Prejudice should not be granted.

Rule returnable the 14th day of May 2007 in Clearfield County Courthouse, Courtroom 1 at 9:30 A.M. o'clock.

BY THE COURT:

Fredric Ammerman ,J.

FILED

APR 04 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/4/07

___ You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) X Plaintiff(s) Attorney ___ Other

X Defendant(s) X Defendant(s) Attorney

___ Special Instructions:

(atty envelopes provided by Atty Cohen)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' MOTION TO DISMISS CASE (2006-936 CD) WITHOUT PREJUDICE**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

March 19, 2007

COPY
FILED
11:33 BL
MAR 21 2007
William A. Shaw
Prothonotary/Clerk of Courts
Orig. to 06-936-CD
No CC
GP

ORIGINAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD |

**PLAINTIFFS' MOTION TO DISMISS CASE (2006-936 CD) WITHOUT PREJUDICE**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians Ashtyn Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion:

1. This matter is set for trial to begin on September 17, 2007.

2. This consolidated medical malpractice case involves the premature birth of twins, Reganne and Ashtyn Hale, and their resulting injuries.

3. The first action, based on Reganne Hale's injuries, was filed on March 16, 2005.

4. The second action, based on Ashtyn Hale's injuries, was filed on June 12, 2006.

5. Although ascertaining both girls' injuries have been difficult, Reganne's injuries are more readily apparent; however, Ashtyn's injuries are more difficult to assess.

6. Therefore, since Ashtyn's injuries may not have completely manifested themselves yet, but may become more apparent and quite severe in the future, Plaintiffs move to dismiss her case without prejudice.

WHEREFORE, Plaintiffs move this Honorable Court for an Order dismissing case number 2006-936 CD without prejudice.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION TO DISMISS CASE (2006-936 CD) WITHOUT PREJUDICE** has been served on the 19th day of March 2007 to the following via facsimile and/or U.S. Mail:

**Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

By: _____
Todd D. Bowlus, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2005-364-CD |

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,<br><br>Plaintiffs,<br><br>vs.<br><br>MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,<br><br>Defendants. | : | CIVIL DIVISION<br><br>Case No.: 2006-936 CD |

**ORDER OF COURT**

AND NOW, this ____ day of _____ 2007, it is hereby it is hereby ORDERED, ADJUDGED and DECREED that case number 2006-936 CD is dismissed without prejudice to re-file at a later date within the statute of limitations.

BY THE COURT:

_____,J.

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

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,
Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,
Defendants.

*Civil Action-Medical Professional Liability Action*
No. 2005-364 CD

JURY TRIAL DEMANDED

FILED
APR 10 2007
m/ 12:30/cc
William A. Shaw
Prothonotary/Clerk of Courts
No CERT COPIES

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ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,
Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,
Defendants.

COVER SHEET TO 06-936-CD

Case No. 2006 - 936 CD

*Civil Action - Medical Professional Liability Action*

JURY TRIAL DEMANDED

Type of Pleading
MOTION FOR CONTINUANCE

Filed on Behalf of Defendant
***Gary D. Ott, M.D.***

Counsel of Record for This Party
***John W. Blasko, Esquire***
Pa. Supreme Court I.D. #6787

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

Counsel for Adverse Party Plaintiffs
***Harry S. Cohen, Esquire***
***Todd D. Bowlus, Esquire***

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

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |
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***MOTION FOR CONTINUANCE OF ARGUMENT DATE***

Gary D. Ott, Defendant, by and through his attorneys, McQuaide, Blasko represents the following:

1. On April 4, 2007, two Rules to Show Cause were issued on Plaintiffs' Motion for Extension of Time to File Expert Reports/Motion for Trial Continuance, and, Motion to Dismiss Case (2006-936 CD) without prejudice.

2. The Rules for argument are scheduled for May 14, 2007 in Courtroom 1 at 9:30 a.m.

3. Counsel for Gary D. Ott, M.D., Defendant, is scheduled to commence trial on May 14, 2007 in the Court of Common Pleas of McKean County as per copy of the Order attached hereto.

4. The Court Administrator advises that the Court could hear the Motions on May 29, 2007 at 9:00 a.m.

WHEREFORE, it is requested that the Court enter an Order continuing the argument from May 14, 2007 at 9:30 a.m. to May 29, 2007 at 9:00 a.m.

McQUAIDE, BLASKO
FLEMING & FAULKNER, INC.

BY _____
JOHN W. BLASKO
Counsel for Defendant
Gary D. Ott, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: 4/9/07

::ODMA\PCDOCS\DOCSLIB2\361116\1

ROBERT SHELDON, Individually and on behalf of the ESTATE OF JEANNINE SHELDON, deceased,

Plaintiffs

Vs.

KANE COMMUNITY HOSPITAL, EMMANUEL F. HIPOLITO, MD., and NAWAZ SUDDLE, M.D.,

Defendant

IN THE COURT OF COMMON PLEAS OF

McKEAN COUNTY, PENNSYLVANIA

CIVIL DIVISION

NO. 53 CD 2005

**ORDER**

**AND NOW,** this 30th day of January, 2007, pretrial conference is set for April 9, 2007, at 1:00 p.m., Judge's Chambers, Courthouse, Smethport, PA.

Pretrial statements shall be prepared in accordance with Local Rule L212, and shall be filed no later than April 5, 2007.

Jury selection and trial in this matter is hereby scheduled for May 14, 15, 16, 17, 18, 2007, at 9:00 a.m., in Courtroom 1, McKean County Courthouse, Smethport, Pennsylvania.

McKEAN COUNTY PROTHONOTARY AND CLERK OF COURTS
2007 JAN 30 PM 3:11

BY THE COURT:

John H. Yoder

JOHN H. YODER, JUDGE

Certification 1/31/07
I hereby certify the within to be a true & correct copy thereof as filed in the office of the Prothonotary of McKean County, Pennsylvania.

Bonnie Marie Rood

Prothonotary

1-30-07
cc: S. Neum
D. Lingent
J. Blesk
G. Bok

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

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | Case No. 2006 - 936 CD<br><br>*Civil Action - Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED |

CERTIFICATE OF SERVICE

I hereby certify that the Motion for Continuance, in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, this 9th day of April, 2007 to:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO, SCHWARTZ,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
Gary D. Ott, M.D.

::ODMA\PCDOCS\DOCSLIB2\361116\1

UA

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

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |

FILED 1cc
0/4:00 BL Atty
APR 13 2007 Blasko
William A. Shaw
Prothonotary/Clerk of Courts

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | Case No. 2006 - 936 CD<br><br>*Civil Action - Medical Professional Liability Action*<br><br>JURY TRIAL DEMANDED |

***ORDER OF COURT***

AND NOW, this 13 day of April, 2007, upon consideration of Motion for Continuance of Argument Date filed by Gary D. Ott, M.D., the argument on Plaintiffs' Motion for Extension of Time to File Expert Reports/Motion for Trial Continuance, and, Plaintiffs' Motion to Dismiss Case (2006-936 CD) without prejudice is continued and rescheduled for May 29, 2007 in Courtroom 1 at 9:00 a.m.

BY THE COURT,

J.

::ODMA\PCDOCS\DOCSLIB2\361116\1

FILED

APR 13 2007

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 4/13/07

X You are responsible for serving all appropriate parties.

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

___ Plaintiff(s) ___ Plaintiff(s) Attorney ___ Other

___ Defendant(s) ___ Defendant(s) Attorney

___ Special Instructions:

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

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,
Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,
Defendants.

*Civil Action-Medical Professional Liability Action*
No. 2005-364 CD

JURY TRIAL DEMANDED

FILED
APR 18 2007
m/12:45/lc
William A. Shaw
Prothonotary/Clerk of Courts
1 cert to
06-936-CD (GK)

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ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,
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MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,
Defendants.

Case No. 2006 - 936 CD

*Civil Action - Medical Professional Liability Action*

JURY TRIAL DEMANDED

Type of Pleading
Affidavit of Service for Order of Court dated April 13, 2007

Filed on Behalf of Defendant
***Gary D. Ott, M.D.***

Counsel of Record for This Party
***John W. Blasko, Esquire***
Pa. Supreme Court I.D. #6787
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801
(814) 238-4926

Counsel for Adverse Party Plaintiffs
***Harry S. Cohen, Esquire***
***Todd D. Bowlus, Esquire***

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

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***AFFIDAVIT OF SERVICE***

Before me, the undersigned authority, personally appeared John W. Blasko, Esquire, who, being duly sworn, deposes and says that a true and correct copy of the Order of Court dated April 13, 2007, signed by the Honorable Fredric J. Ammerman, in the above-captioned cases was served upon counsel of record: Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, Harry S. Cohen & Associates, P.C., Two Chatham Center, Suite 985, Pittsburgh, PA 15219 and David R. Johnson, Esquire, 1010 Two Chatham Center, Pittsburgh, PA 15219 by regular mail, first class, at the Post Office, State College, Pennsylvania, postage prepaid, on April 17, 2007.

McQUAIDE, BLASKO, FLEMING
& FAULKNER, INC.

BY _____
JOHN W. BLASKO
Counsel for Defendant
Gary D. Ott, M.D.

Sworn to and subscribed before me
this 17th day of April, 2007.

_____
Notary Public

NOTARIAL SEAL
NANCY L. SWISHER, NOTARY PUBLIC
STATE COLLEGE BORO., CENTRE COUNTY
MY COMMISSION EXPIRES FEB. 23, 2011

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

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***ORDER OF COURT***

AND NOW, this 13 day of April, 2007, upon consideration of Motion for Continuance of Argument Date filed by Gary D. Ott, M.D., the argument on Plaintiffs' Motion for Extension of Time to File Expert Reports/Motion for Trial Continuance, and, Plaintiffs' Motion to Dismiss Case (2006-936 CD) without prejudice is continued and rescheduled for May 29, 2007 in Courtroom 1 at 9:00 a.m.

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

APR 18 2007

Attest. William L. Shaw
Prothonotary/
Clerk of Courts

BY THE COURT, /S/ Fredric J. Ammerman

J.

ODMA\PCDOCS\DOCS\1820616\1

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

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FILED NO CC
APR 19 2007
William A. Shaw
Prothonotary/Clerk of Courts

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

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NOTICE TO PLEAD

TO: Plaintiffs

YOU ARE HEREBY notified to plead to the within Answer with New Matter within twenty (20) days from the date of service hereof or a default judgment may be entered against you.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorney for Defendant
Gary D. Ott, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: April 18, 2007

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

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, Plaintiffs, vs. MICHAEL J. KUSH, M.D., and adult individual; GARY D. OTT, M.D., an adult individual; YOO, TAI, M.D., A Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, Defendants. | ) | *Civil Action-Medical Professional Liability Action*<br>No. 2005-364 CD<br><br>JURY TRIAL DEMANDED |

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**ANSWER OF DEFENDANT GARY D. OTT, M.D. TO PLAINTIFFS' MOTION TO DISMISS CASE (2006-936 CD) WITHOUT PREJUDICE**

1. Admitted.

2, 3, 4. Admitted. In further response, on September 26, 2006, the Plaintiffs filed a Motion to Consolidate the actions of Reganne and Ashtyn representing to this Court, on which an Order was entered, as the reasons:

> "1. The two above-referenced actions pending in this Court have **identical questions of law and facts**.

2. In actions pending in the same county involving a common question of law or fact, or arising from the same transaction or occurrence, the court is authorized to **consolidate the actions to avoid unnecessary cost or delay pursuant** to Pa.R.Civ.P. 213(a)."

(See Plaintiffs' Motion to Consolidate, Exhibit "A" attached hereto.)

5, 6. The Defendant, Dr. Ott, is without information as to the averments of Paragraphs 5 and 6, and, requires proof thereof at the hearing or argument. In further response, Plaintiff/husband has testified both twins can be evaluated and treated. Attached hereto "Exhibit "B` is a report with comments on Ashtyn produced in discovery which indicates she is doing well.

7. If Plaintiffs' Motion is granted, the Defendant, Dr. Ott, would be under a cloud of a potential liability suit for conceivably another 14 years, depending on Plaintiffs' whim as to when suit would be refilled. With the passage and time, memories fade, witnesses die or their whereabouts unknown which would be prejudicial to Defendant, Dr. Ott. Further, Plaintiffs are attempting to have "two bites of the apple" on liability which arise out of the same treatment, having common questions of fact and law.

WHEREFORE, it is requested the Court dismiss the Plaintiffs' Motion with prejudice.

**NEW MATTER**

8. Along with the Motion to Dismiss the claim of Ashtyn, without prejudice, Plaintiffs have also filed the Motion for Extension of Time to File Expert Reports or in the Alternative Motion for Trial Continuance.

9. The Plaintiffs' request for an extension of time to file economic or life planners' reports, and, their Motion to Dismiss the case involving Ashtyn, can simply be accommodated by bifurcating the issues of liability and damages at trial of this case. A bifurcation of the issues

would permit the trial to proceed on liability issues only, and the Plaintiffs would have additional time to develop the damage portion of their case to be heard later by a jury.

10. The Plaintiffs have filed five expert reports on liability and causation for use in both of the twins' cases and it is anticipated the Defendants may have a similar number of experts on liability. Under these circumstances, there could be 12 or 13 experts on liability and causation alone.

11. Pursuant to Pa. Rule of Civil Procedure 213(b), the Defendant, Dr. Ott, hereby requests bifurcation of the trial of the action in two phases by which a jury would first determine liability against all the Defendants and proceed to damages only if necessary.

12. Rule 213(b) provides as follows:

> "(b) The court, in furtherance of convenience or to avoid prejudice, may, on its own motion or on motion of any party, order a separate trial of any cause of action, claim, or counterclaim, set-off, or cross-suit, or of any separate issue, or of any number of causes of action, claims, counterclaims, set-offs, cross-suits, or issues."

13. In Santarlas v. Leaseway Motor Trans. Co., 456 Pa. Super. 34, 689 A.2d 311 (1997) , the Court held a trial court **"properly exercised its discretion in deciding to bifurcate the liability and damage aspect of trial . . ."**; that a trial court "**may order** bifurcation on its own motion **in furtherance convenience or to avoid prejudice**"; that bifurcation is "a means to **insure against taint of the jury through sympathy occasioned by knowledge of the severity of the injury**," and that an "order of bifurcation was an **efficient employment of court recourses and in fact worked to avoid rather than promote prejudice to either litigant**."

14. Bifurcation in this medical malpractice trial is appropriate in furtherance of judicial expediency, the convenience to the Court and parties, and to avoid prejudice to the

Defendants. The liability phase of the case would be limited to the period of treatment and hospitalization of the Plaintiff Angela Hale from the period of November 9, 2002 through November 13, 2002. Thereafter, all medical care and treatment would relate to damages, in that, Ashtyn and Reganne were transferred to other hospitals and subsequently treated by other health care providers. The Defendant Dr. Ott has not treated the children after their birth on November 10, 2002.

15. The factual issues of liability are not intertwined with the issues of damages in this case, and, the majority of the witnesses could be separated and be unrelated to the damage portion of the case. The following records deal solely with liability and are irrelevant to damages: (1) office records of Dr. Ott; (2) office records of Dr. Kush; (3) DRMC records of November 9, 2002; and, (4) DRMC records of November 10-13, 2002. All other records produced in this case would relate to damages issues.

16. The damage testimony in this case would be unrelated to the liability testimony, and, as a result, bifurcation would have the potential of shortening the trial, and, it would be in the interest of fairness to have the jury concentrate on the issue of liability without being aware of the damage figures so that no prejudice would result to the Defendants from the jury's consideration of the nature or severity of the Plaintiffs' damages along with its determination of whether there was liability. It is reasonable to estimate that the case on liability could be completed by all parties within four (4) to five (5) days.

17. Given the nature of the children's disability, the likelihood of jury sympathy is an inevitable emotional sway which would be manifestly apparent, and, bifurcation would minimize the prejudice to the Defendants due to such factors.

18. The bifurcation into separate liability and damage phases would result in judicial economy and convenience to the Court, as well as the parties, because, in the event the issue of liability is found in favor of all the Defendants, the trial on damage would not proceed.

19. Should Plaintiffs prevail on liability, there would be an increased probability that the case would be settled prior to a jury's determination of damages. There also exists the possibility that the jury would return a verdict in favor of one or more Defendants, and, in such event, the bifurcation would be beneficial to the prevailing Defendants.

20. In Pascale v. Hechinger Co., 426 Pa. Super. 426, 627 A.2d 750, 756 (1993), the court approved of bifurcation saying:

> "The liability questions were not interwoven with the damage questions. **Rather than submit to the jury the complicated and potentially unnecessary law of damages and contribution among tortfeasors, the court limited consideration initially to the attribution of liability among the parties who were sued and counter-sued as defendants.** Appellants have not persuaded us that the presentation of their case suffered prejudice as a result of this procedure. **Their concern that the jury would speculate that there were no damages since the issue was not before them, is not substantiated**. The judge instructed the jury on the law necessary to answer the four special interrogatories relating to liability. The judge told the jury that it was to apply only the rules of law upon which it was instructed by the court. **Absent any support in the record, we do not find that the jury disregarded the court's instructions. There was no abuse of discretion in the restriction of closing arguments to liability questions only."**

21. By proceeding on the severance or bifurcation of the issue of liability, the Plaintiffs requested relief as to additional time for their pediatric neurologist and psychiatrist to work with a life planner on damages would be resolved.

WHEREFORE, it is requested that the Court order that the trial be bifurcated on the issues of liability and damages for the convenience of the parties, and judicial expediency, and in the interest of fairness, as well as to avoid prejudice.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
GARY D. OTT, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: April 18, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2005-364-CD

**PLAINTIFFS' MOTION TO CONSOLIDATE**

Filed on Behalf of Plaintiffs

---

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION

Case No.: 2006-936 CD

Counsel of Record for Plaintiffs:

Harry S. Cohen, Esquire
PA I.D. #30682

Todd D. Bowlus, Esquire
PA I.D. #89106

HARRY S. COHEN & ASSOCIATES, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
Firm ID #813

(412) 281-3000

**JURY TRIAL DEMANDED**

9-26-06
Date

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2005-364-CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; YOO, TAI, Y., MD, a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

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| ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor, | : | CIVIL DIVISION |
| | : | Case No.: 2006-936 CD |
| Plaintiffs, | : | |
| vs. | : | |
| MICHAEL J. KUSH, MD; an adult individual; GARY D. OTT, MD; an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation, | : | |
| Defendants. | : | |

**PLAINTIFFS' MOTION TO CONSOLIDATE**

AND NOW, come the Plaintiffs, Angela Hale and Randy A. Hale, as parents and natural guardians of Reganne Hale, a minor, by and through their attorneys, Harry S. Cohen & Associates, by Harry S. Cohen, Esquire and Todd D. Bowlus, Esquire, and set forth the following Motion to Consolidate:

1. The two above-referenced actions pending in this Court have identical questions of law and facts.

2. In actions pending in the same county involving a common question of law or fact, or arising from the same transaction or occurrence, the court is authorized to consolidate the actions to avoid unnecessary cost or delay, pursuant to Pa.R.Civ.P. 213(a).

WHEREFORE, Plaintiffs move this Honorable Court for an Order to Consolidate the two-above-referenced actions for discovery and trial at Docket Number 2005-364-CD.

Respectfully submitted,

HARRY S. COHEN & ASSOCIATES, PC

By: _____

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Attorneys for Plaintiffs
Two Chatham Center, Suite 985
Pittsburgh, PA 15219
(412) 281-3000

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PLAINTIFFS' MOTION TO CONSOLIDATE** has been served on the 26th day of September 2006 to the following via facsimile and/or U.S. Mail:

**Court Administrator**
Clearfield County Courthouse
One North Second Street
Clearfield, PA 16830

**John W. Blasko, Esquire**
McQuaide Blasko
811 University Drive
State College, PA 16801-6699

**David R. Johnson, Esquire**
Thomson, Rhodes & Cowie, PC
1010 Two Chatham Center
Pittsburgh, PA 15219

HARRY S. COHEN & ASSOCIATES, PC

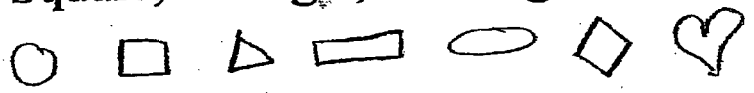
By: _____
Todd D. Bowlus, Esquire

EXHIBIT B

# SONNY DAYS PRESCHOOL ASSESSMENT

DOB: 11/10/02
Name: Ashtyn Hale Date: 2/07
Age Entering Program: 3 years 2mo. Current
Age: 4 years 3mo.

Shapes: Knows all of them
Circle, Square, Triangle, Rectangle, Oval, Diamond, Heart



Colors: Knows all of them.
Orange, Red, Green, Brown, Yellow, Blue, Purple, [redacted], White, Pink, Gray

Numbers: Knows all of them
3 8 6 2 10 5 7 4 1 9

Count:
1.. 20

Letters: Knows all of them
C X F A H D G Y B L M T

N E V S P Z J O R I K Q

U Z W

Hand Dominance: (R) (L) Emerging

Picks Up Small Items with:
Inferior Pincer Grasp
(Pincer Grasp) - Age appropriate

Grip On Pencil; –
Palmar Grasp
Digital Pronated Grasp
Dynamic Tripod Grasp — Ashtyn's writing prehension falls between. It is immature for her age.

Draws a Person with: 7 Body Parts

Scissor Usage:
Able to Snip, (Yes/No)
Able to Cut on a Straight Line, (Yes/No)
Able to Cut Curved Line, (Yes/No)

Colors Simple Pictures with Care;
(Yes, (No,) Sometimes)

Requires Assistance with the following Fasteners:
Zippers, Buttons, (Snaps, Buckles, Tieing)

Can adjust Clothes After Using Bathroom (I) Emerging

Can put on socks, shoes, smock, and coat (I)

Social:

Follows Classroom Rules, (%) 90%

Plays with Others, (%) 80%

Gross Motor:

Sitting Posture,

Tailor sitting, W-sitting, Side-sitting

tends to not do.

Jumps with two feet

Runs

Throws a ball

Catches a ball

Skips

Hops on 1 Foot

Stands on 1 foot

Language:

Participates Verbally during Circle Time; Yes/No

States Full Name Upon Request; Yes/No

Can Identify Letters of Name; Yes/No

Shows Interest in Books; Yes/No - This has improved just recently.

Listens Attentively When Read To: Yes/No

Understands the Concept of Same and Different: yes

Speaks in Sentences; Yes/No

Ashtyn

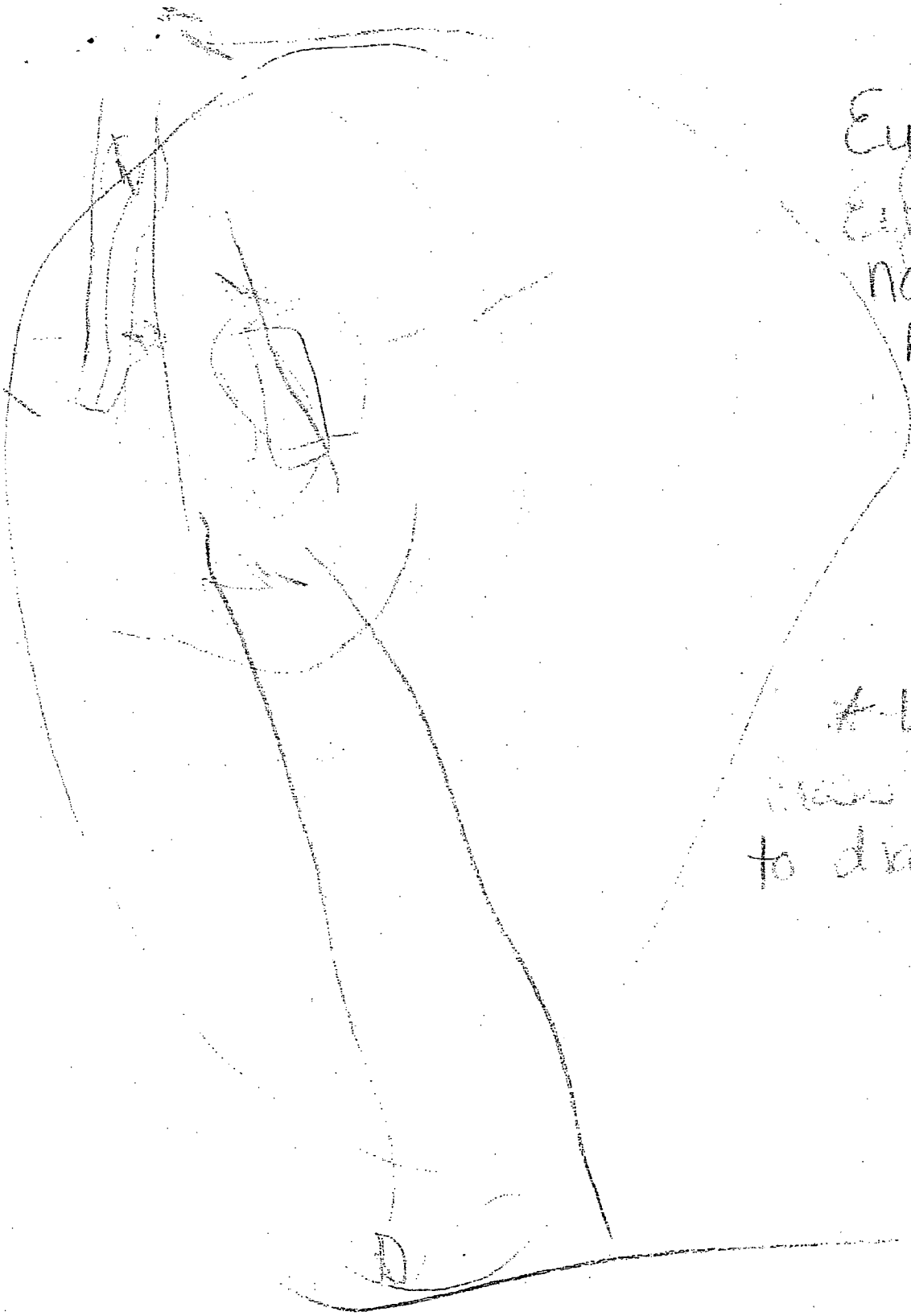
**Knows the Following Body Parts;**
3/13 - Didn't Know.
**Head, Mouth, Eyes, Nose, Ears, Elbows, Neck, Knees, Feet, Hands, Ankles, Shoulders, Wrists**

**Can State Phone Number, Names of Parents, Address**

**Rhymes;** Couldn't get her to respond
**Sad/ Hot/ Red/**

**Comments:**

Ashtyn is a very happy child the majority of the time. She is kind to others and follows classroom rules for the majority. She is very intelligent and has just begun to verbally participate during circle time. Her attention to stories has improved dramatically Ashtyn does not appear to enjoy coloring and structured activities done at the table. She has begun to play with the girls in the class. Her ability to enjoy & participate in a wider range of toys & activities has improved. She continues to require cues to stay on task, and has a short attention span.


Eyebrows
eyes
nose
mouth
arms
hand
feet

Short-term goals for Ashtyn

1. Ashtyn will go to the bathroom without her TSS, 4/5 times by 3/9/07.
2. Ashtyn will sit during story time without cues or self stimulation, 4/5 times by 3/9/07.
3. Ashtyn will complete 90 % of all activities by herself, with minimal cues, by 3/9/07

Sonny Days Progress Evaluation

Name: Ashtyn Date: 9/25/06

Follows classroom rules; Most of the time. She has only 1 or 2 times needed reminding.

Plays with others appropriately; Yes is beginning to play w/ others more vs. by herself.

Recognizes name (in uppercase): (Yes) No Emerging

Listens during circle time: Most of the time she is easily distracted during circle time & bible.

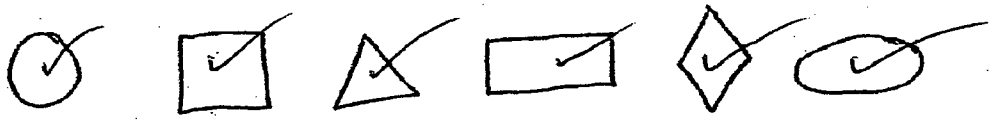
Shows interest in books when read to: Yes in a 1 to 1 scenario. However, if in a group again its more difficult for her to attend.

Follows directions; Most of the time

Can hold scissors correctly ~~s~~ cues; (Yes) No Emerging

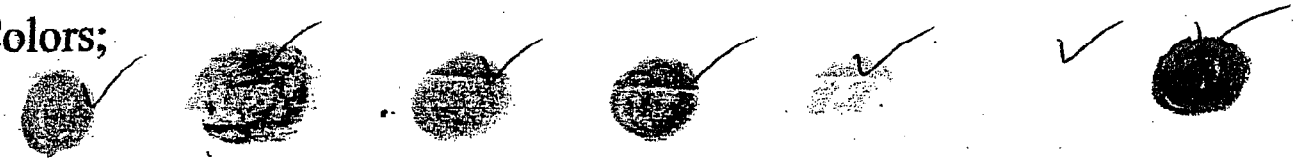
Counts to; 1-29

Recognizes numbers; ~~3~~ ~~8~~ ~~6~~ ~~2~~ 10 ~~5~~ ~~7~~ ~~4~~ ~~1~~ ~~9~~

Shapes; 

Letters; C X F A H D G Y B L M T N

All of them E V S P Z J O R I K Q U Z W

Colors; 

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

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Answer of Defendant Gary D. Ott, M.D. to Plaintiffs' Motion to Dismiss Case (2006-936 CD without Prejudice in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 18th day of April, 2007, to the attorney(s) of record:

Harry S. Cohen, Esquire
Todd D. Bowlus, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
Pittsburgh, PA 15219

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
John W. Blasko
Attorneys for Defendant
GARY D. OTT, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

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

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FILED NO CC
APR 19 2007
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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NOTICE TO PLEAD

TO: Plaintiffs

YOU ARE HEREBY notified to plead to the within Answer with New Matter within twenty (20) days from the date of service hereof or a default judgment may be entered against you.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorney for Defendant
Gary D. Ott, M.D.
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: April 18, 2007

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

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**ANSWER OF DEFENDANT GARY D. OTT, M.D. TO PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORTS OR IN THE ALTERNATIVE, MOTION FOR TRIAL CONTINUANCE**

1. Admitted. In further response, the action on behalf of Reganne was filed on March 16, 2005, and, on behalf of Ashtyn on June 12, 2006.

2. Admitted. The twins were born on November 10, 2002, and the care and treatment rendered by the Defendant Dr. Ott, was for a period beginning November 9, 2002 through November 13, 2002.

3. Denied to the extent it alleges the Order was dated November 1, 2006. The Court entered an Order on October 27, 2006 scheduling time deadlines for expert reports, which was supplemented by Order dated December 5, 2006, scheduling the trial for September 17 through September 26, 2007 before the Honorable John K. Reilly, Jr., Senior Judge. On October 27, 2006, on Motion of the Plaintiffs, the Court also ordered consolidation of the cases filed on behalf of Reganne and Ashtyn Hale.

4. Denied. According to the records, the children were diagnosed over 4 ½ years ago as having persuasive developmental disorder with some autism spectrum. The only medical difference between the diagnosis of Reganne and the diagnosis for Ashtyn is that Reganne has cerebral palsy and hydrocephalus.

5-6. Denied. The Plaintiffs have produced medical records relating to Reganne's and Ashtyn's treatment, as well as diagnosis from health care providers at DRMC; Gateway Medical Associates; Brookville Behavioral Health; DRMC Home Health Care; Children's Hospital; Brookville Behavioral Health Center; Children's Hospital in Pittsburgh, and, by various psychologists and counselors. On March 29, 2007, the Plaintiff, Randy A. Hale testified the twins can be treated and evaluated without any problem as follows:

> "Q. --Ashtyn and Reganne. In your role as the twins' father, are you aware of any times where a physician or health care provider, I'll put the proviso other than those specifically retained by your attorney, I don't want to hear about those folks, but are you aware of any times where a physician or health care provider has been unable to treat or evaluate your daughters because of any behavior exhibited by them?
>
> A. That they were--that they wouldn't be able to or didn't want to?

Q. That they wouldn't sit still for the examination or they wouldn't allow themselves to be examined or treated? Are you aware of anything like that?

A. **I can't recall anyone not treating them because of that.** I mean--

Q. Okay

A. **--I'm not saying that they don't go through tantrums and have fits when someone is trying to examine them, but I can't recall anyone not giving them treatment because of that, no.**

Q. Do both girls exhibit those behaviors that you said tantrums or fits?

A. No.

Q. Which one does, which one does not?

A. Excuse me. Ashtyn is real quiet, but she doesn't throw tantrums and stuff like that. Reganne is the one that she screams, bawls, bangs her head, she throws fits.

Q. Is there any particular event that causes those fits that you said Reganne has--Reganne?

A. You mean like any particular place she goes?

Q. Any particular place or any particular noise or anything that she sees or does that causes it.

A. It could be--it could be anything. It could be me changing the TV from her show that she's watching, she can start screaming and banging her head off the floor. It could be a certain toy that, you know, she doesn't do what she wants it to do. It could be someone talking with her that she doesn't know at all, some stranger that she hasn't seen before that will come up to her and touch her on the arm or something like that, she'll start screaming. I mean there's different--it's different things.

Q. Okay.

A. I can't narrow it down to one specific thing. There's--

Q. And do these--these tantrums occur on would you say a daily basis, a weekly basis?

A. I'm not going to say a daily basis, but it can happen more than one or two times during the week."

7. Neither admitted nor denied in that Defendant is without information concerning the allegations of Paragraph 7, and, as a result will demand testimony on the allegation at the time of hearing or argument. Further, 4 ½ years would be a sufficient time to evaluate the twins.

8. Admitted. After filing suit on behalf of Ashtyn in June, 2006, the Plaintiffs on August 21,2006 filed expert liability reports in support of Reganne's case. On March 31, 2007, Plaintiff notified Defendants that the "same liability expert reports, previously provided for Reganne's case" would be used for Ashtyn's case.

9. The Defendant would be agreeable to an extension of time to June 30th provided it is reciprocal to defense providing rebuttal reports and the case is not continued from September, 2007. Plaintiffs as of the date scheduled for argument would already have had an additional two months extension fro March 31, 2007, the deadline for the reports. Further, as set forth in New Matter, instead of a continuance, the case should be bifurcated taking evidence on liability only at the trial in September, 2007, if Plaintiffs cannot produce an expert on damages before trial.

**NEW MATTER**

10. Along with the Motion for Extension of Time to File Expert Reports or in the Alternative Motion for Trial Continuance, Plaintiffs have also file a Motion to Dismiss the Claim of Ashtyn, Without Prejudice.

11. The Plaintiffs' request for an extension of time to file economic or life planners' reports, and, their Motion to Dismiss the case involving Ashtyn, can simply be accommodated by

bifurcating the issues of liability and damages at trial of this case. A bifurcation of the issues would permit the trial to proceed on liability issues only, and the Plaintiffs would have additional time to develop the damage portion of their case to be heard later by a jury.

12. The Plaintiffs have filed five expert reports on liability and causation for use in both of the twins' cases and it is anticipated the Defendants may have a similar number of experts on liability. Under these circumstances, there could be 12 or 13 experts on liability and causation alone.

13. Pursuant to Pa. Rule of Civil Procedure 213(b), the Defendant, Dr. Ott, hereby requests bifurcation of the trial of the action in two phases by which a jury would first determine liability against all the Defendants and proceed to damages only if necessary.

14. Rule 213(b) provides as follows:

> "(b) The court, in furtherance of convenience or to avoid prejudice, may, on its own motion or on motion of any party, order a separate trial of any cause of action, claim, or counterclaim, set-off, or cross-suit, or of any separate issue, or of any number of causes of action, claims, counterclaims, set-offs, cross-suits, or issues."

15. In Santarlas v. Leaseway Motor Trans. Co., 456 Pa. Super. 34, 689 A.2d 311 (1997) , the Court held a trial court **"properly exercised its discretion in deciding to bifurcate the liability and damage aspect of trial . . ."**; that a trial court "**may order** bifurcation on its own motion **in furtherance convenience or to avoid prejudice**"; that bifurcation is "a means to **insure against taint of the jury through sympathy occasioned by knowledge of the severity of the injury**," and that an "order of bifurcation was an **efficient employment of court recourses and in fact worked to avoid rather than promote prejudice to either litigant**."

16. Bifurcation in this medical malpractice trial is appropriate in furtherance of judicial expediency, the convenience to the Court and parties, and to avoid prejudice to the Defendants. The liability phase of the case would be limited to the period of treatment and hospitalization of the Plaintiff Angela Hale from the period of November 9, 2002 through November 13, 2002. Thereafter, all medical care and treatment would relate to damages, in that, Ashtyn and Reganne were transferred to other hospitals and subsequently treated by other health care providers. The Defendant Dr. Ott has not treated the children after their birth on November 10, 2002.

17. The factual issues of liability are not intertwined with the issues of damages in this case, and, the majority of the witnesses could be separated and be unrelated to the damage portion of the case. The following records deal solely with liability and are irrelevant to damages: (1) office records of Dr. Ott; (2) office records of Dr. Kush; (3) DRMC records of November 9, 2002; and, (4) DRMC records of November 10-13, 2002. All other records produced in this case would relate to damages issues.

18. The damage testimony in this case would be unrelated to the liability testimony, and, as a result, bifurcation would have the potential of shortening the trial, and, it would be in the interest of fairness to have the jury concentrate on the issue of liability without being aware of the damage figures so that no prejudice would result to the Defendants from the jury's consideration of the nature or severity of the Plaintiffs' damages along with its determination of whether there was liability. It is reasonable to estimate that the case on liability could be completed by all parties within four (4) or five (5) days.

19. Given the nature of the children's disability, the likelihood of jury sympathy is an inevitable emotional sway which would be manifestly apparent, and, bifurcation would minimize the prejudice to the Defendants due to such factors.

20. The bifurcation into separate liability and damage cases would result in judicial economy and convenience to the Court, as well as the parties, because, in the event the issue of liability is found in favor of all the Defendants, the trial on damage would not proceed.

21. Should Plaintiffs prevail on liability, there would be an increased probability that the case would be settled prior to a jury's determination of damages. There also exists the possibility that the jury would return a verdict in favor of one or more Defendants, and, in such event, the bifurcation would be beneficial to the prevailing Defendants.

22. In Pascale v. Hechinger Co., 426 Pa. Super. 426, 627 A.2d 750, 756 (1993), the court approved of bifurcation saying:

> "The liability questions were not interwoven with the damage questions. **Rather than submit to the jury the complicated and potentially unnecessary law of damages and contribution among tortfeasors, the court limited consideration initially to the attribution of liability among the parties who were sued and counter-sued as defendants.** Appellants have not persuaded us that the presentation of their case suffered prejudice as a result of this procedure. **Their concern that the jury would speculate that there were no damages since the issue was not before them, is not substantiated**. The judge instructed the jury on the law necessary to answer the four special interrogatories relating to liability. The judge told the jury that it was to apply only the rules of law upon which it was instructed by the court. **Absent any support in the record, we do not find that the jury disregarded the court's instructions. There was no abuse of discretion in the restriction of closing arguments to liability questions only."**

23. By proceeding on the severance or bifurcation of the issue of liability, the Plaintiffs requested issues as to additional time for their pediatric neurologist and psychiatrist to work with a life planner on damages would be resolved.

WHEREFORE, it is requested that the Court order that the trial be bifurcated on the issues of liability and damages for the convenience of the parties, and judicial expediency, and in the interest of fairness, as well as to avoid prejudice.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____
JOHN W. BLASKO
Attorneys for Defendant
GARY D. OTT, M.D.
811 University Drive
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Dated: April 18, 2007

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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Pittsburgh, PA 15219

David R. Johnson, Esquire
1010 Two Chatham Center
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Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation.

Defendants.

CIVIL DIVISION

No. 05-364-CD
**CONSOLIDATED WITH**
No. 06-936-CD

Issue No.

JOINDER IN ANSWER TO PLAINTIFFS' MOTION TO DISMISS CASE 2006-936 CD WITHOUT PREJUDICE

Code: 007

Filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

Counsel of Record for These Parties:

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

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

(412) 232-3400

FILED NOCC
APR 26 2007
William A. Shaw
Prothonotary/Clerk of Courts

JOINDER IN ANSWER TO PLAINTIFFS' MOTION TO DISMISS CASE 2006-936 CD WITHOUT PREJUDICE

NOW COME Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following joinder in answer to plaintiffs' motion to dismiss case 2006-936 CD without prejudice.

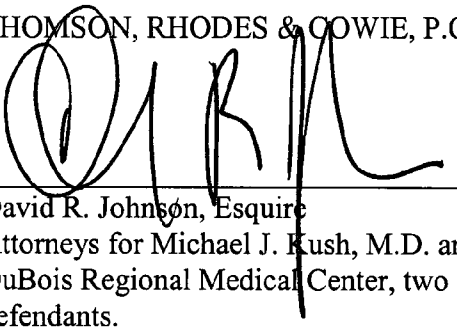
1. Co-defendant, Gary D. Ott, M.D. has filed an answer to plaintiff's motion to dismiss case 2006-936 CD without prejudice. All of the averments therein are equally applicable to Michael J. Kush, M.D. and DuBois Regional Medical Center. As with Dr. Ott, Dr. Kush and DuBois Regional Medical Center would be highly prejudiced should the court grant plaintiffs' motion.

2. Adoption of the approach proposed by the co-defendant, that of bifurcation, is consistent with the law, sensible, and fair to all parties.

3. For all of the above reasons, defendants join in and adopt the answer to plaintiffs' motion to dismiss case 2006-936 CD without prejudice.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within JOINDER IN ANSWER TO PLAINTIFFS' MOTION TO DISMISS CASE 2006-936 CD WITHOUT PREJUDICE has been served upon the following counsel of record and same placed in the U.S. Mails on this 24th day of Apr, 2007:

Harry S. Cohen, Esquire
Harry S. Cohen & Associates, PC
Two Chatham Center, Suite 985
Pittsburgh, PA 15219

John W. Blasko, Esquire
McQuaide Blasko Schwartz Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801

THOMSON, RHODES & COWIE, P.C.

David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ANGELA HALE and RANDY A. HALE, as parents and natural guardians of REGANNE HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D.; an adult individual; YOO, TAI, Y., M.D., a Pennsylvania corporation; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation,

Defendants.

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ANGELA HALE and RANDY A. HALE, as parents and natural guardians of ASHTYN HALE, a minor,

Plaintiffs,

vs.

MICHAEL J. KUSH, M.D., an adult individual; GARY D. OTT, M.D., an adult individual; and DUBOIS REGIONAL MEDICAL CENTER, a Pennsylvania corporation.

Defendants.

CIVIL DIVISION

No. 05-364-CD
**CONSOLIDATED WITH**
No. 06-936-CD

Issue No.

JOINDER IN ANSWER TO PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORTS OR IN THE ALTERNATIVE MOTION FOR CONTINUANCE

Code: 007

Filed on behalf of Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

Counsel of Record for These Parties:

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

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William A. Shaw
Prothonotary/Clerk of Courts

JOINDER IN ANSWER TO PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORTS OR IN THE ALTERNATIVE MOTION FOR CONTINUANCE

NOW COME Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants, by their attorneys, Thomson, Rhodes & Cowie, P.C., and file the following joinder in answer to plaintiffs' motion for extension of time to file expert reports or, in the alternative, motion for continuance.

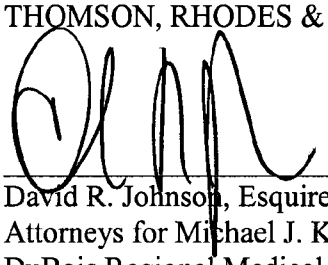
1. Co-defendant Gary D. Ott, M.D. has filed an answer to plaintiffs' motion for extension of time to file expert reports or in the alternative, motion for continuance.

2. Defendants Michael J. Kush, M.D. and DuBois Regional Medical Center adopt and through this joinder incorporate by reference the answer to plaintiffs' motion for extension of time to file expert reports or in the alternative motion for continuance which has been filed on behalf of Dr. Ott.

3. Consistent with said response and the new matter therein, the court is respectfully requested to bifurcate this case as between the issues of liability and damages for the convenience of the parties, judicial expediency, in the interest of fairness, and to avoid prejudice – all of which would be accomplished by entry of an order consistent with the proposal set forth in the answer filed on behalf of co-defendant.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire
Attorneys for Michael J. Kush, M.D. and DuBois Regional Medical Center, two of the defendants.

**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within JOINDER IN ANSWER TO PLAINTIFFS' MOTION FOR EXTENSION OF TIME TO FILE EXPERT REPORTS OR IN THE ALTERNATIVE MOTION FOR CONTINUANCE has been served upon the following counsel of record and same placed in the U.S. Mails on this 24th day of Apr., 2007:

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