



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, a minor, by and  
through his parents and natural  
guardians, ELIZABETH SMITH and  
DAVID SMITH; and ELIZABETH  
SMITH and DAVID SMITH, as  
individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D., SOLA  
OSUNDEKO, M.D. and DUBOIS  
REGIONAL MEDICAL CENTER,

Defendants.

CIVIL DIVISION

No. 2005-1832-CV

**PRAECIPE FOR WRIT OF  
SUMMONS**

PRO SE:

Elizabeth Smith and David Smith  
218 Euclid Avenue  
Brookville, PA 15825  
(814) 849-0186

**JURY TRIAL DEMANDED**

**FILED**

NOV 23 2005

0/11:35/4  
William A. Shaw

Prothonotary/Clerk of Courts

1 COPY TO DAVID SMITH  
w/6 WATS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

CIVIL DIVISION

DWIGHT SMITH, a minor, by and  
through his parents and natural guardians,  
ELIZABETH SMITH and DAVID  
SMITH; and ELIZABETH SMITH  
and DAVID SMITH, as individuals,

No.:

Plaintiffs,

vs.

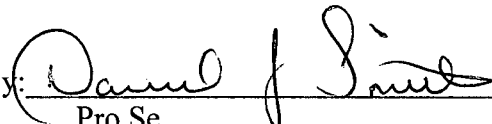
MICHAEL KUSH, M.D., SOLA  
OSUNDEKO, M.D. and DUBOIS  
REGIONAL MEDICAL CENTER,

Defendants.

**PRAECIPE FOR WRIT OF SUMMONS**

TO: Prothonotary of Clearfield County

Please issue a Writ of Summons in Civil Action in the within-captioned case.

By:   
Pro Se  
Elizabeth and David Smith  
218 Euclid Avenue  
Brookville, PA 15825  
(814) 849-0186

**FILED**

**NOV 23 2005**

William A. Sharv  
Prothonotary/Clerk of Courts

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

**SUMMONS**

**Dwight Smith, a minor, by and through  
his parents and natural guardians,  
Elizabeth Smith, and David Smith;  
and Elizabeth Smith and David Smith,  
as individuals,**

**Vs.**

**NO.: 2005-01832-CD**

**Michael Kush, M.D.,  
Sola Osundeko, M.D. and  
DuBois Regional Medical Center**

**TO: MICHAEL KUSH, M.D.  
SOLA OSUNDEKO, M.D.  
DUBOIS REGIONAL MEDICAL CENTER**

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

Date: 11/23/2005

---

William A. Shaw  
Prothonotary

Issued by:  
Elizabeth Smith and David Smith  
218 Euclid Ave.  
Brookville, PA  
814-849-0186

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

DWIGHT SMITH, a minor, by and through  
his parents and natural guardians,  
ELIZABETH SMITH, and DAVID SMITH;  
and ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs

vs.

MICHAEL KUSH, M.D.,  
SOLA OSUNDEKO, M.D. and  
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

No. 2005 – 1832 CD

**ISSUE:**  
PRAECIPE FOR APPEARANCE

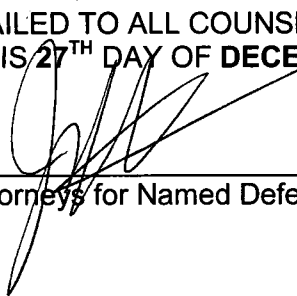
Filed on behalf of Defendant,  
DUBOIS REGIONAL MEDICAL  
CENTER

Counsel of Record for This Party:  
John L. McIntyre, Esquire  
PA I.D. #28015

McINTYRE, DUGAS, HARTYE &  
SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 27<sup>TH</sup> DAY OF DECEMBER, 2005.

  
Attorneys for Named Defendant

**FILED** NO CC  
mike  
DEC 30 2005  
William A. Shaw  
Prothonotary/Clerk of Courts

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

DWIGHT SMITH, a minor, by and through : No. 2005 – 1832 CD  
his parents and natural guardians, :  
ELIZABETH SMITH, and DAVID SMITH; :  
and ELIZABETH SMITH and DAVID :  
SMITH, as individuals, :

Plaintiffs

vs.

MICHAEL KUSH, M.D., :  
SOLA OSUNDEKO, M.D. and :  
DUBOIS REGIONAL MEDICAL CENTER, :

Defendants

JURY TRIAL DEMANDED

**PRAECIPE FOR APPEARANCE**

TO: PROTHONOTARY

Enter my Appearance on behalf of Defendant, DUBOIS REGIONAL MEDICAL  
CENTER.

Papers may be served at the address set forth below

  
Attorneys for Defendant,  
DUBOIS REGIONAL MEDICAL CENTER

**McINTYRE, DUGAS, HARTYE & SCHMITT**

John L. McIntyre, Esquire

PA I.D. #28015

P.O. Box 533

Hollidaysburg, PA 16648-0533

PH: (814) 696-3581

FAX: (814) 696-9399

Date: December 27, 2005

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

DWIGHT SMITH, a minor, by and through  
his parents and natural guardians,  
ELIZABETH SMITH, and DAVID SMITH;  
and ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs

vs.

MICHAEL KUSH, M.D.,  
SOLA OSUNDEKO, M.D. and  
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

No. 2005 – 1832 CD

**ISSUE:**  
PRAECIPE FOR RULE TO FILE  
COMPLAINT

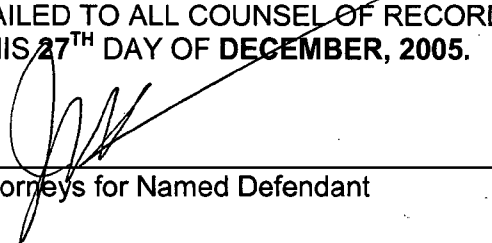
Filed on behalf of Defendant,  
DUBOIS REGIONAL MEDICAL  
CENTER

Counsel of Record for This Party:  
John L. McIntyre, Esquire  
PA I.D. #28015

McINTYRE, DUGAS, HARTYE &  
SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 27<sup>TH</sup> DAY OF DECEMBER, 2005.

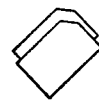
  
Attorneys for Named Defendant

**FILED** <sup>NO CC</sup>  
DEC 30 2005  
m/ville/61 Rule to  
File to  
Att'y  
William A. Shaver  
Prothonotary/Clerk of Courts



John L. McIntyre, Esquire  
PA I.D. #28015  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

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

 COPY

DWIGHT SMITH, a minor, by and through  
his parents and natural guardians,  
ELIZABETH SMITH, and DAVID SMITH;  
and ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs

vs.

MICHAEL KUSH, M.D.,  
SOLA OSUNDEKO, M.D. and  
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

No. 2005 – 1832 CD

JURY TRIAL DEMANDED

**RULE TO FILE COMPLAINT**

AND NOW, this 30<sup>th</sup> day of December, 200<sup>5</sup>, Rule is entered on the  
Plaintiffs to file a Complaint within twenty (20) days.

\_\_\_\_\_  
Prothonotary

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

DWIGHT SMITH, a minor, by and through  
his parents and natural guardians,  
ELIZABETH SMITH, and DAVID SMITH;  
and ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs

vs.

MICHAEL KUSH, M.D.,  
SOLA OSUNDEKO, M.D. and  
DUBOIS REGIONAL MEDICAL CENTER,

Defendants

No. 2005 – 1832 CD

**ISSUE:**

CERTIFICATE OF SERVICE OF RULE  
TO FILE COMPLAINT

Filed on behalf of Defendant,  
DUBOIS REGIONAL MEDICAL  
CENTER

Counsel of Record for This Party:  
John L. McIntyre, Esquire  
PA I.D. #28015

McINTYRE, HARTYE & SCHMITT  
P.O. Box 533  
Hollidaysburg, PA 16648  
(814) 696-3581

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 3<sup>RD</sup> DAY OF JANUARY, 2006.

  
Attorneys for Named Defendant

**FILED** *no cc*  
*11:20 AM*  
**JAN 05 2006** *(5)*

William A. Shaw  
Prothonotary/Clerk of Courts

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

DWIGHT SMITH, a minor, by and through : No. 2005 – 1832 CD  
his parents and natural guardians, :  
ELIZABETH SMITH, and DAVID SMITH; :  
and ELIZABETH SMITH and DAVID :  
SMITH, as individuals, :

Plaintiffs :

vs. :

MICHAEL KUSH, M.D., :  
SOLA OSUNDEKO, M.D. and :  
DUBOIS REGIONAL MEDICAL CENTER, :

Defendants :

JURY TRIAL DEMANDED

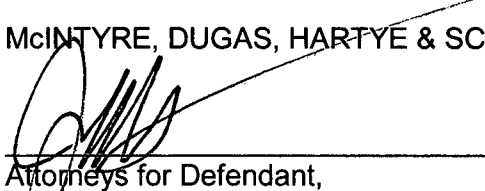
**CERTIFICATE OF SERVICE OF RULE TO FILE COMPLAINT**

TO: PROTHONOTARY

You are hereby notified that on the 3<sup>rd</sup> day of **January, 2006**, Defendant,  
DUBOIS REGIONAL MEDICAL CENTER, served a RULE upon the Plaintiffs, by mailing  
the original of same via First Class Mail, postage prepaid, addressed to Plaintiffs as  
follows:

Elizabeth and David Smith  
218 Euclid Avenue  
Brookville, PA 15825

McINTYRE, DUGAS, HARTYE & SCHMITT

  
Attorneys for Defendant,  
DUBOIS REGIONAL MEDICAL CENTER

John L. McIntyre, Esquire  
PA I.D. #28015  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101035  
NO: 05-1832-CD  
SERVICE # 1 OF 3  
SUMMONS

PLAINTIFF: DWIGHT SMITH, a minor by&through his parents & natural guardians  
Elizabeth Smith & Davis Smith al

vs.

DEFENDANT: MICHAEL KUSH, M.D., SOLA OSUNDEKO, M.D. and  
DUBOIS REGIONAL MEDICAL CENTER

SHERIFF RETURN

---

NOW, December 02, 2005 AT 11:30 AM SERVED THE WITHIN SUMMONS ON MICHAEL KUSH, M.D.  
DEFENDANT AT 145 HOSPITAL AVE. SUITE 106 Med Arts Bldg., DUBOIS, CLEARFIELD COUNTY,  
PENNSYLVANIA, BY HANDING TO MAUREEN BARBER, RECEPTIONIST A TRUE AND ATTESTED COPY OF  
THE ORIGINAL SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

FILED  
01/31/23/2006  
MAR 01 2006  
(um)

William A. Shaw  
Prothonotary/Clerk of Courts

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

Service # 2 of 3 Services

Sheriff Docket # **101035**

DWIGHT SMITH, a minor by&through his parents & natural guardians  
Elizabeth Smith & Davis Smith al

Case # 05-1832-CD

vs.

MICHAEL KUSH, M.D., SOLA OSUNDEKO, M.D. and  
DUBOIS REGIONAL MEDICAL CENTER

TYPE OF SERVICE SUMMONS

## SHERIFF RETURNS

NOW March 01, 2006 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN SUMMONS "NOT FOUND" AS TO SOLA OSUNDEKO, M.D., DEFENDANT. MOVED TO PUNXSUTAWNEY, PA..

SERVED BY: /

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

DOCKET # 101035  
NO: 05-1832-CD  
SERVICE # 3 OF 3  
SUMMONS

PLAINTIFF: DWIGHT SMITH, a minor by&through his parents & natural guardians  
Elizabeth Smith & Davis Smith al

vs.

DEFENDANT: MICHAEL KUSH, M.D., SOLA OSUNDEKO, M.D. and  
DUBOIS REGIONAL MEDICAL CENTER

**SHERIFF RETURN**

---

NOW, December 02, 2005 AT 11:20 AM SERVED THE WITHIN SUMMONS ON DUBOIS REGIONAL MEDICAL CENTER DEFENDANT AT DEPT. OF HEALTH INFORMATION MANAGEMENT, 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO NICOLE LUKETICH, INFORMATION MANAGER A TRUE AND ATTESTED COPY OF THE ORIGINAL SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101035  
NO: 05-1832-CD  
SERVICES 3  
SUMMONS

PLAINTIFF: DWIGHT SMITH, a minor by&through his parents & natural guardians  
Elizabeth Smith & Davis Smith al

vs.

DEFENDANT: MICHAEL KUSH, M.D., SOLA OSUNDEKO, M.D. and  
DUBOIS REGIONAL MEDICAL CENTER

SHERIFF RETURN

---


RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	DAVID SMITH	CASH	30.00
SHERIFF HAWKINS	DAVID SMITH	CASH	47.80

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2006  
\_\_\_\_\_

So Answers,

  
by Mandy L. Harris

Chester A. Hawkins  
Sheriff



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

**SUMMONS**

**Dwight Smith, a minor, by and through  
his parents and natural guardians,  
Elizabeth Smith, and David Smith;  
and Elizabeth Smith and David Smith,  
as individuals,**

**Vs.**

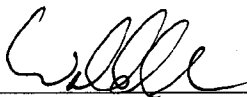
**NO.: 2005-01832-CD**

**Michael Kush, M.D.,  
Sola Osundeko, M.D. and  
DuBois Regional Medical Center**

**TO: MICHAEL KUSH, M.D.  
SOLA OSUNDEKO, M.D.  
DUBOIS REGIONAL MEDICAL CENTER**

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

Date: 11/23/2005

  
\_\_\_\_\_  
William A. Shaw  
Prothonotary

Issued by:  
Elizabeth Smith and David Smith  
218 Euclid Ave.  
Brookville, PA  
814-849-0186

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

DWIGHT SMITH, A MINOR, BY HIS  
PARENT AND NATURAL GUARDIANS,  
ELIZABETH SMITH AND DAVID SMITH  
AND ELIZABETH SMITH AND DAVID  
SMITH, AS INDIVIDUALS  
218 Euclid Avenue  
Brookville, Pennsylvania 15825

vs.

MICHAEL KUSH, M.D.  
145 Hospital Ave., Suite 106  
Dubois, PA 15801

: NO. 2005-1832 CD

: ATTORNEY I.D. 26135

: JURY TRIAL DEMANDED

N O T I C E

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

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

FILED

MAR 21 2006

m/11:30/uno  
William A. Shaw

Prothonotary/Clerk of Courts

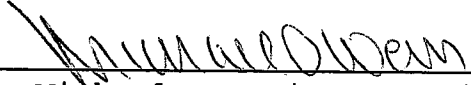
1 CENT TO ATT

05-15-2006 Document

Reinstated/Reissued to Sheriff/Attorney  
for service.

  
Deputy Prothonotary

CLEARFIELD COUNTY BAR ASSOCIATION  
LAWYER REFERRAL and INFORMATION SERVICE  
230 East Market Street  
Clearfield, Pennsylvania 16830  
(814) 765-2641

  
\_\_\_\_\_  
Michael J. Weiss, Esquire  
Attorney for Plaintiffs  
1236 Brace Road - Suite B  
Cherry Hill, NJ 08034  
(856) 428-1236

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

DWIGHT SMITH, A MINOR, BY HIS	:	NO. 2005-1832 CD
PARENT AND NATURAL GUARDIANS,	:	
ELIZABETH SMITH AND DAVID SMITH	:	
AND ELIZABETH SMITH AND DAVID	:	
SMITH AS INDIVIDUALS	:	
	:	
	:	
vs.	:	
	:	ATTORNEY I.D. 26135
MICHAEL KUSH, M.D.	:	
	:	
	:	
	:	JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiffs, Dwight Smith, a minor, by his parents and natural guardians, Elizabeth Smith and David Smith, and Elizabeth Smith and David Smith, as individuals, currently reside at 218 Euclid Avenue, Brookville, Commonwealth of Pennsylvania.

2. Defendant, Michael Kush, M.D., now and at all times material hereto, is a licensed physician, specializing in the practice of obstetrics and gynecology, with an office for the practice of medicine at the DuBois Regional Medical Center.

3. At all times relevant hereto, and more specifically, on or before November 29, 2003 and at all times thereafter, up to and including the date of birth of the minor plaintiff, November 29,

2003, the defendant, Michael Kush, M.D., provided medical advise, treatment, care and management of the medical condition of the minor plaintiff's mother, Elizabeth, and/or the minor plaintiff, Dwight Smith.

4. On or before November 29, 2003, Elizabeth Smith came under the professional care of the defendant, Michael Kush, M.D., for prenatal care associated with the birth of the minor plaintiff. At all times relevant hereto, and in connection with the labor and delivery, Michael Kush, M.D., acted in capacity of treating physician and attending physician of Elizabeth Smith and the minor plaintiff, Dwight Smith.

5. Defendant, Michael Kush, M.D., owed Elizabeth Smith and her unborn child, plaintiff, Dwight Smith, the duty to possess and exercise the degree of professional skill and knowledge required of practitioners with the health care profession.

6. Defendant breached the aforesaid duty of care by committing acts of negligence set forth in the following paragraphs:

a. failing to properly deliver the minor plaintiff, Dwight Smith, specifically failing to perform a timely cesarean section delivery;

b. failing to adequately assess Elizabeth Smith for high risk pregnancy;

c. failing to adequately assess and evaluate the fetal

weight and maternal pelvis prior to delivery;

d. failing to have experienced staff present and available to manage the delivery of a macrosomic fetus;

e. failing to recognize and heed the warning signals of shoulder dystocia;

f. the use of excessive force in the delivery of the minor plaintiff, Dwight Smith;

g. failing to correctly perform accepted medical maneuvers to extricate and deliver the impacted shoulder of the minor plaintiff, Dwight Smith;

h. failure to provide adequate, appropriate and necessary prenatal management to Elizabeth, including as set forth more fully herein, the failure to use available diagnostic studies including ultrasound; to assess fundal height, fetal size and/or weight, to assess pelvic adequacy, shoulder dystocia and to assess the need for a cesarean section delivery;

i. failing to take proper cognizance of Elizabeth Smith's physical signs, symptoms and medical history at all times pertinent to her prenatal care and labor;

j. negligently increasing the risk of neurologic and motor damage to the minor plaintiff, Dwight Smith;

k. failing to conform to the requisite standards of pediatric, obstetric, gynecologic and neonatal care in the pre-delivery and delivery management of the minor plaintiff, Dwight

Smith; and

1. failing to properly monitor, observe and record the progress of labor of Elizabeth Smith.

COUNT I

PLAINTIFFS, DWIGHT SMITH, A MINOR, BY HIS PARENTS AND NATURAL GUARDIANS, ELIZABETH SMITH AND DAVID SMITH, AND ELIZABETH SMITH AND DAVID SMITH, AS INDIVIDUALS VS. MICHAEL KUSH, M.D.

NEGLIGENCE

7. Plaintiffs incorporate herein by reference the allegations in Paragraphs 1-6 as fully as those set forth herein at length.

8. As a result of the aforesaid acts of negligence committed by defendant, the minor plaintiff, Dwight Smith, sustained serious physical, neurological and emotional injuries including, but not limited to a brachial plexus injury involving the left arm, shoulder and hand, all of which have caused him great pain and suffering and which have in the past and will in the future prevent from engaging and enjoying the normal activities of childhood and adult life, such injuries being permanent.

9. The care and treatment provided by defendant deviated from accepted standards of obstetric and gynecologic care.

10. The defendant's deviation from accepted standards of care was a substantial contributing factor leading to the catastrophic and permanent injuries as described herein.

11. The aforesaid acts of negligence by defendant also

increased the risk of harm that plaintiff, Dwight Smith, would suffer from and will continue to suffer from the aforementioned injuries.

12. As a result of the negligence of defendant, the minor plaintiff, Dwight Smith, will suffer a loss and depreciation of his earnings and will continue to suffer such loss and depreciation for an indefinite time in the future to his great detriment and loss.

WHEREFORE, plaintiffs, Dwight Smith, a minor, by his parents and natural guardians, Elizabeth Smith, and David Smith, and Elizabeth Smith and David Smith, as individuals, demand judgment against the defendant, Michael Kush, M.D., in an amount in excess of Fifty Thousand (\$50,000.00) Dollars, as well as lawful interest and costs.

#### COUNT 2

DWIGHT SMITH, a minor, by and through his parents and natural guardians, ELIZABETH SMITH AND DAVID SMITH AND ELIZABETH SMITH AND DAVID SMITH, AS INDIVIDUALS

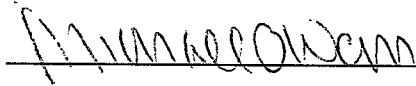
13. Plaintiffs, Elizabeth Smith and David Smith as individuals, hereby repeat each and every allegation of Count 1 as if same were set forth at length herein.

14. As a proximate result of the injuries sustained by the minor plaintiff, Dwight Smith,, the plaintiffs, Elizabeth Smith and David Smith have been and will continue to be required to incur substantial medical and/or other expenses.



WHEREFORE, the plaintiffs, Elizabeth Smith and David Smith, as individuals,

demand judgment against the defendant, Michael Kush, M.D., on this Count, together with interest and costs of suit.

\_\_\_\_\_

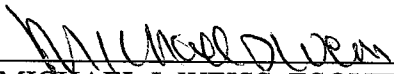
MICHAEL J. WEISS, ESQ.  
Attorney for Plaintiff

Dated: March 16, 2006

CERTIFICATE OF MERIT AS TO MICHAEL KUSH, M.D.

I, MICHAEL J. WEISS, ESQUIRE, hereby state:

1. I am the attorney for the plaintiffs in this action;
2. An appropriate licensed physician, board certified in obstetrics and gynecology, has supplied a written statement in the within action and has determined that there exists a reasonable probability that the care, skill or knowledge exercised or exhibited in the treatment, practice or work by defendant, Michael Kush, M.D., that is the subject of the Complaint fell outside acceptable professional standards and that such conduct was a cause in bringing about injury to the minor plaintiff, Dwight Smith.

  
\_\_\_\_\_  
MICHAEL J. WEISS, ESQUIRE

Dated: 3/16/06

VERIFICATION

I, MICHAEL J. WEISS, ESQUIRE hereby state:

1. I am the attorney for the Plaintiff in this action;

2. I verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief; and

3. I understand that the statements in said Complaint are made subject to penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

  
MICHAEL J. WEISS

Date: March 16, 2006

FILED  
MAR 21 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

VERIFICATIONFILED <sup>no cc</sup>

MAR 27 2006

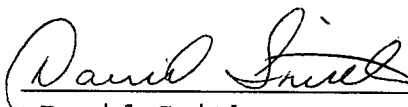
William A. Shaw  
Prothonotary/Clerk of Courts

We, Elizabeth Smith and David Smith hereby state:

1. We are the plaintiffs in this action;
2. I verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief; and
3. I understand that the statements in said Complaint are made subject to penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.



Elizabeth Smith



David Smith

Date: March 16, 2006

**FILED**

**MAR 27 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

2006 MAR 27

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, A MINOR, BY HIS )  
PARENT AND NATURAL GUARDIANS, )  
ELIZABETH SMITH AND DAVID )  
SMITH AND ELIZABETH SMITH AND )  
DAVID SMITH, AS INDIVIDUALS )

Plaintiffs, )

v. )

MICHAEL KUSH, M. D. )

Defendants )

CIVIL DIVISION

No. 2005-1832 CD

Civil Action

**PRAECIPE TO FILE ORDER TO MARK  
ACTION DISMISSED, DISCONTINUED AND  
ENDED AS TO DUBOIS REGIONAL MEDICAL  
CENTER**

TO THE PROTHONOTARY:

Please mark the above action dismissed, discontinued and ended as to Dubois Regional  
Medical Center.

LAW OFFICES OF MICHAEL J. WEISS

By: 

MICHAEL J. WEISS, ESQUIRE

Dated: March 30, 2006

**FILED**

4/11/06 11:59am

APR - 3 2006

William A. Shaw  
Prothonotary

ICC & 1 Cert of  
disc to Atty  
Weiss, as to  
DuBois Regional  
Medical Center  
only -

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FILED

APR - 3 2006

William A. Shaw  
Prothonotary



# THE LAW OFFICE OF MICHAEL J. WEISS

1236 Brace Road -Suite B  
Cherry Hill, New Jersey 08034

Tel: 856-428-1236  
Fax: 856-428-5303

Michael J. Weiss\*+,  
\_\_\_\_\_

Mary Wagner, Paralegal

\*Member of N.J. and Pa. Bar  
+Certified by the Supreme  
Court of New Jersey as a  
Civil Trial Attorney

March 30, 2006

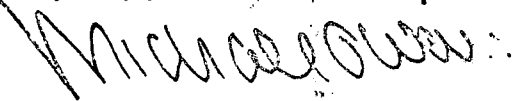
Office of the Prothonotary  
Court of Common Pleas of Clearfield County  
Courthouse  
230 East Market Street  
Clearfield, PA 16830

**Re: Dwight Smith, a minor by and through his parents and natural guardians,  
Elizabeth Smith and David Smith vs. Michael Kush, M. D.  
No. 2005-1832 CD**

Dear Sir/Madam:

Enclosed herewith please find original plus one copy of Praeipie to Dismiss, Discontinue and End as to Defendant, DuBois Regional Medical Center. Please file the original and file a date-stamped copy to my office in the enclosed self-addressed, stamped envelope. Thank you for your assistance in this matter.

Very truly yours,



MICHAEL J. WEISS

MJW/smk  
Enclosure

2006-04-03

NO 2005-1832 CD

RECEIVED BY THE CLERK OF THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
ON APRIL 3, 2006 AT 10:00 AM

CLEARFIELD COUNTY

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Dwight Smith  
Elizabeth Smith  
David Smith

Vs.

No. 2005-01832-CD

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center

CERTIFICATE OF DISCONTINUATION

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on April 3, 2006, marked:

Dismissed, discontinued and ended as to DUBOIS REGIONAL MEDICAL CENTER, ONLY.

Record costs in the sum of \$ have been paid in full by .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 4th day of April A.D. 2006.



William A. Shaw, Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, A MINOR, BY HIS )  
PARENT AND NATURAL GUARDIANS, )  
ELIZABETH SMITH AND DAVID )  
SMITH AND ELIZABETH SMITH AND )  
DAVID SMITH, AS INDIVIDUALS )

Plaintiffs, )

v. )

MICHAEL KUSH, M. D. )

Defendants )

CIVIL DIVISION

No. 2005-1832 CD

Civil Action

**PRAECIPE TO REINSTATE THE  
COMPLAINT AND TO FORWARD THE  
COMPLAINT TO THE SHERIFF FOR SERVICE**

TO THE PROTHONOTARY:

Please find original plus one copy of Praecipe to Reinstate the Complaint in this matter. Please file the original and return a date stamped copy. Kindly then forward the reinstated Complaint plus the Sheriff's fee attached to the Sheriff's office for service.

LAW OFFICES OF MICHAEL J. WEISS

By: 

MICHAEL J. WEISS, ESQUIRE

Dated: May 12, 2006

**FILED** *Atty pd. 7.00*  
*m/12:31/06*  
**MAY 15 2006** *1 Reinstated*  
*Compl. to Sheriff*

William A. Shaw  
Prothonotary/Clerk of Courts

*(62)*

RECEIVED  
JUL 11 2006  
FEDERAL BUREAU OF INVESTIGATION  
U.S. DEPARTMENT OF JUSTICE

U.S. DEPARTMENT OF JUSTICE  
FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D.C. 20535

*Mr. [illegible]*

**FILED**

**MAY 15 2006**

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101534  
NO: 05-1832-CD  
SERVICE # 1 OF 1  
COMPLAINT

PLAINTIFF: DWIGHT SMITH, A MINOR  
vs.  
DEFENDANT: MICHAEL KUSH, M.D.

SHERIFF RETURN

NOW, May 18, 2006 AT 1:25 PM SERVED THE WITHIN COMPLAINT ON MICHAEL KUSH, M.D. DEFENDANT AT 145 HOSPITAL AVE., SUITE 106, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO LISA BATSON, SECRETARY, RISK MANAGEMENT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

FILED  
013:0381  
MAY 24 2006

William A. Shaw  
Prothonotary/Clerk of Courts

PURPOSE	VENDOR	CHECK #	AMOUNT
SURCHARGE	WEISS	5532	10.00
SHERIFF HAWKINS	WEISS	5532	35.30

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2006

\_\_\_\_\_

So Answers,

  
Chester A. Hawkins  
Sheriff

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

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading  
***Praecipe for Entry of  
Appearance***

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

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

Counsel for Adverse Party  
***Michael J. Weiss, Esquire***  
Pa. Supreme Court I.D. #26135

**FILED** No cc  
mjt:3264  
SEP 12 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

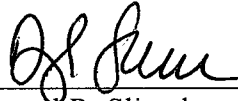
DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**PRAECIPE FOR ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Please enter our appearance on behalf of the Defendant, MICHAEL KUSH, M.D. in the  
above-captioned matter.

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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

Dated: September 11, 2006



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

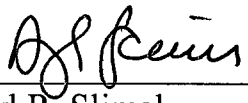
DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Praeipie for Entry of Appearance on Behalf of Defendant Michal Kush, M.D., in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 11<sup>th</sup> day of September, 2006, to the attorney(s) of record:

Michael J. Weiss, Esquire  
DKW Law Group, P.C.  
600 Grant Street 58<sup>th</sup> Floor  
Pittsburgh, PA 15219

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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

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

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading  
***Defendant Dr. Michael Kush's  
Answer with New Matter to  
Plaintiffs' Complaint***

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

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

Counsel for Adverse Party  
***Michael J. Weiss, Esquire***  
Pa. Supreme Court I.D. #26135

**FILED** *no cc*  
*mjl 11:03 AM*  
SEP 20 2006  
William A. Shaw  
Prothonotary/Clerk of Courts

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

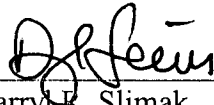
DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**NOTICE TO PLEAD**

TO: DWIGHT, ELIZABETH, and DAVID SMITH  
c/o Michael J. Weiss, Esquire

YOU ARE HEREBY notified to file a written response to the enclosed Answer  
and New Matter within twenty (20) days from the date of service hereof or a judgment may be  
entered against you.

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
Darryl R. Slimak  
Attorney for Defendant  
MICHAEL KUSH, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: September 19, 2006

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**DEFENDANT DR. MICHAEL KUSH'S ANSWER**  
**WITH NEW MATTER TO PLAINTIFFS' COMPLAINT**

AND NOW comes, Defendant, MICHAEL A. KUSH, M.D., by and through his attorneys, McQuaide, Blasko, Fleming & Faulkner, Inc., and responds to the Plaintiffs' Complaint as follows:

1. The averments of Complaint paragraph 1 are presently believed to likely be correct and therefore are admitted.
2. Admitted.

3. The averments of Complaint paragraph 3 are denied as stated in that the applicable medical records more fully and properly set forth the contacts between and care and treatment provided by Dr. Kush for Plaintiffs up through the date indicated.

4. Admitted.

5. Admitted.

6. The averments of Complaint paragraph 6 are specifically denied as incorrect legal and factual conclusions and pursuant to and consistent with Pa. R.C.P. No. 1029(e). To the contrary, at all times answering Defendant exercised reasonable and proper medical skill, care and judgment under the circumstances.

**COUNT I**  
**Negligence**

7. In response to Complaint paragraph 7, answering Defendant incorporates herein by reference his foregoing responses as though set forth at length.

8-12. The averments of Complaint paragraphs 8 through 12, inclusive, are denied as incorrect legal and factual conclusions and pursuant to and consistent with Pa. R.C.P. No. 1029(e). To the contrary, at all times answering Defendant exercised reasonable and proper skill, care and judgment under the circumstances and is not responsible for the alleged injuries and damages for which Plaintiffs have filed suit.

WHEREFORE, Defendant Michael Kush, M.D., respectfully requests entry of judgment in his favor and that the Complaint against him be dismissed, with prejudice.

**COUNT II**

13. In response to Complaint paragraph 13, answering Defendant incorporates herein by reference his foregoing responses as though set forth at length.

14. The averments of Complaint 14 contain incorrect legal conclusions to which no further or more specific response is required under the Rules of Civil Procedure, and are in any event denied pursuant to and consistent with Pa. R.C.P. No. 1029(e). Answering Defendant's foregoing responses and the paragraphs in New Matter as set forth hereinafter, are incorporated herein by reference.

WHEREFORE, Defendant Michael Kush, M.D., respectfully requests entry of judgment in his favor and that the Complaint against him be dismissed, with prejudice.

**NEW MATTER**

15. Defendants raise all defenses of the Healthcare Services Malpractice Act, 40 P.S. § 1301 *et. seq*, and the M-Care Act, 40 P.S. §1303.101, *et seq*, insofar as applicable hereto.

16. Plaintiffs' claims are or may be barred in whole or in part by the applicable statute of limitations, and therefore judgment should be entered in favor of the Defendant.

WHEREFORE, Defendant Michael Kush, M.D., respectfully requests entry of judgment in his favor and that the Complaint against him be dismissed, with prejudice.

Respectfully submitted,

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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



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

Dated: September 19, 2006



Smith v. Kush

**VERIFICATION**

The undersigned verifies that he is authorized to make this verification on his own behalf; and that the statements made in the foregoing **DEFENDANT DR. MICHAEL KUSH'S ANSWER WITH NEW MATTER TO PLAINTIFFS' COMPLAINT** are 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.

Michael A. Kush M.D.  
Michael A. Kush, M.D.

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


DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant Dr. Michael Kush's Answer with New Matter to Plaintiffs' Complaint in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 19<sup>th</sup> day of September, 2006, to the attorney(s) of record:

Michael J. Weiss, Esquire  
DKW Law Group, P.C.  
600 Grant Street 58<sup>th</sup> Floor  
Pittsburgh, PA 15219

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By: 

Darryl R. Slimak

Attorneys for Defendant

MICHAEL A. KUSH, M.D.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, a minor, by his parent  
and natural guardians, ELIZABETH SMITH  
and DAVID SMITH and ELIZABETH  
SMITH and DAVID SMITH as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

CIVIL DIVISION

No. 2005 – 1832 CD

Issue No.

PRAECIPE FOR APPEARANCE

Filed on behalf of defendant.

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 <sup>no</sup> <sup>cc</sup>  
m1110201  
SEP 20 2006 (5)

William A. Shaw  
Prothonotary/Clerk of Courts

PRAECIPE FOR APPEARANCE

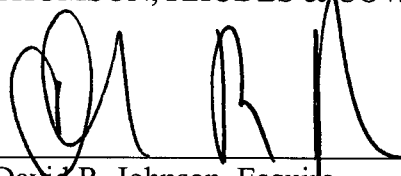
TO: PROTHONOTARY

Kindly enter our appearance on behalf of Michael Kush, M.D., the defendant.

JURY TRIAL DEMANDED.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.

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

David R. Johnson, Esquire  
Attorneys for defendant.

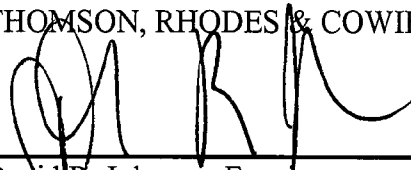
**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within PRAECIPE FOR  
APPEARANCE has been served upon the following counsel of record and same placed  
in the U.S. Mails on this 18<sup>th</sup> day of Sept., 2006:

Michael Weiss, Esquire  
1236 Brace Road, Suite B  
Cherry Hill, NJ 08034

Darryl R. Slimak, 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 defendant.

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

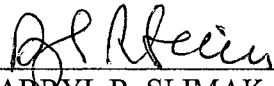
DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b>Medical Professional</b>
SMITH and DAVID SMITH, and	:	<b>Liability Action</b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendant's First Set of Interrogatories and Request for Production of Documents Directed to Plaintiffs laintiffs in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 29<sup>th</sup> day of September, 2006, to the attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road- Suite B  
Cherry Hill, NJ 08034

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
DARRYL R. SLIMAK  
Attorneys for Defendant  
Michael Kush, M.D.

**FILED** NO cc  
OCT 02 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

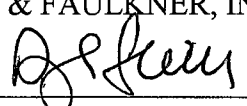
DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendant's Second Request for Production of Documents and Tangible Things Directed to Plaintiffs in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 29<sup>th</sup> day of September, 2006, to the attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road- Suite B  
Cherry Hill, NJ 08034

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
DARRYL R. SLIMAK  
Attorneys for Defendant  
Michael Kush, M.D.

**FILED** *NR CC*  
*3/11/18/61*  
OCT 02 2006 *S*

William A. Shaw  
Prothonotary/Clerk of Courts



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

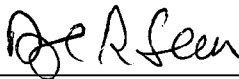
DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendant's Expert Interrogatories Directed to Plaintiffs in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 29th day of September, 2006, to the attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road- Suite B  
Cherry Hill, NJ 08034

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
DARRYL R. SLIMAK  
Attorneys for Defendant  
Michael Kush, M.D.

**FILED** *no cc*  
OCT 02 2006 

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, A MINOR, BY HIS )  
PARENT AND NATURAL GUARDIANS, )  
ELIZABETH SMITH AND DAVID )  
SMITH AND ELIZABETH SMITH AND )  
DAVID SMITH, AS INDIVIDUALS )

Plaintiffs, )

v. )

MICHAEL KUSH, M. D. )

Defendants )

CIVIL DIVISION

No. 2005-1832 CD

Civil Action

**PRAECIPE TO FILE PLAINTIFFS'  
CERTIFICATION OF MAILING OF  
INTERROGATORIES**

TO THE PROTHONOTARY:

Please find original plus one copy of Plaintiffs' Certification of Mailing of Interrogatories, Supplemental Interrogatories, Medical Malpractice Interrogatories, and Notice to Produce. Please file the original and return a date stamped copy.

LAW OFFICES OF MICHAEL J. WEISS

By: 

MICHAEL J. WEISS, ESQUIRE

Dated: October 5, 2006

**FILED**

OCT 10 2006

m/12:05/4  
William A. Shaw

Prothonotary/Clerk of Courts

1 cent to ATT

**CERTIFICATE OF MAILING**

I, Michael J. Weiss, Attorney for Plaintiffs do hereby certify that I mailed a copy of Plaintiffs' Interrogatories, Supplemental Interrogatories, Medical Malpractice Interrogatories, and Notice to Produce, to Darryl R. Slimak, Esquire, McQuaide Blasko, 811 University Drive, State College, Pennsylvania 16801-6699 by first class mail on October 4, 2006.

LAW OFFICES OF MICHAEL J. WEISS

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

  
MICHAEL J. WEISS, ESQUIRE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, A MINOR, BY HIS )  
PARENT AND NATURAL GUARDIANS, )  
ELIZABETH SMITH AND DAVID )  
SMITH AND ELIZABETH SMITH AND )  
DAVID SMITH, AS INDIVIDUALS )

Plaintiffs, )

v. )

MICHAEL KUSH, M. D. )

Defendants )

CIVIL DIVISION

No. 2005-1832 CD

Civil Action

**PRAECIPE TO FILE PLAINTIFFS  
RESPONSE TO NEW MATTER OF  
DEFENDANT, MICHAEL KUSH, M. D.**

TO THE PROTHONOTARY:

Please find original plus one copy of Plaintiffs' response to new matter of defendant, Michael Kush, M. D. in this matter. Please file the original and return a date stamped copy.

LAW OFFICES OF MICHAEL J. WEISS

By: 

MICHAEL J. WEISS, ESQUIRE

Dated: October 4, 2006

**FILED**

OCT 10 2006

W/12:10/11  
William A. Shaw  
Prothonotary/Clerk of Courts  
1 COPY TO ATTY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, A MINOR, BY HIS )  
PARENT AND NATURAL GUARDIANS, )  
ELIZABETH SMITH AND DAVID )  
SMITH AND ELIZABETH SMITH AND )  
DAVID SMITH, AS INDIVIDUALS )

Plaintiffs, )

v. )

MICHAEL KUSH, M. D. )

Defendants )

CIVIL DIVISION

No. 2005-1832 CD

Civil Action

**PLAINTIFFS' RESPONSE TO NEW MATTER OF  
DEFENDANT, MICHAEL KUSH, M.D.**

15. Denied as stated as this is a conclusion of law to which no response is required.
16. Denied as stated as this is a conclusion of law to which no response is required.

Respectfully submitted,

LAW OFFICES OF MICHAEL J. WEISS

By: 

MICHAEL J. WEISS, ESQUIRE

Attorney for Plaintiffs

PA. I. D. #26135

Dated: October 4, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, A MINOR, BY HIS )  
PARENT AND NATURAL GUARDIANS, )  
ELIZABETH SMITH AND DAVID )  
SMITH AND ELIZABETH SMITH AND )  
DAVID SMITH, AS INDIVIDUALS )

Plaintiffs, )

v. )

MICHAEL KUSH, M. D. )

Defendants )

CIVIL DIVISION

No. 2005-1832 CD

Civil Action

**CERTIFICATE OF MAILING**

I, Michael J. Weiss, Attorney for Plaintiffs do hereby certify that I mailed  
a copy of Plaintiffs' response to new matter of defendant, Michael Kush, M. D., to  
Darryl R. Slimak, Esquire, McQuaide Blasko, 811 University Drive, State College,  
Pennsylvania 16801-6699 by first class mail on October 4, 2006.

LAW OFFICES OF MICHAEL J. WEISS

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

MICHAEL J. WEISS, ESQUIRE

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

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

**JURY TRIAL DEMANDED**

No: 2005 - 1832 - C.D.

Type of Pleading  
***Defendant's Revised  
Interrogatories and Request  
for Production of Documents  
Directed to Plaintiffs***

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

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

Counsel for Adverse Party  
***Michael J. Weiss, Esquire***  
I.D. #26135

**FILED**

OCT 12 2006

William A. Shaw  
Prothonotary/Clerk of Courts

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

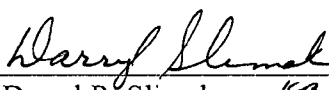
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendant's Revised Interrogatories and Request for Production of Documents Directed to Plaintiffs in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 11<sup>th</sup> day of October, 2006 to the attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road Suite B  
Cherry Hill, NJ 08034



McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
Darryl R. Slimak *KPS*

Attorneys for Defendant  
MICHAEL KUSH, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

FILED No cc  
DEC 04 2006

CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA

William A. Shaw  
Prothonotary/Clerk of Courts

PURSUANT TO RULE 4009.22

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH

TERM,  
CLEARFIELD

-VS-

CASE NO: 2005-1832 CD

KUSH

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of DARRYL SLIMAK, ESQUIRE  
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: 11/16/2006

MCS on behalf of

DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH

TERM,

-VS-

CASE NO: 2005-1832 CD


KUSH

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

SOLA OSUNDEKO, M.D.	MEDICAL & BILLING
MAGEE WOMENS HOSPITAL+	MEDICAL AND HOSPITAL BILL
WOMEN'S HEALTHCARE OF CLARION	MEDICAL & BILLING
STEVEN J. MITROSKY, D.O.	MEDICAL & BILLING
Thomas D. Sneeringer, M.D.	MEDICAL & BILLING
	MEDICAL & BILLING
	MEDICAL & BILLING

TO: MICHAEL J. WEISS, ESQ, PLAINTIFF COUNSEL  
MCS on behalf of DARRYL SLIMAK, 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. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 10/30/2006

MCS on behalf of  
  
DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

CC: DARRYL SLIMAK, ESQUIRE

- 20106-1

Any questions regarding this matter, contact

THE MCS GROUP, INC.  
300 LAWYERS BUILDING

PITTSBURGH, PA 15219  
(412) 642-4420

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

\*

Vs.

\*

No. 2005-01832-CD

\*

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

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

TO: Custodian of Records: Sola Osundeko, M.D.  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

(Address)

300 Lawyers Building Pittsburgh, Pa 15219  
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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Skaw  
Prothonotary/Clerk, Civil Division

DATE: Wednesday, October 25, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

SOLA OSUNDEKO, M.D.  
145 HOSPITAL AVE

DUBOIS, PA 15801

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLING RECORDS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

\*

\*

\*

No. 2005-01832-CD

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

TO: Custodian of Records: Magee Womens 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:

\*\*\*See Attached Rider\*\*\*

(Address)  
300 Lawyers Building Pittsburgh, Pa 15219

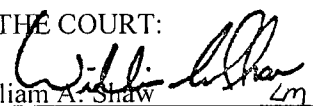
You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing 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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Wednesday, October 25, 2006  
Seal of the Court

Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

MAGEE WOMENS HOSPITAL +  
300 HALKET STREET

PITTSBURGH, PA 15213

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for  
hospitals, \$50.00 for all other providers.

BILLING STATEMENTS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS  
& BALANCES

Any and all records, correspondence, files and memorandums, handwritten  
notes, billing and payment records, relating to any examination,  
consultation, care or treatment of patient.

\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

\*

\*

\*

No. 2005-01832-CD

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

TO: Custodian of Records: Women's Healthcare of Clarion  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

(Address)  
MCS 300 Lawyers Building Pittsburgh, Pa 15219

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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Thursday, October 26, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy



# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

WOMEN'S HEALTHCARE OF CLARION  
1008 S. 5TH AVE  
#203

CLARION, PA 16214

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

## BILLS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

\*

Vs.

\*

No. 2005-01832-CD

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

\*

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

TO: Custodian of Records: Stephen J. Mitrosky, D.O.

(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

(Address)

MCS 300 Lawyers Building Pittsburgh, Pa 15219

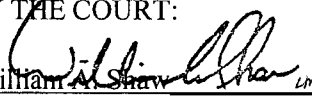
You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing 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: Darryl S Limak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Thursday, October 26, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

STEVEN J. MITROSKY, D.O.  
1008 S. 5TH AVE  
#104

CLARION, PA 16214

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLING TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS, AND BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes; billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

\*

Vs.

\*

No. 2005-01832-CD

\*

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

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

TO: Custodian of Records: Thomas Sneeringer, D.O.  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

(Address)

300 Lawyers Building Pittsburgh, Pa 15219

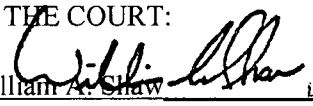
You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing 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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Monday, October 30, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

THOMAS D. SNEERINGER, M.D.  
PRIMARY CARE ASSOC.  
248 ALLEGHENY BLVD.

BROOKVILLE, PA 15825

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLING STATEMENTS FOR 2002-PRESENT TO INCLUDE CHARGES, PAYMENTS  
ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

\*

Vs.

\*

\*

## Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

SOLA OSUNDEKO, M.D.  
145 HOSPITAL AVE

DUBOIS, PA 15801

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLING RECORDS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Magee Womens 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:

\*\*\*See Attached Rider\*\*\*

(Address)  
300 Lawyers Building Pittsburgh, Pa 15219

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address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing the things sought.

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(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Wednesday, October 25, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy



# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

MAGEE WOMENS HOSPITAL+  
300 HALKET STREET

PITTSBURGH, PA 15213

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLING STATEMENTS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment of patient.

\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

\*

Vs.

\*

No. 2005-01832-CD

\*

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

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

TO: Custodian of Records: Women's Healthcare of Clarion  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

(Address)

MCS 300 Lawyers Building Pittsburgh, Pa 15219

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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Thursday, October 26, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

WOMEN'S HEALTHCARE OF CLARION  
1008 S. 5TH AVE  
#203

CLARION, PA 16214

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

## BILLS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

\*

Vs.

\*

No. 2005-01832-CD

\*

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

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

TO: Custodian of Records: Stephen J. Mitrosky, D.O.

(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

(Address)

MCS 300 Lawyers Building Pittsburgh, Pa 15219

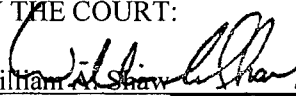
You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing 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: Darryl S Limak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Thursday, October 26, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

STEVEN J. MITROSKY, D.O.  
1008 S. 5TH AVE  
#104

CLARION, PA 16214

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

## BILLING TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS, AND BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes; billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

THOMAS D. SNEERINGER, M.D.  
PRIMARY CARE ASSOC.  
248 ALLEGHENY BLVD.

BROOKVILLE, PA 15825

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLING STATEMENTS FOR 2002-PRESENT TO INCLUDE CHARGES, PAYMENTS  
ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

FILED

DEC 05 2006

m/12:40/w  
William A. Shaw  
Prothonotary/Clerk of Courts  
no c/c

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

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

*Medical Professional  
Liability Action*

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading  
*Defendant's Responses to  
Plaintiffs' Notice to Produce*

Filed on Behalf of Defendant  
Michael Kush, M.D.

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



: McQuaide, Blasko, Fleming &  
: Faulkner, Inc.  
: 811 University Drive  
: State College, PA 16801  
: (814) 238-4926  
: Fax: (814) 238-9624  
:  
: Counsel for Adverse Party  
: ***Michael J. Weiss, Esquire***  
: I.D. #26135

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant's Responses to Plaintiffs' Notice to Produce in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 4<sup>th</sup> day of December, 2006, to the attorney(s) of record:

Michael J. Weiss, Esquire  
The Law Offices of Michael J. Weiss  
11236 Brace Road Suite B  
Cherry Hill, PA 08034

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219-3499

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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



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

FILED  
DEC 05 2006  
m/12:40/um  
William A. Shaw  
Prothonotary/Clerk of Courts  
no 9/C (SM)

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

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

*Medical Professional  
Liability Action*

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading  
*Defendant's Answers to  
Plaintiffs' Expert  
Interrogatories*

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

: McQuaide, Blasko, Fleming &  
: Faulkner, Inc.  
: 811 University Drive  
: State College, PA 16801  
: (814) 238-4926  
: Fax: (814) 238-9624  
:  
: Counsel for Adverse Party  
: ***Michael J. Weiss, Esquire***  
: I.D. #26135

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

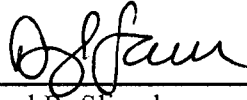
I hereby certify that a true and correct copy of the Defendant's Answers to Plaintiffs' Expert Interrogatories in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 4<sup>th</sup> day of December, 2006, to the attorney(s) of record:

Michael J. Weiss, Esquire  
The Law Offices of Michael J. Weiss  
1236 Brace Road Suite B  
Cherry Hill, NJ 08034

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219-3499

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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



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

FILED

DEC 05 2006  
12:40  
William A. Shaw  
Prothonotary/Clerk of Courts  
NO C/C

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

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

*Medical Professional  
Liability Action*

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading  
*Defendant's Answers to  
Plaintiffs' Interrogatories and  
Supplemental Interrogatories*

Filed on Behalf of Defendant  
Michael Kush, M.D.

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



: McQuaide, Blasko, Fleming &  
: Faulkner, Inc.  
: 811 University Drive  
: State College, PA 16801  
: (814) 238-4926  
: Fax: (814) 238-9624  
:  
: Counsel for Adverse Party  
: ***Michael J. Weiss, Esquire***  
: I.D. #26135

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant's Answers to Plaintiffs' Interrogatories and Supplemental Interrogatories in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 4<sup>th</sup> day of December, 2006, to the attorney(s) of record:

Michael J. Weiss, Esquire  
The Law Offices of Michael J. Weiss  
1236 Brace Road Suite B  
Cherry Hill, NJ 08034

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219-3499

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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



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

---

12/19/06  
Sp to: M. Weiss  
No action necessary @  
this time - he was unfamiliar  
w/ local rules & w/ proceed  
w/ discovery accordingly -  
R. JW.

---

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

DWIGHT SMITH, A MINOR, BY HIS )  
PARENT AND NATURAL GUARDIANS, )  
ELIZABETH SMITH AND DAVID )  
SMITH AND ELIZABETH SMITH AND )  
DAVID SMITH, AS INDIVIDUALS )

Plaintiffs, )

v. )

MICHAEL KUSH, M. D. )

Defendants )

CIVIL DIVISION

No. 2005-1832 CD

Civil Action

**PRAECIPE TO PREPARE A CASE  
SCHEDULING ORDER**

TO THE PROTHONOTARY:

Please find original plus one copy of Praecipe to prepare a case scheduling Order in this matter. Please file the original and return a date stamped copy. Kindly then forward the request to Court Administration for the preparation of the requested Order.

LAW OFFICES OF MICHAEL J. WEISS

By: 

MICHAEL J. WEISS, ESQUIRE

Dated: December 13, 2006

FILED <sup>icc</sup>  
m/jl:06/01  
DEC 15 2006

William A. Shaw  
Prothonotary/Clerk of Courts

Atty Weiss  
(GR)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, A MINOR, BY HIS )  
PARENT AND NATURAL GUARDIANS, )  
ELIZABETH SMITH AND DAVID )  
SMITH AND ELIZABETH SMITH AND )  
DAVID SMITH, AS INDIVIDUALS )

Plaintiffs, )

v. )

MICHAEL KUSH, M. D. )

Defendants )

CIVIL DIVISION

No. 2005-1832 CD

Civil Action

**CERTIFICATE OF MAILING**

I, Michael J. Weiss, Attorney for Plaintiffs do hereby certify that I mailed a copy of Plaintiffs' Praeipe requesting the preparation of a case scheduling Order to the attorney for defendant, Michael Kush, M. D., to Darryl R. Slimak, Esquire, McQuaide Blasko, 811 University Drive, State College, Pennsylvania 16801-6699 by first class mail on December 13, 2006.

LAW OFFICES OF MICHAEL J. WEISS

By: 

MICHAEL J. WEISS, ESQUIRE

THE COURT OF APPEALS  
IN AND FOR THE DISTRICT OF COLUMBIA  
HAS REVIEWED THE ORDER OF THE  
COURT OF COMMON PLEAS  
IN AND FOR THE DISTRICT OF COLUMBIA  
IN THE MATTER OF

THE DISTRICT OF COLUMBIA  
V.  
THE DISTRICT OF COLUMBIA

*[Handwritten signature]*

**FILED**

DEC 15 2006

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, A MINOR, BY HIS )  
PARENT AND NATURAL GUARDIANS, )  
ELIZABETH SMITH AND DAVID )  
SMITH AND ELIZABETH SMITH AND )  
DAVID SMITH, AS INDIVIDUALS )

Plaintiffs, )

v. )

MICHAEL KUSE, M. D. )

Defendants )

CIVIL DIVISION

No. 2005-1832 CD

Civil Action

**PROPOSED CASE SCHEDULING  
ORDER**

THIS MATTER having been opened to the Court upon the application of Michael J. Weiss, Esquire, on behalf of the Plaintiff, the Court having considered the moving papers and for other good cause shown;

IT IS ON THIS \_\_\_\_\_ day of \_\_\_\_\_ 2006, ORDERED that the case management and time standards for medical malpractice cases shall be applicable to this case and are hereby incorporated into this Order.

1. All discovery on the above matter shall be completed not later than \_\_\_\_\_.

2. Plaintiff shall identify and submit curriculum vitae and expert reports of all expert witnesses intended to testify at trial to all other parties not later than \_\_\_\_\_.

3. Defendant shall identify and submit curriculum vitae and expert reports of all expert witnesses intended to testify at trial not later than \_\_\_\_\_.

4. All pre-trial motions shall be filed not later than \_\_\_\_\_.



5. A settlement conference may be scheduled at any time after \_\_\_\_\_
6. A pre-trial conference will be scheduled any time after \_\_\_\_\_
7. A pre-trial memorandum shall be filed \_\_\_\_\_ days following the pre-trial conference.
8. It is expected that the case will be ready for trial \_\_\_\_\_.

BY THE COURT:

\_\_\_\_\_

CERTIFICATE  
PREREQUISITE TO SERVICE OF A SUBPOENA  
PURSUANT TO RULE 4009.22

**FILED** *NO CC*  
*11:43/61*  
**DEC 18 2006** *(S)*

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH

TERM,  
CLEARFIELD

-VS-

CASE NO: 2005-1832 CD

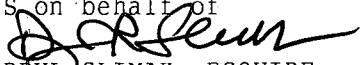
KUSH

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of DARRYL SLIMAK, ESQUIRE  
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: 12/10/2006

MCS on behalf of  
  
DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH

TERM,

-VS-

CASE NO: 2005-1832 CD

KUSH

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

Gateway Area Medical Associate Medical & Billing  
William Schrantz M.D. Medical & Billing

TO: MICHAEL J. WEISS, ESQ, PLAINTIFF COUNSEL

MCS on behalf of DARRYL SLIMAK, 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. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 11/20/2006

MCS on behalf of

  
DARRYL SLIMAK, ESQUIRE

Attorney for DEFENDANT

CC: DARRYL SLIMAK, ESQUIRE

- 20106-1

Any questions regarding this matter, contact

THE MCS GROUP, INC.  
300 LAWYERS BUILDING

PITTSBURGH, PA 15219  
(412) 642-4420

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Gateway Area Medical Associates  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

MCS 300 Lawyers Building, Pittsburgh, Pa 15219  
(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID #                       
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Friday, November 17, 2006  
Seal of the Court

Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

GATEWAY AREA MEDICAL ASSOCIATE  
635 MAPLE AVE #C

DUBOIS, PA 15801

RE: 21069  
ELIZABETH SMITH.

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLING TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: William Francis Schrantz, M.D.  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219  
(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16891  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw *lm*  
Prothonotary/Clerk, Civil Division

DATE: Friday, November 17, 2006  
Seal of the Court

Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

WILLIAM SCHRANTZ M.D.  
18 SPORTSMAN DRIVE  
SUITE 20

CLARION, PA 16214

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLING STATEMENTS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCE

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

## Deputy



# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

GATEWAY AREA MEDICAL ASSOCIATE  
635 MAPLE AVE #C

DUBOIS, PA 15801

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

## BILLING TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: William Francis Schrantz, M.D.  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219  
(Address)

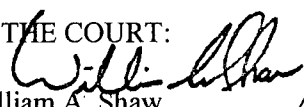
You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing 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: Darryl Slimak, Esq.  
ADDRESS: 811 University Dr  
State College, Pa 16891  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw lm  
Prothonotary/Clerk, Civil Division

DATE: Friday, November 17, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

WILLIAM SCHRANTZ M.D.  
18 SPORTSMAN DRIVE  
SUITE 20

CLARION, PA 16214

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLING STATEMENTS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCE

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

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

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading:  
Certificate of Service

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

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

Counsel for Adverse Party  
***Michael J. Weiss, Esquire***  
Pa. Supreme Court I.D. #26135

**FILED** <sup>NO</sup> <sup>CC</sup>  
JAN 6 9 2007

William A. Shaw  
Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

IN THE MATTER OF:

SMITH

-VS-

KUSH

COURT OF COMMON PLEAS

TERM,

CASE NO: 2005-1832 CD

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

Adagio Health

Medical & Billing

TO: MICHAEL J. WEISS, ESQ, PLAINTIFF COUNSEL  
MCS on behalf of DARRYL SLIMAK, 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. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 12/08/2006

MCS on behalf of

DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

CC: DARRYL SLIMAK, ESQUIRE

- 20106-1  
-

Any questions regarding this matter, contact

THE MCS GROUP, INC.  
300 LAWYERS BUILDING

PITTSBURGH, PA 15219  
(412) 642-4420

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Adagio Health  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219  
(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw *lm*

Prothonotary/Clerk, Civil Division

DATE: Friday, December 08, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

ADAGIO HEALTH  
1064 EAST MAIN ST

CLARION, PA 16214

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

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

DWIGHT SMITH, a minor, by his :  
parent and natural guardians, ELIZABETH : *Medical Professional*  
SMITH and DAVID SMITH, and : *Liability Action*  
ELIZABETH SMITH and DAVID :  
SMITH, as individuals, : JURY TRIAL DEMANDED  
:  
Plaintiffs, : No: 2005 - 1832 - C.D.  
:  
vs. :  
:  
MICHAEL KUSH, M.D., :  
:  
Defendant. :  
:

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Defendants' Notice of Intent to Serve Subpoenas for Production of Documents and Things Directed to Adagio Health in the above-referenced matter was mailed by U.S. First Class Mail, postage paid, this 8<sup>th</sup> day of December, 2006, to the attorneys/parties of record:

Michael J. Weiss, Esquire  
1236 Brace Road Suite B  
Cherry Hill, NJ 08034

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:



Darryl R. Slimak, Esquire  
I.D. No.41695  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Attorneys for Defendants

Dated: 1/8/07



CERTIFICATE  
PREREQUISITE TO SERVICE OF A SUBPOENA  
PURSUANT TO RULE 4009.22

**FILED** *NO CC*  
*m 112:5284*  
**JAN 16 2007**  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH

TERM,  
CLEARFIELD

-VS-

CASE NO: 2005-1832 CD


KUSH

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of DARRYL SLIMAK, ESQUIRE  
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: 01/01/2007

MCS on behalf of  
  
DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

IN THE MATTER OF:

SMITH

-VS-

KUSH

COURT OF COMMON PLEAS

TERM,

CASE NO: 2005-1832 CD


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

Adagio Health

Medical & Billing

TO: MICHAEL J. WEISS, ESQ, PLAINTIFF COUNSEL  
MCS on behalf of DARRYL SLIMAK, 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. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 12/08/2006

MCS on behalf of  
  
DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

CC: DARRYL SLIMAK, ESQUIRE

- 20106-1  
-

Any questions regarding this matter, contact

THE MCS GROUP, INC.  
300 LAWYERS BUILDING

PITTSBURGH, PA 15219  
(412) 642-4420

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Adagio Health  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219  
(Address)

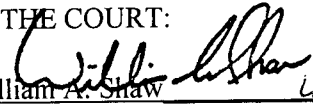
You may deliver or mail legible copies of the documents or produce things requested by  
this subpoena, together with the certificate of compliance, to the party making this request at the  
address listed above. You have the right to seek in advance the reasonable cost of preparing the  
copies or producing 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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw lm  
Prothonotary/Clerk, Civil Division

DATE: Friday, December 08, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

ADAGIO HEALTH  
1064 EAST MAIN ST

CLARION, PA 16214

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES

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\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Adagio Health  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219  
(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw *lm*

Prothonotary/Clerk, Civil Division

DATE: Friday, December 08, 2006  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

ADAGIO HEALTH  
1064 EAST MAIN ST

CLARION, PA 16214

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$100.00 for hospitals, \$50.00 for all other providers.

BILLS TO INCLUDE CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: up to and including the present.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

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

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading:  
Certificate of Service  
for Notice of Deposition

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

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

Counsel for Adverse Party  
***Michael J. Weiss, Esquire***  
Pa. Supreme Court I.D. #26135

**FILED** No CC.  
M/11:44 Lm  
FEB 09 2007

William A. Shaw  
Prothonotary/Clerk of Courts

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**NOTICE OF TAKING ORAL DEPOSITION OF ELIZABETH SMITH**

TO: Michael J. Weiss, Esquire  
1236 Brace Road Suite B  
Cherry Hill, NJ 08034

PLEASE TAKE NOTICE that pursuant to the Pennsylvania Rules of Civil Procedure, the undersigned attorneys for Defendant in the above-captioned matter will take the oral deposition of **Elizabeth Smith**, on **Monday, April 9, 2007**, commencing at **10:00 a.m.**, before a stenographer/Notary Public of MLP Reporting Service of 413 N. Vesper Street, Lock Haven, PA 17745, 814-234-0775, at a Conference Room at the DuBois Regional Hospital West Campus, "Home Health" building, second floor, 100 Hospital Avenue, Dubois, PA 15801

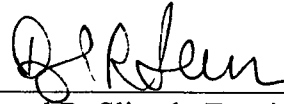
The Deponent is to bring with her any and all photos, notes, diaries, memoranda, calendars, and any other documents or things relating to this case which Deponent has prepared or has in her possession, custody or control.



McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

Dated: 2-8-2007

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



Darryl R. Slimak, Esquire  
I.D. No. 41695  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Attorneys for Defendant  
Michael Kush, M.D.

DRS/pal

cc: Michael J. Weiss, Esquire  
David R. Johnson, Esquire  
MLP Reporting Service

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**NOTICE OF TAKING ORAL DEPOSITION OF DAVID SMITH**

TO: Michael J. Weiss, Esquire  
1236 Brace Road Suite B  
Cherry Hill, NJ 08034

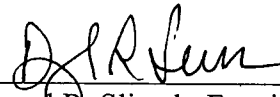
PLEASE TAKE NOTICE that pursuant to the Pennsylvania Rules of Civil Procedure, the undersigned attorneys for Defendant in the above-captioned matter will take the oral deposition of **David Smith, on Monday, April 9, 2007, commencing at 12:00 p.m.,** before a stenographer/Notary Public of MLP Reporting Service of 413 N. Vesper Street, Lock Haven, PA 17745, 814-234-0775, **at a Conference Room at the DuBois Regional Hospital Campus, 100 Hospital Avenue, Dubois, PA 15801**

**The Deponent is to bring with him any and all photos, notes, diaries, memoranda, calendars, and any other documents or things relating to this case which Deponent has prepared or has in his possession, custody or control.**

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

Dated: 2-8-2007

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

  
Darryl R. Slimak, Esquire  
I.D. No. 41695  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Attorneys for Defendant  
Michael Kush, M.D.

DRS/pal

cc: Michael J. Weiss, Esquire  
David R. Johnson, Esquire  
MLP Reporting Service

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	


CERTIFICATE OF SERVICE

I hereby certify that the Notice of Taking Oral Deposition of Elizabeth Smith and David Smith,  
in the above-referenced matter was mailed by regular mail, first class, at the Post Office, State College,  
Pennsylvania, postage prepaid, this 8<sup>th</sup> day of February, 2007, to:

Michael J. Weiss, Esquire  
1236 Brace Road Suite B  
Cherry Hill, NJ 08034

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219-3499

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
Darryl R. Slimak, Esquire  
I.D. No. 41695  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Attorneys for Defendant  
Michael Kush, M.D.

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

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading:  
Certificate of Service  
for Notice of Intent

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

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

Counsel for Adverse Party  
***Michael J. Weiss, Esquire***  
Pa. Supreme Court I.D. #26135

**FILED** <sup>NO CC</sup>  
APR 13 2007  
(5)

William A. Shaw  
Prothonotary/Clerk of Courts

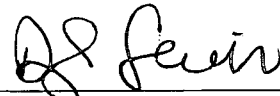
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA - CIVIL DIVISION

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	

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

Defendants intend to serve a subpoena identical to those attached to this notice to Cen  
Clear Child Services, Riverview Intermediate Unit 6 and Children's Hospital in Pittsburgh. You  
have twenty (20) days from the date listed below in which to file of record and serve upon the  
undersigned any objection to the subpoenas. If no objection is made, the subpoena may be  
served.

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

By:   
DARRYL R. SLIMAK  
I.D. No. 41695  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Attorneys for Defendant

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

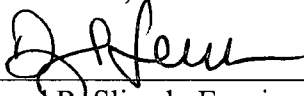
I hereby certify that a true and correct copy of the Defendant's Notice of Intent to Serve Subpoenas for Production of Documents and Things directed to Riverview Intermediate Unit 6, Cen Clear Child Services and Children's Hospital in Pittsburgh, in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 12<sup>th</sup> day of April, 2007, to the attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road Suite B  
Cherry Hill, NJ 08034

David R. Johnson, Esquire  
Thomson, Rhodes & Cowie, P.C.  
1010 Two Chatham Center  
Pittsburgh, PA 15219-3499

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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

  
Darryl R. Slimak, Esquire  
I.D. No. 41695  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Attorneys for Defendant  
Michael Kush, M.D.

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

**FILED**

APR 17 2007

M/12:10/07

William A. Shaw

Prothonotary/Clerk of Courts

no Clerk

copy

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

**Medical Professional  
Liability Action**

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading:  
Certificate of Service  
for Certificate Prerequisite

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

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

Counsel for Adverse Party  
**Michael J. Weiss, Esquire**  
Pa. Supreme Court I.D. #26135



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

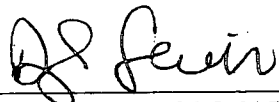
DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	

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

Defendants intend to serve a subpoena identical to those attached to this notice to Cen  
Clear Child Services, Riverview Intermediate Unit 6 and Children's Hospital in Pittsburgh. You  
have twenty (20) days from the date listed below in which to file of record and serve upon the  
undersigned any objection to the subpoenas. If no objection is made, the subpoena may be  
served.

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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

  
DARRYL R. SLIMAK  
I.D. No. 41695  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Attorneys for Defendant

**SUBPOENA ATTACHMENT FOR:**

***CHILDREN'S HOSPITAL IN PITTSBURGH  
3705 FIFTH AVENUE  
PITTSBURGH, PA 15213***

**Records pertaining to:**

**Dwight James Smith DOB: 11/29/03**

***Records/Billing Statements Dated June 2005 to present***

Please provide a copy of all records, office notes of any physician seeing this patient, admission/discharge summaries, operative reports, lab reports, x-ray reports, medication records, reports, notes, correspondence, x-ray reports, test results, consultations, progress notes or other material or information relating to any consultation, examination, medical history, diagnosis or treatment. We would also appreciate all **billing statements depicting charges, payments, adjustment and balances.** We reserve the right to obtain copies of radiology films using this subpoena once we have had an opportunity to review any records or radiology reports that are received in response to this request.

**WILLIAM A. SHAW**  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2010  
Clearfield Co., Clearfield, PA

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

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

*Medical Professional  
Liability Action*

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

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

TO: Children's Hospital of Pittsburgh  
3705 Fifth Avenue  
Pittsburgh, PA 15213

Within twenty (20) days after service of this subpoena, you are ordered by the court to produce the following documents or things: **Complete Records of Dwight James Smith; DOB 11/29/03; also see attachment.**

at: ***McQuaide Blasko Law Offices, 811 University Drive, State College, PA 16801***

You may deliver or mail legible copies of the documents or produce things 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 ordering compelling you to comply with it.

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

NAME: *Darryl R. Slimak, Esquire*  
ADDRESS: *811 University Drive, State College, PA 16801*  
TELEPHONE: *(814) 238-4926*  
SUPREME CT ID#: *41695*  
ATTORNEY FOR: *Defendants*

BY THE COURT:

*William A. Shaw*  
William A. Shaw, Sr., Prothonotary/Clerk  
Civil Division

Dated: 4/13/07

[Seal of the Court]

**WILLIAM A. SHAW**  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2010  
Clearfield Co., Clearfield, PA

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	

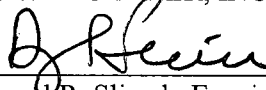
**CERTIFICATE**  
**PREREQUISITE TO SERVICE OF SUBPOENAS**  
**PURSUANT TO RULE 4009.22**

As a prerequisite to service of subpoenas for documents and things pursuant to Rule 4009.22,  
Defendants certify that:

- 1) a notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to the party at least twenty days prior to the date on which the subpoenas are 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 the 20 days have been waived
- 4) the subpoena which will be served is identical to the subpoenas which is attached to the notice of intent to serve the subpoena.

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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

  
Darryl R. Slimak, Esquire  
I.D. No.41695  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Attorneys for Defendant

Dated: \_\_\_\_\_

4/16/07

FILED

MAY 16 2007

m (12:30/12)

William A. Shaw  
Prothonotary/Clerk of Courts

100 No 9/c

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

DWIGHT SMITH, a minor, by his  
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SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading  
***Objection to Plaintiffs'  
"Notice to Produce"***

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

: McQuaide, Blasko, Fleming &  
: Faulkner, Inc.  
: 811 University Drive  
: State College, PA 16801  
: (814) 238-4926  
: Fax: (814) 238-9624  
:  
: Counsel for Adverse Party  
: ***Michael J. Weiss, Esquire***  
: I.D. #26135

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

DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**OBJECTION TO PLAINTIFFS' "NOTICE TO PRODUCE"**

AND NOW comes Defendant, MICHAEL KUSH, M.D., by and through his counsel, McQuaide, Blasko, Fleming & Faulkner, Inc., and objects to Plaintiffs' so-called "Notice to Produce" as follows:

1. Per the document styled "Notice to Produce," purportedly issued pursuant to nonexistent R.4:18-1, Plaintiffs demand Defendant Dr. Kush produce a copy of his employment contract with the DuBois Regional Medical Center as of the date of November 29, 2003.



2. The instant case is a professional medical negligence claim against Defendant Dr. Michael Kush only, filed by minor Plaintiff's parents. The allegations of the claim pertain to purportedly substandard care in the pregnancy and delivery care of the child who developed an Erb's palsy shoulder dystocia nerve injury.

3. DuBois Regional Medical Center is not a defendant in the instant case. Moreover, there are no issues in the case pertaining to Dr. Kush's relationship to DuBois Regional Medical Center, which he acknowledged employed him at the time in question.

4. Plaintiffs have not produced any expert reports or any other evidence or basis to demonstrate the relevance of Dr. Kush's employment contract with the hospital, and none is apparent.

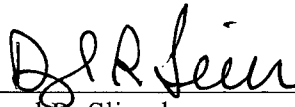
5. In addition, Plaintiffs' request is not recognized under the Pennsylvania Rules of Civil Procedure which has no rule 4:18-1 or procedure entitled "Notice to Produce," as such. Rather, this case follows the Pennsylvania Rules of Civil Procedure, not those of New Jersey where Plaintiffs' counsel demands that the document be produced at.

6. Plaintiffs' request for Dr. Kush's employment contract is not only unlikely to lead to the discovery of admissible evidence, said document contains personal, confidential, and privileged information of Dr. Kush and/or DuBois Regional Medical Center which is not appropriate for discovery. The demand for the employment contract is unreasonable and in bad faith, would cause unreasonable annoyance, and is beyond the scope of discovery authorized by the Pennsylvania Rules of Civil Procedure.

Respectfully submitted,

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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

  
Darryl R. Slimak

Attorneys for Defendant  
MICHAEL KUSH, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: 5-14-07

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

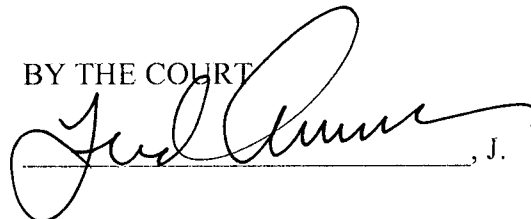
DWIGHT SMITH, a minor, by his :  
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SMITH and DAVID SMITH, and : *Liability Action*  
ELIZABETH SMITH and DAVID :  
SMITH, as individuals, : JURY TRIAL DEMANDED  
:  
Plaintiffs, : No: 2005 - 1832 - C.D.  
:  
VS. :  
:  
MICHAEL KUSH, M.D., :  
:  
Defendant. :

**RULE TO SHOW CAUSE**

AND NOW, this 17 day of May, 2007, the Plaintiffs are directed to show cause, if any they have, why Defendant's Objection to Plaintiffs' "Notice to Produce" should not be granted.

This Rule is returnable for Answer within 20 days and argument is scheduled for the 13th day of June, 2007, at 1:30 P m. in Courtroom 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT

 J.

FILED  
01:48/51  
MAY 18 2007  
2cc  
Atty Slimak  
(6K)

FILED

MAY 18 2007

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 5/18/07

☒ You are responsible for serving all appropriate parties.

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

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

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

DWIGHT SMITH, a minor, by his  
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SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

*Medical Professional  
Liability Action*

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Objection to Plaintiffs' "Notice to Produce" in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 15<sup>th</sup> day of May, 2007 to the attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road Suite B  
Cherry Hill, NJ 08034

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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

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

FILED

MAY 22 2007

2/11:00/5  
William A. Shaw  
Prothonotary/Clerk of Courts  
No 4/c

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

DWIGHT SMITH, a minor, by his  
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Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading  
***Certificate of Service Re  
Service of Rule to Show  
Cause***

Filed on Behalf of Defendant  
Michael Kush, M.D.

Counsel of Record for This  
Party

***Darryl R. Slimak, Esquire***  
Pa. Supreme Court I.D. 41695

: McQuaide, Blasko, Fleming &  
: Faulkner, Inc.  
: 811 University Drive  
: State College, PA 16801  
: (814) 238-4926  
: Fax: (814) 238-9624  
:  
: Counsel for Adverse Party  
: ***Michael J. Weiss, Esquire***  
: I.D. #26135



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

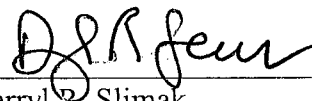
DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
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ELIZABETH SMITH and DAVID	:	
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	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Rule to Show Cause re Defendant's Objection to Plaintiffs' "Notice to Produce" in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 21<sup>st</sup> day of May, 2007, to the attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road- Suite B  
Cherry Hill, NJ 08034

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
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*Medical Professional  
Liability Action*

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

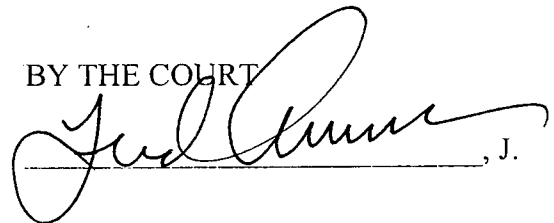
RULE TO SHOW CAUSE

AND NOW, this 17 day of May, 2007, the Plaintiffs are directed to  
show cause, if any they have; why Defendant's Objection to Plaintiffs' "Notice to Produce"  
should not be granted.

This Rule is returnable for Answer within 20 days and argument is scheduled for the  
13<sup>th</sup> day of June, 2007, at 1:30 P m. in Courtroom 1 of the Clearfield County  
Courthouse, Clearfield, Pennsylvania.

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

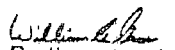
BY THE COURT

 J.

MAY 18 2007

Attest.



  
Prothonotary/  
Clerk of Courts

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

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	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	

**ORDER**

AND NOW, this 13 day of June, 2007, a Rule to Show Cause having been issued by the Court regarding Defendant's Objection to Plaintiffs' "Notice to Produce," and, no Answer having been received from Plaintiffs in opposition to Defendant's Objection and Plaintiffs' counsel's office staff having contacted the Court and Defendant's attorney, Darryl Slimak and advising that Plaintiffs' counsel will not oppose the objection or appear for the scheduled argument on June 13, 2007,

IT IS HEREBY ORDERED, that said argument/hearing is cancelled and Defendant's Objection to Plaintiffs' "Notice to Produce" is SUSTAINED. Defendant need not respond to Plaintiffs' Notice to Produce.

**FILED** 2cc AMM  
0/3:55 cm Slimak  
JUN 13 2007 @

BY THE COURT,

  
FREDRIC J. AMMERMAN, P.J.

William A. Shaw  
Prothonotary/Clerk of Courts

FILED

JUN 19 2007

12:30/4  
William A. Shaw  
Prothonotary/Clerk of Courts  
No. 216

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

DWIGHT SMITH, a minor, by his  
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SMITH and DAVID SMITH, and  
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vs.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading  
***Certificate of Service re  
Judge's Order Sustaining  
Defendant's Objection to  
Plaintiffs' "Notice to  
Produce"***

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

: McQuaide, Blasko, Fleming &  
: Faulkner, Inc.  
: 811 University Drive  
: State College, PA 16801  
: (814) 238-4926  
: Fax: (814) 238-9624  
:  
: Counsel for Adverse Party  
: ***Michael J. Weiss, Esquire***  
: I.D. #26135

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

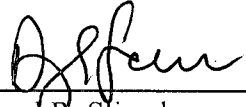
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	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Judge's Order Sustaining Defendant's Objection to Plaintiffs' "Notice to Produce" in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 18<sup>th</sup> day of June, 2007, to the attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road- Suite B  
Cherry Hill, NJ 08034

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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

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



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

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Plaintiffs,

VS.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

**JURY TRIAL DEMANDED**

**No: 2005 - 1832 - C.D.**

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

**JUN 13 2007**

Attest.

*William L. Shaw*  
Prothonotary/  
Clerk of Courts

**ORDER**

AND NOW, this 13 day of June, 2007, a Rule to Show Cause having been issued by the Court regarding Defendant's Objection to Plaintiffs' "Notice to Produce," and, no Answer having been received from Plaintiffs in opposition to Defendant's Objection and Plaintiffs' counsel's office staff having contacted the Court and Defendant's attorney, Darryl Slimak and advising that Plaintiffs' counsel will not oppose the objection or appear for the scheduled argument on June 13, 2007,

IT IS HEREBY ORDERED, that said argument/hearing is cancelled and Defendant's Objection to Plaintiffs' "Notice to Produce" is SUSTAINED. Defendant need not respond to Plaintiffs' Notice to Produce.

BY THE COURT,

*Fredric J. Ammerman*  
FREDRIC J. AMMERMAN, P.J.

FILED  
m1913061 @  
SEP 24 2007 No CC  
William A. Shaw  
Prothonotary/Clerk of Courts

CERTIFICATE  
PREREQUISITE TO SERVICE OF A SUBPOENA  
PURSUANT TO RULE 4009.22

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH, ET AL

TERM,  
CLEARFIELD

-VS-

CASE NO: 2005-1832 CD


KUSH

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of DARRYL SLIMAK, ESQUIRE  
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) The parties have waived the twenty-day notice provided in Rules 4009.21 and 4009.22 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: 09/18/2007

MCS on behalf of  
  
DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

IN THE MATTER OF:

COURT OF COMMON PLEAS

SMITH, ET AL

TERM,

-VS-

CASE NO: 2005-1832 CD

KUSH

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

DUBOIS REGIONAL MEDICAL CENTERMEDICAL  
DUBOIS REGIONAL MEDICAL CENTERHOSPITAL BILL ONLY  
DUBOIS REGIONAL MEDICAL CENTERX-RAY ONLY  
DUBOIS REGIONAL MEDICAL CENTERPATHOLOGY

TO: MICHAEL J. WEISS, ESQ, PLAINTIFF COUNSEL  
DAVID R. JOHNSON, ESQUIRE

MCS on behalf of DARRYL SLIMAK, 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. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 08/29/2007

MCS on behalf of

  
DARRYL SLIMAK, ESQUIRE

Attorney for DEFENDANT

CC: DARRYL SLIMAK, ESQUIRE  
NANCY MCKITTRICK

- 20106-1  
-  
-  
-  
-

Any questions regarding this matter, contact

THE MCS GROUP, INC.  
300 LAWYERS BUILDING

PITTSBURGH, PA 15219  
(412) 642-4420

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of records: Dubois Regional Medical Center  
(Name of Person or Entity)

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

\*\*\*See Attached Rider\*\*\*

MCS 300 Lawyers Building Pittsburgh, P 15219  
(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, PA 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Monday, August 27, 2007  
Seal of the Court

Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

DUBOIS REGIONAL MEDICAL CENTER  
100 HOSPITAL AVENUE

DUBOIS, PA 15801

RE: 21069  
ELIZABETH SMITH

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

MEDICAL RECORDS TO INCLUDE  
REPORTS, ANCILLARY DIAGNOSTIC TESTING, PHYSICIAN ORDERS, PHYSICIAN  
PROGRESS NOTES, NURSING NOTES, ANCILLARY NOTES, LABS, RADIOLOGY  
REPORTS

Any and all records, correspondence, files and memorandums, handwritten  
notes, relating to any examination, consultation care or treatment.

\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: from: 00-00-2002 to 00-00-2007.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Dubois Regional Medical Center  
(Name of Person or Entity)

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State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw lm  
Prothonotary/Clerk, Civil Division

DATE: Monday, August 27, 2007  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

**TO: CUSTODIAN OF RECORDS FOR:**

**DUBOIS REGIONAL MEDICAL CENTER  
100 HOSPITAL AVENUE**

**DUBOIS, PA 15801**

**RE: 21069  
ELIZABETH SMITH**

**Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.**

**BILLING STATEMENTS MUST  
CONTAIN CHARGES, PAYMENTS, ADJUSTMENTS & BALANCES.  
Any and all billing records pertaining to patient.**

**\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\***

**Dates Requested: from: 00-00-2002 to 00-00-2007.**

**Subject : ELIZABETH SMITH**

**218 EUCLID AVE, BROOKVILLE, PA**

**Social Security #: XXX-XX-5524**

**Date of Birth: 10-07-1979**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records, DuBois Regional Medical Center  
(Name of Person or Entity)

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TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Monday, August 27, 2007  
Seal of the Court

Deputy



# EXPLANATION OF REQUIRED RECORDS

**TO: CUSTODIAN OF RECORDS FOR:**

**DUBOIS REGIONAL MEDICAL CENTER  
100 HOSPITAL AVENUE**

**DUBOIS, PA 15801**

**RE: 21069  
ELIZABETH SMITH**

**Prior approval is required for fees in excess of \$150.00 for  
hospitals, \$100.00 for all other providers.**

**Any and all X-Rays pertaining to patient.**

**Dates Requested: from: 00-00-2002 to 00-00-2007.**

**Subject : ELIZABETH SMITH**

**218 EUCLID AVE, BROOKVILLE, PA**

**Social Security #: XXX-XX-5524**

**Date of Birth: 10-07-1979**

Deputy

# EXPLANATION OF REQUIRED RECORDS

**TO: CUSTODIAN OF RECORDS FOR:**

**DUBOIS REGIONAL MEDICAL CENTER  
100 HOSPITAL AVENUE**

**DUBOIS, PA 15801**

**RE: 21069  
ELIZABETH SMITH**

**Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.**

**PATHOLOGY**

**Dates Requested: from: 00-00-2002 to 00-00-2007.**

**Subject : ELIZABETH SMITH**

**218 EUCLID AVE, BROOKVILLE, PA**

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COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of records: Dubois Regional Medical Center  
(Name of Person or Entity)

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SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shinn  
Prothonotary/Clerk, Civil Division

DATE: Monday, August 27, 2007  
Seal of the Court

\_\_\_\_\_  
Deputy

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No. 2005-01832-CD

SUBPOENA TO PRODUCE DOCUMENTS OR THINGS FOR DISCOVERY PURSUANT TO  
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TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw lm  
Prothonotary/Clerk, Civil Division

DATE: Monday, August 27, 2007  
Seal of the Court

\_\_\_\_\_  
Deputy

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TELEPHONE: 412-642-4420  
SUPREME COURT ID #                       
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Monday, August 27, 2007  
Seal of the Court

\_\_\_\_\_  
Deputy



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**Date of Birth: 10-07-1979**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD  
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Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
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No. 2005-01832-CD

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NAME: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw *LM*  
Prothonotary/Clerk, Civil Division

DATE: Monday, August 27, 2007  
Seal of the Court

Deputy

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100 HOSPITAL AVENUE

DUBOIS, PA 15801

RE: 21069  
ELIZABETH SMITH

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## PATHOLOGY

Dates Requested: from: 00-00-2002 to 00-00-2007.

Subject : ELIZABETH SMITH

218 EUCLID AVE, BROOKVILLE, PA

Social Security #: XXX-XX-5524

Date of Birth: 10-07-1979

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, a minor, by his parent  
and natural guardians, ELIZABETH SMITH  
and DAVID SMITH and ELIZABETH  
SMITH and DAVID SMITH as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

CIVIL DIVISION

No. 2005 – 1832 CD

Issue No.

STIPULATION

Filed on behalf of defendant.

Counsel of Record for This Party:

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

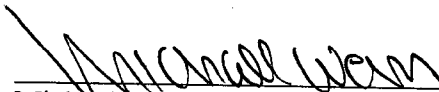
THOMSON, RHODES & COWIE, P.C.  
Firm #720  
1010 Two Chatham Center  
Pittsburgh, PA 15219

(412) 232-3400

**FILED** *NO CC*  
*7/10/30/31*  
OCT 01 2007 *(6X)*  
William A. Shaw  
Prothonotary/Clerk of Courts

STIPULATION

NOW COME plaintiffs, by their attorney, Michael Weiss, and hereby stipulate that they will not claim that any liability arises in this case as a result of any alleged act or omission by Dr. Kush occurring on or before September 7, 2003.

1  
  
\_\_\_\_\_  
Michael Weiss, Esquire  
Attorney for plaintiffs.

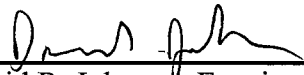
**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within STIPULATION has been served upon the following counsel of record and same placed in the U.S. Mails on this 28th day of Sept, 2007:

Michael Weiss, Esquire  
1236 Brace Road, Suite B  
Cherry Hill, NJ 08034

Darryl R. Slimak, 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 defendant.

FILED

NOV 13 2007

m/12:50/6  
William A. Shaw  
Prothonotary/Clerk of Courts  
N.C.C.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA

DWIGHT SMITH, a minor, by his parent  
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and DAVID SMITH and ELIZABETH  
SMITH and DAVID SMITH as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

CIVIL DIVISION

No. 2005 – 1832 CD

Issue No.

WITHDRAWAL OF APPEARANCE

Filed on behalf of defendant.

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

WITHDRAWAL OF APPEARANCE

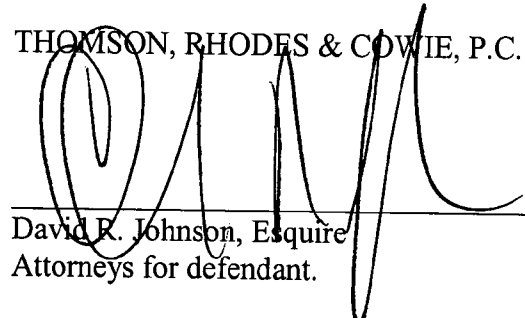
TO: PROTHONOTARY

Kindly withdraw the appearance of David R. Johnson, Esquire and Thomson, Rhodes & Cowie, P.C. on behalf of Michael Kush, M.D., the defendant.

Darryl R. Slimak, Esquire of the firm McQuaide Blasko Schwartz Fleming & Faulkner, Inc. will be representing the defendant.

Respectfully submitted,

THOMSON, RHODES & COWIE, P.C.



David R. Johnson, Esquire  
Attorneys for defendant.



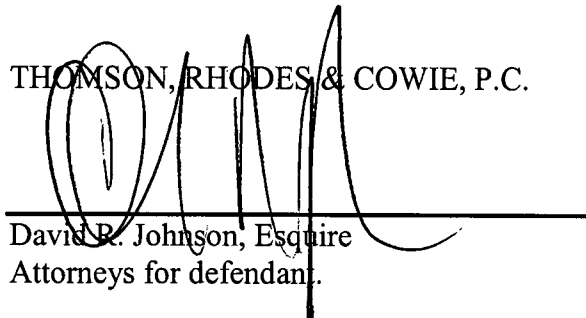
**CERTIFICATION OF SERVICE**

I hereby certify that a true and correct copy of the within WITHDRAWAL OF APPEARANCE has been served upon the following counsel of record and same placed in the U.S. Mails on this 8<sup>th</sup> day of Nov., 2007:

Michael Weiss, Esquire  
1236 Brace Road, Suite B  
Cherry Hill, NJ 08034

Darryl R. Slimak, 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 defendant.

FILED

JUN 16 2008

m/11:45/c

William A. Shaw  
Prothonotary/Clerk of Courts

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

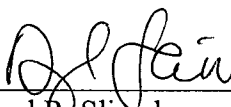
DWIGHT SMITH, a minor, by his	:	
parent and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant's Supplemental Expert  
Witness Interrogatories and Request for Production of Documents Directed to Plaintiffs  
Regarding Daniel Adler, M.D. in the above-captioned matter was mailed by regular mail, postage  
prepaid, at the Post Office, State College, Pennsylvania, on this 13<sup>th</sup> day of June, 2008, to the  
attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road Suite B  
Cherry Hill, NJ 08034

McQUAIDE, BLASKO,  
FLEMING & FAULKNER, INC.

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

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

FILED<sup>RP</sup>

SEP 20 2010

10:00 AM  
William A. Shaw  
Prothonotary/Clerk of Courts

IN THE MATTER OF:

COURT OF COMMON PLEAS

DWIGHT SMITH, ET AL

TERM,

-VS-

CASE NO: 2005-1832

MICHAEL KUSH, M.D.

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

RIVERVIEW INTERMEDIATE UNIT#6	OTHER
PRIMARY CARE ASSOCIATES	MEDICAL & BILLING
EARLY INTERVENTION SERVICES	OTHER
CEN-CLEAR CHILD SERVICES	OTHER

TO: MICHAEL J. WEISS, ESQ, PLAINTIFF COUNSEL

MCS on behalf of DARRYL SLIMAK, 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. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 09/14/2010

MCS on behalf of

DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

CC: DARRYL SLIMAK, ESQUIRE - 20106-1

MICHAEL J. WEISS, ESQ  
LAW OFFICE OF MICHAEL WEISS  
1236 BRACE ROAD  
SUITE B  
CHERRY HILL, NJ 08034

THE MCS GROUP, INC.  
300 LAWYERS BUILDING  
PITTSBURGH, PA 15219  
(412) 642-4420

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Riverview Intermediate Unit #6  
(Name of Person or Entity)

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

\*\*\*See Attached\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219  
(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw *lm*  
Prothonotary/Clerk, Civil Division

DATE: Thursday, September 09, 2010  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

RIVERVIEW INTERMEDIATE UNIT#6  
270 MAYFIELD RD

CLARION, PA 16214

RE: 39212  
DWIGHT SMITH

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

ALL RECORDS IN YOUR POSSESSION PERTAINING TO DWIGHT SMITH FOR DATES  
10/24/2006-PRES

Subject : DWIGHT SMITH  
218 EUCLID AVE, BROOKVILLE, PA 15825  
Social Security #: XXX-XX-0752  
Date of Birth: 11-29-2003

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Primary Care Assoc  
(Name of Person or Entity)

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

\*\*\*See Attached\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219  
(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Thursday, September 09, 2010  
Seal of the Court

Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

PRIMARY CARE ASSOCIATES  
477 ROUTE 28

BROOKVILLE, PA 15825

RE: 39212  
DWIGHT SMITH

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

TO INCLUDE CHARGES, PAYMENT, ADJUSTMENTS, BALANCES & PAYORS

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: from: 02-20-2007 to the present.

Subject : DWIGHT SMITH

218 EUCLID AVE, BROOKVILLE, PA 15825

Social Security #: XXX-XX-0752

Date of Birth: 11-29-2003



Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

EARLY INTERVENTION SERVICES  
94 HOSPITAL ST

RIDGEWAY, PA 15853

RE: 39212  
DWIGHT SMITH

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

ALL RECORDS IN YOUR POSSESSION PERTAINING TO DWIGHT SMITH FOR THE DATES 1/14/2005-PRES

Subject : DWIGHT SMITH  
218 EUCLID AVE, BROOKVILLE, PA 15825  
Social Security #: XXX-XX-0752  
Date of Birth: 11-29-2003



# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

CEN-CLEAR CHILD SERVICES  
493 SOUTH HIGHLAND ST

DUBOIS, PA 15801

RE: 39212  
DWIGHT SMITH

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

ALL RECORDS IN YOUR POSSESSION PERTAINING TO DWIGHT SMITH FOR THE DATES 1/21/2004-PRES. TO INCLUDE BILLING RECORDS FOR THESE DATES INCLUDING CHARGES, PAYMENTS, ADJUSTMENTS, BALANCES & PAYORS

Subject : DWIGHT SMITH  
218 EUCLID AVE, BROOKVILLE, PA 15825  
Social Security #: XXX-XX-0752  
Date of Birth: 11-29-2003

09/14/2010 08:02 FAX

002/011



300 Lawyers Building, Pittsburgh, Pennsylvania 15219  
(412) 642-4420 Fax Number: (412) 642-9088

**URGENT!!!!****URGENT!!!!****URGENT!!!!**

SEPTEMBER 14, 2010

DWIGHT SMITH  
DWIGHT SMITH, ET AL VS MICHAEL RUSH, M.D.

MQUADE, HASKO, ET AL  
DARREL SLIMAK, REQUIRE - ( ) -

We have been requested by the above-mentioned counsel to obtain material on an expedited basis from the below listed custodians. In order to comply with this request we must have your signature indicating that you waive the twenty-day notice period provided in Rules 4009.21 and 4009.22. Please fax this form to us immediately at (412) 642-9088 with your signature so that we may comply with this request.

Your cooperation would be greatly appreciated.

Sincerely,

LISA RUKAS

Custodians:

RIVERVIEW INTERMEDIATE UNIT#6 - OTHER  
BRIMFY CARE ASSOCIATES - MEDICAL & BILLING  
EARLY INTERVENTION SERVICES - OTHER  
CEN-CLEAR CHILD SERVICES - OTHER

Counsel:

MICHAEL J. WEISS, ESQ (856) 428-5303

I agree to waive waiting period ☒ Date: 9/15/10

Copies: Yes \_\_\_ No ☒ I agree to pay the invoice provided with the documents

Review Documents: Yes \_\_\_ No \_\_\_ Advise of Cost: \_\_\_\_\_

I do not agree to waive rule: \_\_\_\_\_ Date: \_\_\_\_\_

Billing Info: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA

PURSUANT TO RULE 4009.22

FILED

SEP 29 2010

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE MATTER OF:

COURT OF COMMON PLEAS

DWIGHT SMITH, ET AL

TERM,

CLEARFIELD

-VS-

CASE NO: 2005-1832

MICHAEL KUSH, M.D.

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of DARRYL SLIMAK, ESQUIRE  
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) The parties have waived the twenty-day notice provided in Rules 4009.21 and 4009.22 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: 10/04/2010

MCS on behalf of

Darryl Slimak  
DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

N THE MATTER OF:

COURT OF COMMON PLEAS

DWIGHT SMITH, ET AL

TERM,

-VS-

CASE NO: 2005-1832

MICHAEL KUSH, M.D.

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

RIVERVIEW INTERMEDIATE UNIT#6	OTHER
PRIMARY CARE ASSOCIATES	MEDICAL & BILLING
EARLY INTERVENTION SERVICES	OTHER
CEN-CLEAR CHILD SERVICES	OTHER

TO: MICHAEL J. WEISS, ESQ, PLAINTIFF COUNSEL

MCS on behalf of DARRYL SLIMAK, 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. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 09/14/2010

MCS on behalf of

DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

CC: DARRYL SLIMAK, ESQUIRE - 20106-1

MICHAEL J. WEISS, ESQ  
LAW OFFICE OF MICHAEL WEISS  
1236 BRACE ROAD  
SUITE B  
CHERRY HILL, NJ 08034

THE MCS GROUP, INC.  
300 LAWYERS BUILDING  
PITTSBURGH, PA 15219  
(412) 642-4420





# EXPLANATION OF REQUIRED RECORDS

**TO: CUSTODIAN OF RECORDS FOR:**

RIVERVIEW INTERMEDIATE UNIT#6  
270 MAYFIELD RD

CLARION, PA 16214

**RE: 39212**  
**DWIGHT SMITH**

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

ALL RECORDS IN YOUR POSSESSION PERTAINING TO DWIGHT SMITH FOR DATES 10/24/2006-PRES

**Subject : DWIGHT SMITH**  
**218 EUCLID AVE, BROOKVILLE, PA 15825**  
**Social Security #: XXX-XX-0752**  
**Date of Birth: 11-29-2003**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Primary Care Assoc  
(Name of Person or Entity)

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

\*\*\*See Attached\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219  
(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Thursday, September 09, 2010  
Seal of the Court

Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

PRIMARY CARE ASSOCIATES  
477 ROUTE 28

BROOKVILLE, PA 15825

RE: 39212  
DWIGHT SMITH

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

TO INCLUDE CHARGES, PAYMENT, ADJUSTMENTS, BALANCES & PAYORS

Any and all records, correspondence, files and memorandums, handwritten notes, billing and payment records, relating to any examination, consultation, care or treatment. \*\*\*\*TO INCLUDE PATIENT ID SHEET\*\*\*\*  
\*CERTIFICATION OF RECORDS MUST BE SIGNED AND RETURNED\*

Dates Requested: from: 02-20-2007 to the present.

Subject : DWIGHT SMITH

218 EUCLID AVE, BROOKVILLE, PA 15825

Social Security #: XXX-XX-0752

Date of Birth: 11-29-2003

Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

EARLY INTERVENTION SERVICES  
94 HOSPITAL ST

RIDGEWAY, PA 15853

RE: 39212  
DWIGHT SMITH

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

ALL RECORDS IN YOUR POSSESSION PERTAINING TO DWIGHT SMITH FOR THE DATES 1/14/2005-PRES

Subject : DWIGHT SMITH  
218 EUCLID AVE, BROOKVILLE, PA 15825  
Social Security #: XXX-XX-0752  
Date of Birth: 11-29-2003

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Cen Clear Child Services  
(Name of Person or Entity)

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

\*\*\*See Attached\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219  
(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Thursday, September 09, 2010  
Seal of the Court

\_\_\_\_\_  
Deputy

# EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

CEN-CLEAR CHILD SERVICES  
493 SOUTH HIGHLAND ST

DUBOIS, PA 15801

RE: 39212  
DWIGHT SMITH

Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.

ALL RECORDS IN YOUR POSSESSION PERTAINING TO DWIGHT SMITH FOR THE DATES 1/21/2004-PRES. TO INCLUDE BILLING RECORDS FOR THESE DATES INCLUDING CHARGES, PAYMENTS, ADJUSTMENTS, BALANCES & PAYORS

Subject : DWIGHT SMITH  
218 EUCLID AVE, BROOKVILLE, PA 15825  
Social Security #: XXX-XX-0752  
Date of Birth: 11-29-2003

09/14/2010 08:02 FAX

002/011



300 Lawyers Building, Pittsburgh, Pennsylvania 15219  
(412) 642-4420 Fax Number: (412) 642-9088

**URGENT!!!!****URGENT!!!!****URGENT!!!!**

SEPTEMBER 14, 2010

DWIGHT SMITH  
DWIGHT SMITH, ET AL VS MICHAEL KUH, M.D.

MCQUADE, HASKO, ET AL  
DARRYL SLIMAK, ESQUIRE - ( ) -

We have been requested by the above-mentioned counsel to obtain material on an expedited basis from the below listed custodians. In order to comply with this request we must have your signature indicating that you waive the twenty-day notice period provided in Rules 4009.21 and 4009.22. Please fax this form to us immediately at (412) 642-9088 with your signature so that we may comply with this request.

Your cooperation would be greatly appreciated.

Sincerely,

LISA RUKAS

Custodians:

RIVERVIEW INTERMEDIATE UNIT#6	- OTHER
PRIMARY CARE ASSOCIATES	- MEDICAL & BILLING
EARLY INTERVENTION SERVICES	- OTHER
CEN-CLEAR CHILD SERVICES	- OTHER

Counsel:

MICHAEL J. WEISS, ESQ (856) 428-5303

I agree to waive waiting period ☒ Date: 9/15/10

Copies: Yes ☐ No ☒ I agree to pay the invoice provided with the documents

Review Documents: Yes ☐ No ☐ Advise of Cost: \_\_\_\_\_

I do not agree to waive rule: \_\_\_\_\_ Date: \_\_\_\_\_

Billing Info: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA

PURSUANT TO RULE 4009.22

IN THE MATTER OF:

COURT OF COMMON PLEAS

DWIGHT SMITH, ET AL

TERM,  
CLEARFIELD

-VS-

CASE NO: 2005-1832

MICHAEL KUSH, M.D.

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of DARRYL SLIMAK, ESQUIRE  
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.

MCS on behalf of

DATE: 12/12/2010

/s/ Darryl Slimak, Esquire  
DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

FILED No.  
MT:3230 CC  
DEC 20 2010

William A. Shaw  
Prothonotary/Clerk of Courts

MCS # 39212-L05  
DE11

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

IN THE MATTER OF:

COURT OF COMMON PLEAS

DWIGHT SMITH, ET AL

TERM,

-VS-

CASE NO: 2005-1832

MICHAEL KUSH, M.D.

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

CLEARFIELD COUNTY MENTAL OTHER

TO: MICHAEL J. WEISS, ESQ, PLAINTIFF COUNSEL

MCS on behalf of DARRYL SLIMAK, 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. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 11/22/2010

MCS on behalf of

DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

CC: DARRYL SLIMAK, ESQUIRE - 20106-1

MICHAEL J. WEISS, ESQ  
LAW OFFICE OF MICHAEL WEISS  
1236 BRACE ROAD  
SUITE B  
CHERRY HILL, NJ 08034

THE MCS GROUP, INC.  
300 LAWYERS BUILDING  
PITTSBURGH, PA 15219  
(412) 642-4420

MCS # 39212-C01

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

\*

Vs.

\*

No. 2005-01832-CD

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

\*

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

TO: Custodian of Records: Clearfield County Mental Health & Retardation  
(Name of Person or Entity)

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

\*\*\*See Attached\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219

(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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:



William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Monday, November 15, 2010

Seal of the Court

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan, 2014  
Clearfield Co., Clearfield, PA

## EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

CLEARFIELD COUNTY MENTAL  
HEALTH & RETARDATION  
PO BOX 268

DUBOIS, PA 15801

RE: MCS # 39212-L05  
DWIGHT SMITH  
218 EUCLID AVE  
BROOKVILLE, PA 15825  
Social Security #: XXX-XX-0752  
Date of Birth: 11-29-2003

Entire medical file from 01-14-2005 to the present, including but not limited to any and all records, correspondence to and from the consulting and treating physicians. Include all files, memoranda, handwritten notes, history, physical reports, and all prescription/medication records. Include all and all such items as may be stored in a computer database or otherwise in electronic form.

ALL RECORDS IN YOUR POSSESSION PERTAINING TO DWIGHT SMITH  
FROM 1/14/2005-PRES

**Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.**

MCS # 39212-L05  
SU11

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Clearfield County Mental Health & Retardation  
(Name of Person or Entity)

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

\*\*\*See Attached\*\*\*

MCS 300 Lawyers Building Pittsburgh, Pa 15219  
(Address)

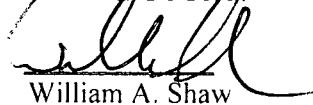
You may deliver or mail legible copies of the documents or produce things requested by this  
subpoena, together with the certificate of compliance, to the party making this request at the address listed  
above. You have the right to seek in advance the reasonable cost of preparing the copies or producing  
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: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, Pa 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

  
William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Monday, November 15, 2010

Seal of the Court

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan, 2014  
Clearfield Co., Clearfield, PA

## EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

CLEARFIELD COUNTY MENTAL  
HEALTH & RETARDATION  
PO BOX 268

DUBOIS, PA 15801

RE: MCS # 39212-L05

DWIGHT SMITH

218 EUCLID AVE

BROOKVILLE, PA 15825

Social Security #: XXX-XX-0752

Date of Birth: 11-29-2003

Entire medical file from 01-14-2005 to the present, including but not limited to any and all records, correspondence to and from the consulting and treating physicians. Include all files, memoranda, handwritten notes, history, physical reports, and all prescription/medication records. Include all and all such items as may be stored in a computer database or otherwise in electronic form.

ALL RECORDS IN YOUR POSSESSION PERTAINING TO DWIGHT SMITH  
FROM 1/14/2005-PRES

**Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.**

MCS # 39212-L05  
SU11



FILED NOCC  
m/11:09am  
S APR 26 2012 OK

William A. Shaw  
Prothonotary/Clerk of Courts

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

DWIGHT SMITH, a minor, by his  
parents and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

***Medical Professional  
Liability Action***

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading  
***Defendant's Motion to Strike  
and Objections to Certificate  
of Readiness AND Motion for  
Pa. R.C.P. No. 1042.41  
Scheduling Order and  
Conference***

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

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



:  
:  
: Counsel for Adverse Party  
: ***Michael J. Weiss, Esquire***  
: I.D. #26135

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

DWIGHT SMITH, a minor, by his	:	
parents and natural guardians, ELIZABETH:	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**DEFENDANT'S MOTION TO STRIKE AND OBJECTIONS TO**  
**CERTIFICATE OF READINESS**

**And**

**MOTION FOR Pa. R.C.P. No. 1042.41 SCHEDULING ORDER AND CONFERENCE**

AND NOW comes Defendant, MICHAEL KUSH, M.D., by and through his counsel,  
McQuaide Blasko, Inc., and objects to the Plaintiffs' Certificate of Readiness on the following  
bases:

1. On or about April 19, 2012 Plaintiffs filed their Civil Trial Listing – Certificate of  
Readiness in the instant matter.

2. Pursuant to Local Rule 212.2, Defendant hereby moves to strike and objects to the Certificate of Readiness but does not object to this case being scheduled for a Status/Case Management Conference.

3. Plaintiffs have not complied with Rule 212.2 as:

- (a) discovery has **not** been completed;
- (b) the case is **not** fully ready for trial;
- (c) an Order of Court has **not** been entered limiting discovery.

4. Plaintiffs have just recently served new expert reports on Defendant which the defense is in the process of having reviewed by its experts. Adequate time is required for the defense experts to consider these new expert reports and respond to same.

5. Plaintiffs' and defense counsel recently discussed this case and Defense counsel made it clear that before the case would be ready for trial, the defense desired to schedule and complete a supplemental deposition of the Plaintiff-parents and conduct an independent medical examination of the child, as the child's condition at issue (nerve damage from the birthing process), and any ongoing effects and/or resolution of same, have not been assessed in several years. In this regard, the Plaintiffs' depositions and counsel's observations of the child's condition last occurred over five years ago on April 9, 2007.

6. Defense counsel has also advised Plaintiffs' counsel that the defense would be seeking updated medical/pediatric records on the child, as well as school and activity/club records, in order to properly assess the child's condition and recovery, and to properly prepare for trial of this matter.

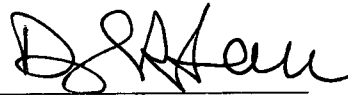
7. The instant case was commenced in 2006 and significant discovery and depositions were completed in/by December 2007, however, Plaintiffs did not produce all of their expert reports until August 3, 2010 (Dr. Michael Kreitzer), April 4, 2012 (Dr. Lawrence Borow), and April 5, 2012 (rebuttal report of Dr. Daniel Adler).

WHEREFORE, Defendant requests that this matter not be placed on a trial list but that the matter instead be scheduled for a Status/Case Management Conference pursuant to Pa. R.C.P. No. 1042.41.

Respectfully submitted,

McQUAIDE BLASKO, INC.

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



Darryl R. Slimak  
Attorney for Defendant  
MICHAEL KUSH, M.D.  
811 University Drive  
State College, PA 16801  
814.238.4926  
Fax; 814.238.9624

Dated: \_\_\_\_\_

4/25/2012

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

DWIGHT SMITH, a minor, by his	:	
parents and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Defendant's Motion to Strike and Objections to Certificate of Readiness and Motion for Pa. R.C.P. No. 1042.41 Scheduling Order and Conference in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 25<sup>th</sup> day of April, 2012 to the attorney(s)/party(ies) of record:

Michael J. Weiss, Esquire  
1236 Brace Road  
Cherry Hill, NJ 08034

McQUAIDE BLASKO, INC.

By: 

Darryl R. Slimak  
Attorney for Defendant  
MICHAEL KUSH, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

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

DWIGHT SMITH, a minor, by his	:	
parents and natural guardians, ELIZABETH :	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2012, upon  
consideration of Defendant's Motion to Strike and Objections to Certificate of  
Readiness and Motion for Pa. R.C.P. No. 1042.41 Scheduling Order and  
Conference, is it hereby Ordered and Decreed that Defendant's Motion is

GRANTED. The Plaintiffs' Certificate of Readiness is hereby STRICKEN and a Status/ Scheduling Conference will be scheduled.

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



FILED

300  
012:11/20/ Atty Shimak  
APR 27 2012  
William A. Shaw  
Prothonotary/Clerk of Courts  
OK

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

DWIGHT SMITH, a minor, by his  
parents and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

*Medical Professional  
Liability Action*

JURY TRIAL DEMANDED

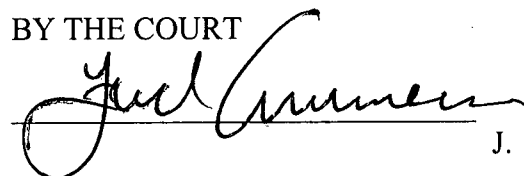
No: 2005 - 1832 - C.D.

RULE TO SHOW CAUSE

AND NOW, this 27 day of April, 2012, the Plaintiffs are  
directed to show cause, if any they have, why Defendant's Motion to Strike and Objections to  
Certificate of Readiness and Motion for Pa. R.C.P. No. 1042.41 Scheduling Order and  
Conference should not be granted.

This Rule is returnable for Answer within 20 days and argument is scheduled for the  
8th day of June, 2012, at 2:00 p m. in Courtroom 1 of the  
Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT

  
J.

FILED

APR 27 2012

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 4/27/12

☒ 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

DWIGHT SMITH, A MINOR, BY HIS )  
PARENT AND NATURAL GUARDIANS, )  
ELIZABETH SMITH AND DAVID )  
SMITH AND ELIZABETH SMITH AND )  
DAVID SMITH, AS INDIVIDUALS )

Plaintiffs, )

v. )

MICHAEL KUSH, M. D. )

Defendants )

CIVIL DIVISION

No. 2005-1832 CD

Civil Action

**PRAECIPE TO WITHDRAW  
CERTIFICATE OF READINESS  
AND SCHEDULE A STATUS  
CONFERENCE VIA TELECONFERENCE**

TO THE PROTHONOTARY:

Kindly withdraw the Certificate of Readiness filed in the above matter on April 23, 2012.

Please further schedule a status conference via teleconference in the above-captioned matter on \_\_\_\_\_, 2012 at \_\_\_\_\_ m.

This will also confirm that the hearing presently scheduled for June 8, 2012 at 2:00 p.m. is cancelled.

LAW OFFICES OF MICHAEL J. WEISS

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

MICHAEL J. WEISS, ESQUIRE

Dated: May 8, 2012

**FILED**

MAY 24 2012

William A. Shaw  
Prothonotary/Clerk of Courts

CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA

PURSUANT TO RULE 4009.22

FILED

MAY 25 2012

W/10:35U  
William A. Shaw  
Prothonotary/Clerk of Courts

I came to MCS

IN THE MATTER OF:

COURT OF COMMON PLEAS

DWIGHT SMITH, a minor, by his parents,  
ELIZABETH SMITH & DAVID SMITH

TERM,  
CLEARFIELD

-VS-

CASE NO: 2005-1832-C.D.

MICHAEL KUSH, M.D.

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of DARRYL SLIMAK, ESQUIRE  
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: 05/22/2012

MCS on behalf of

/s/ Darryl Slimak, Esquire

DARRYL SLIMAK, ESQUIRE

Attorney for DEFENDANT

MCS # 44168-L01  
DE11

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

IN THE MATTER OF:

COURT OF COMMON PLEAS

DWIGHT SMITH, a minor, by his parents,  
ELIZABETH SMITH & DAVID SMITH  
-VS-

TERM,

CASE NO: 2005-1832-C.D.

MICHAEL KUSH, M.D.

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

PRIMARY CARE ASSOCIATES  
BROOKVILLE AREA

MEDICAL & BILLING  
SCHOLASTIC

TO: MICHAEL J. WEISS, ESQ, PLAINTIFF COUNSEL

MCS on behalf of DARRYL SLIMAK, 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. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 05/02/2012

MCS on behalf of

DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

CC: DARRYL SLIMAK, ESQUIRE

- 7102/20106-1  
-

MICHAEL J. WEISS, ESQ  
LAW OFFICE OF MICHAEL WEISS  
1236 BRACE ROAD  
SUITE B  
CHERRY HILL, NJ 08034

THE MCS GROUP, INC.  
428 FORBES AVENUE  
PITTSBURGH, PA 15219  
(412) 642-4420

MCS # 44168-C01  
DE02

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Primary Care Associates  
(Name of Person or Entity)

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

\*\*see attached\*\*

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. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

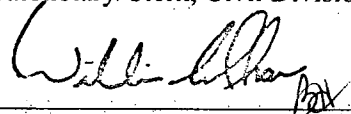
If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

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

NAME: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, PA 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division



Deputy  
WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan, 2014  
Clearfield Co., Clearfield, PA

DATE: Friday, April 27, 2012  
Seal of the Court

## EXPLANATION OF REQUIRED RECORDS

O: CUSTODIAN OF RECORDS FOR:

PRIMARY CARE ASSOCIATES  
77 ROUTE 28

ROOKVILLE, PA 15825

E: MCS # 44168-L01  
DWIGHT JAMES SMITH  
218 EUCLID AVENUE  
BROOKVILLE, PA 15825  
Social Security #: XXX-XX-6521  
Date of Birth: 11-29-2003

Entire medical file from 12-09-2008 to the present, including but not limited to any and all records, correspondence to and from the consulting and treating physicians, files, memoranda, handwritten notes, history and physical reports, medication/prescription records, billing/payment records, including any and all such items as may be stored in a computer database or otherwise in electronic form, relating to any examination, diagnosis or treatment.

TO INCLUDE PHYSICAL THERAPY RECORDS

**Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.**

MCS # 44168-L01  
SU10

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

Michael Kush, M.D.  
Sola Osundeko, M.D.  
DuBois Regional Medical Center  
Defendant(s)

No. 2005-01832-CD

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

TO: Custodian of Records: Brookville Area School District  
(Name of Person or Entity)

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

\*\*see attached\*\*

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. 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.

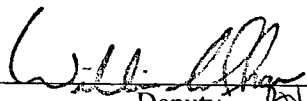
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

NAME: Darryl Slimak, Esq  
ADDRESS: 811 University Dr  
State College, PA 16801  
TELEPHONE: 412-642-4420  
SUPREME COURT ID # \_\_\_\_\_  
ATTORNEY FOR: Defendant

BY THE COURT:

William A. Shaw  
Prothonotary/Clerk, Civil Division

DATE: Friday, April 27, 2012  
Seal of the Court

  
Deputy

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan, 2014  
Clearfield Co., Clearfield, PA



## EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

BROOKVILLE AREA  
SCHOOL DISTRICT  
265 N. BARNETT ST

BROOKVILLE, PA 15825

RE: MCS # 44168-L02  
DWIGHT JAMES SMITH  
218 EUCLID AVENUE  
BROOKVILLE, PA 15825  
Social Security #: XXX-XX-6521  
Date of Birth: 11-29-2003

Entire scholastic file, including but not limited to records, files, evaluations, test and report cards, health records, memoranda, attendance records.

**Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.**

MCS # 44168-L02  
SU10

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


DWIGHT SMITH, a minor, BY HIS PARENT	*	NO. 2005-1832-CD
AND NATURAL GUARDIANS, ELIZABETH SMITH	*	
and DAVID SMITH and ELIZABETH SMITH and	*	
DAVID SMITH, as individuals,	*	
Plaintiffs	*	
	*	
vs.	*	
MICHAEL KUSH, M.D.,	*	
Defendant	*	

**ORDER**

NOW, this 24<sup>th</sup> day of May, 2012, following receipt and review of the Praecipe to Withdraw Certificate of Readiness and Schedule a Status Conference Via Teleconference filed by Michael J. Weiss, Esquire, counsel for the Plaintiffs; it is the ORDER of this Court as follows:

1. As the Plaintiffs have withdrawn the Certificate of Readiness, the argument on the Defendant's Preliminary Objections scheduled for June 8, 2012 is hereby **CANCELED**;
2. The Request for Status Conference is **GRANTED** and the status conference will be held in Chambers on the **20th day of June, 2012 at 2:00 p.m.** at the Clearfield County Courthouse, Clearfield, Pennsylvania; and
3. The request by Attorney Weiss to participate in the status conference via teleconference is **DENIED**.

FILED  
013:0961  
MAY 25 2012  
William A. Shaw  
Prothonotary/Clerk of Courts  
1 CC Attys: Johnson  
Slimak  
Weiss

BY THE COURT  
  
FREDRIC J. AMMERMAN  
President Judge

FILED

MAY 25 2012

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 5/25/12

\_\_\_\_ 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

FILED

JUN 26 2012

William A. Shaw  
Prothonotary/Clerk of Courts  
no 4/c

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

*Medical Professional  
Liability Action*

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading:  
Certificate of Service  
for Notice of Deposition

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

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

Counsel for Adverse Party  
*Michael J. Weiss, Esquire*  
Pa. Supreme Court I.D. #26135

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

DWIGHT SMITH, a minor, by his	:	
parents and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	

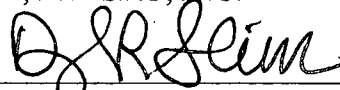
**NOTICE OF ORAL DEPOSITION OF ELIZABETH SMITH**

TO: ELIZABETH SMITH  
C/O Michael J. Weiss, Esquire  
1236 Brace Road- Suite B  
Cherry Hill, NJ 08034

PLEASE TAKE NOTICE that pursuant to the Pennsylvania Rules of Civil Procedure, the undersigned attorneys for the Defendant, Michael J. Kush, M.D., in the above-captioned matter will take the oral deposition of **ELIZABETH SMITH** on **Tuesday, August 7, 2012** commencing at **10:00 a.m.**, before a stenographer/Notary Public of Sargent's Court Reporting, 106 North 2nd Street, Clearfield, PA. 16830. (814) 765-8711.

**The Deponent is to bring with her any and all photographs of Dwight Smith which Deponent has in her possession, custody and/or control.**

McQUAIDE, BLASKO, INC.

By: 

Darryl R. Slimak  
Attorneys for Defendant  
Michael J. Kush, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: June 25, 2012

Cc: Sargent's Court Reporting (via e-mail)

PENNSYLVANIA - CIVIL DIVISION

DWIGHT SMITH, a minor, by his	:	
parents and natural guardians, ELIZABETH	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

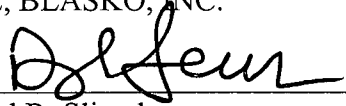
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Notice of Deposition Directed to **Elizabeth Smith**, in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 25<sup>th</sup> day of June, 2012, to the attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road- Suite B  
Cherry Hill, NJ 08034

McQUAIDE, BLASKO, INC.

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

  
Darryl R. Slimak  
Attorneys for Defendant  
Michael J. Kush, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: June 25, 2012  
Cc: Sargent's Court Reporting (via e-mail)

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

FILED

JUN 26 2012  
William A. Shaw  
Prothonotary/Clerk of Courts  
no 41

DWIGHT SMITH, a minor, by his  
parent and natural guardians, ELIZABETH  
SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID  
SMITH, as individuals,

Plaintiffs,

vs.

MICHAEL KUSH, M.D.,

Defendant.

*Medical Professional  
Liability Action*

JURY TRIAL DEMANDED

No: 2005 - 1832 - C.D.

Type of Pleading:  
Certificate of Service  
for Notice of Deposition

Filed on Behalf of Defendant  
Michael Kush, M.D.

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

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

Counsel for Adverse Party  
*Michael J. Weiss, Esquire*  
Pa. Supreme Court I.D. #26135



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

DWIGHT SMITH, a minor, by his	:	
parents and natural guardians, ELIZABETH:	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**NOTICE OF ORAL DEPOSITION OF DAVID SMITH**

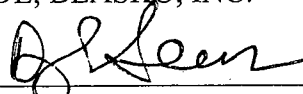
TO: DAVID SMITH  
C/O Michael J. Weiss, Esquire  
1236 Brace Road- Suite B  
Cherry Hill, NJ 08034

PLEASE TAKE NOTICE that pursuant to the Pennsylvania Rules of Civil Procedure, the undersigned attorneys for the Defendant, Michael J. Kush, M.D., in the above-captioned matter will take the oral deposition of **DAVID SMITH** on **Tuesday, August 7, 2012** commencing at **11:00 a.m.**, before a stenographer/Notary Public of Sargent's Court Reporting, 106 North 2nd Street, Clearfield, PA. 16830. (814) 765-8711.

**The Deponent is to bring with him any and all photographs of Dwight Smith which Deponent has in his possession, custody and/or control.**

McQUAIDE, BLASKO, INC.

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



Darryl R. Slimak

Attorneys for Defendant

Michael J. Kush, M.D.

811 University Drive

State College, PA 16801

(814) 238-4926

Fax: (814) 238-9624

Dated: June 25, 2012

Cc: Sargent's Court Reporting (via e-mail)

PENNSYLVANIA - CIVIL DIVISION

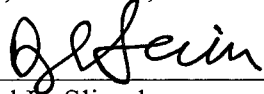
DWIGHT SMITH, a minor, by his	:	
parents and natural guardians, ELIZABETH:	:	<b><i>Medical Professional</i></b>
SMITH and DAVID SMITH, and	:	<b><i>Liability Action</i></b>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	
	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Notice of Deposition Directed to **David Smith**, in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 25<sup>th</sup> day of June, 2012, to the attorney(s) of record:

Michael J. Weiss, Esquire  
1236 Brace Road- Suite B  
Cherry Hill, NJ 08034

McQUAIDE, BLASKO, INC.

By:   
Darryl R. Slimak  
Attorneys for Defendant  
Michael J. Kush, M.D.  
811 University Drive  
State College, PA 16801  
(814) 238-4926  
Fax: (814) 238-9624

Dated: June 25, 2012  
Cc: Sargent's Court Reporting (via e-mail)

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

DWIGHT SMITH, a minor, by and through his  
parents and natural guardians, ELIZABETH SMITH  
and DAVID SMITH; and ELIZABETH SMITH and  
DAVID SMITH, as individuals,  
Plaintiffs

vs.

MICHAEL KUSH, M.D., SOLA OSUNDEKO, M.D. and  
DUBOIS REGIONAL MEDICAL CENTER,  
Defendants

NO. 2005-1832-CD

**FILED** 2cc

OP 9:25 AM  
JUN 27 2012

William A. Shaw  
Prothonotary/Clerk of Courts

Atty: Weiss  
Slimek

OK

**ORDER**


NOW, this 25<sup>th</sup> day of June, 2012, following status 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 September 18, 2012 commencing at 9:00 a.m. in  
Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for December 17, 18, 19, 20 and 21, 2012,  
commencing at 9:00 a.m. each day in Courtroom No. 1 of the Clearfield County  
Courthouse, with Senior Judge David E. Grine, Specially Presiding.
3. The parties shall have completed the discovery process within no more than  
three (3) months from this date.
4. Any further report of any expert who will testify for Plaintiffs shall be provided to  
Defense counsel within no more than thirty (30) days following the completion of  
discovery as set forth in paragraph 3 above. The Defendants shall have no more  
than thirty (30) days thereafter to provide Plaintiffs' counsel with any additional  
expert reports.
5. Any party making objections relative the testimony to be provided by any witness  
in the form of a deposition at the time of trial shall submit said objections to the

Court, in writing, no later than forty-five (45) days prior to the commencement of trial. All objections shall reference specific page and line numbers within the deposition(s) in question along with that party's brief relative same. The opposing party shall file an Answer thereto and submit its brief in opposition to said objections no later than thirty (30) days prior to the commencement of trial.

6. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than forty-five (45) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than thirty (30) days prior to trial.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge

CERTIFICATE

PREREQUISITE TO SERVICE OF A SUBPOENA

PURSUANT TO RULE 4009.22

FILED NO CC  
M 11:34 AM  
JUL 27 2012

William A. Shaw  
Prothonotary/Clerk of Courts

OK

IN THE MATTER OF:

COURT OF COMMON PLEAS

DWIGHT SMITH, a minor, by his parents,  
ELIZABETH SMITH & DAVID SMITH

TERM,  
CLEARFIELD

-VS-

CASE NO: 2005-1832-C.D.

MICHAEL KUSH, M.D.

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22

MCS on behalf of DARRYL SLIMAK, ESQUIRE  
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: 07/17/2012

MCS on behalf of

/s/ Darryl Slimak, Esquire  
DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

MCS # 44168-L03  
DE11

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

IN THE MATTER OF:

COURT OF COMMON PLEAS

DWIGHT SMITH, a minor, by his parents,  
ELIZABETH SMITH & DAVID SMITH  
-VS-

TERM,

CASE NO: 2005-1832-C.D.

MICHAEL KUSH, M.D.

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

CLEARFIELD ELEMENTARY

SCHOLASTIC

TO: MICHAEL J. WEISS, ESQ, PLAINTIFF COUNSEL

MCS on behalf of DARRYL SLIMAK, 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. Complete copies of any reproduced records may be ordered at your expense by completing the attached counsel card and returning same to MCS or by contacting our local MCS office.

DATE: 06/25/2012

MCS on behalf of

DARRYL SLIMAK, ESQUIRE  
Attorney for DEFENDANT

CC: DARRYL SLIMAK, ESQUIRE

- 7102/20106-1  
-

MICHAEL J. WEISS, ESQ  
LAW OFFICE OF MICHAEL WEISS  
1236 BRACE ROAD  
SUITE B  
CHERRY HILL, NJ 08034

THE MCS GROUP, INC.  
428 FORBES AVENUE

PITTSBURGH, PA 15219  
(412) 642-4420

MCS # 44168-C01  
DE02

COMMONWEALTH OF PENNSYLVANIA  
CLEARFIELD COUNTY

Dwight Smith  
Elizabeth Smith  
David Smith  
Plaintiff(s)

Vs.

No. 2005-01832-CD

Michael Kush, M.D.  
Sola Osundeko MD  
DuBois Regional Medical Center  
Defendant(s)

SUBPOENA TO ATTEND AND TESTIFY

TO: Custodian of Records: Clearfield Elementary

1. You are ordered by the Court to come to MCS, 428 Forbes Ave,  
Suite 300, Pittsburgh, PA 15219  
(Specify Courtroom or other place)

at \_\_\_\_\_ County, Pennsylvania, on \_\_\_\_\_ at \_\_\_\_\_  
o'clock, \_\_ M., to testify on behalf of \_\_\_\_\_

\_\_\_\_\_ in the above case,  
and to remain until excused.

2. And bring with you the following: \*\*see attached\*\*

in lieu of personal appearance, please mail the  
requested documents

If you fail to attend or to produce the documents or things required by this subpoena, you may be subject to the sanctions authorized by Rule 234.5 of the Pennsylvania Rules of Civil Procedure, including but not limited to costs, attorney fees and imprisonment.

ISSUED BY A PARTY/COUNSEL IN COMPLIANCE WITH PA.R.C.P. No. 234.2(a)

NAME: Darryl Slimak, Esquire

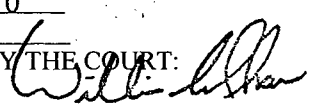
ADDRESS: 811 University Dr

State College, PA 16801

TELEPHONE: 412-642-4420

SUPREME COURT ID # \_\_\_\_\_

BY THE COURT:

  
William A. Shaw (LJ)  
Prothonotary/Clerk, Civil Division

\_\_\_\_\_  
Deputy

DATE: Monday, June 11, 2012  
Seal of the Court

OFFICIAL NOTE: This form of subpoena shall be used whenever a subpoena is issuable, including hearings in connection with depositions and before arbitrators, masters, commissioners, etc. in compliance with PA.R.C.P. No. 234.1. If a subpoena for production of documents, records or things is desired, complete Paragraph 2.



## EXPLANATION OF REQUIRED RECORDS

TO: CUSTODIAN OF RECORDS FOR:

CLEARFIELD ELEMENTARY  
ATTN: GUIDANCE OFFICE  
719 CLEARFIELD RD

FENELTON, PA 16034

RE: MCS # 44168-L03  
DWIGHT JAMES SMITH  
218 EUCLID AVENUE  
BROOKVILLE, PA 15825  
Social Security #: XXX-XX-6521  
Date of Birth: 11-29-2003

Entire scholastic file, including but not limited to records, files, evaluations, test and report cards, health records, memoranda, attendance records.

**Prior approval is required for fees in excess of \$150.00 for hospitals, \$100.00 for all other providers.**

MCS # 44168-L03  
SU10

FILED

OCT 15 2012

William A. Shaw  
Prothonotary/Clerk of Courts

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

DWIGHT SMITH, A MINOR BY  
HIS PARENT AND NATURAL GUARDIANS,  
ELIZABETH SMITH AND DAVID SMITH, ET AL

No. 2005-1832-C.D.

vs.

MICHAEL KUSH, M.D.

ATTORNEY I. D. 26135

PETITION FOR LEAVE TO COMPROMISE MIINOR'S ACTION – PETITION OF DWIGHT  
SMITH

1. The Petitioner is Dwight Smith, born November 29, 2002 who presently resides with his father, David Smith, his parent and natural guardian, at 104 Alaska Road, Brookville, Pennsylvania, 15825.
2. Petitioner's parents are Elizabeth Smith, residing at 596 Raybuck Road, Reynoldsville, Pennsylvania, 15851, and David Smith, residing at 104 Alaska Road, Brookville, Pennsylvania, 15825.
3. The Petitioner's claim arose out of his birth on November 29, 2003 at Dubois Regional Medical Center, which delivery was performed by defendant, Michael Kush, M.D. It is specifically alleged that the delivery was improperly performed by the defendant in a negligent fashion and that such negligence resulted in the Petitioner's permanent injury.
4. Petitioner sustained the following injuries at the time of his delivery performed by the defendant: brachial plexus traction injury involving the 5<sup>th</sup> and 6<sup>th</sup> cervical nerves of the left

brachial plexus with incomplete recovery with internal rotation contraction of the shoulder.

(Please note that the details of such injury are set forth in the expert reports of Daniel Adler, M.D., a pediatric neurologist, which reports are dated October 17, 2007 and August 1, 2012, and attached hereto as Exhibit 1 ).

5. The settlement proposal. A settlement has been proposed on behalf of the defendant in the amount of \$325,000.00.

6. No other persons sustained injury in the delivery as described and the settlement is allocated exclusively for the benefit of the Petitioner.

7. All applicable medical costs have been paid by insurance.

8. The Pennsylvania Professional Liability Joint Underwriting Association ("PAJUA"), on behalf of its insured, shall arrange for the following future guaranteed payments (the "Periodic Payments"), to be made to Dwight Smith, under the following terms:

\$25,000, payable annually, guaranteed for 4 years, beginning on 11/29/2021, with the last guaranteed payment on 11/29/2024;

A guaranteed lump sum payment of \$30,000.00 payable on 11/29/2027;

A guaranteed lump sum payment of \$40,000.00, payable on 11/29/2030;

A guaranteed lump sum payment of \$56,622.39, payable on 11/29/2033.

The cost of the annuity to fund the Periodic Payments is \$150,000.00, an amount which PAJUA will pay to John Hancock Assignment Company.

The aforementioned Periodic Payments stated as guaranteed shall be paid whether or not Dwight Smith is alive. In the event that Dwight Smith dies at any time prior to the receipt of all Periodic Payments described as guaranteed, the remaining guaranteed payments shall be paid to his Estate, or to any such person(s) he may so designate on or after attaining his age of majority.

The said Periodic Payments constitute damages on account of personal injury or sickness in a case involving physical injury or physical sickness within the meaning of Sections 104(a)(2) and 130(c) of the Internal Revenue Code of 1986, as amended.

PAJUA shall assign, and John Hancock Assignment Company shall assume and accept, all of PAJUA's liability to make the aforementioned Periodic Payments by a "qualified assignment" within the meaning of and subject to the conditions of Section 130(c) of the Internal Revenue Code of 1986 as amended. PAJUA shall be released from all liability for the Periodic Payments.

John Hancock Assignment Company shall fund the obligation assumed for the Periodic Payments by the purchase of an annuity from John Hancock Life Insurance Company (U.S.A.) an A.M. Best Company rated A+ insurer licensed to do business in the State of Pennsylvania. (See attached ratings of such company as Exhibit 2.) It is understood that John Hancock Life Insurance Company (U.S.A.) shall guarantee the performance of John Hancock Assignment Company. (See attached form of guarantee to be issued by John Hancock Life Insurance Company (U.S.A.) – Exhibit 3 ).

9. In addition to all the above-mentioned periodic payments, the sum of \$16,358.54 will be available to the Petitioner for deposit in a local bank as selected by the Petitioner's parents and approved by the Court subject to the condition that any such deposit shall be FDIC insured. This sum, unlike the above-listed annuity payments, may be available for an emergent need of the Petitioner upon application to this Court. Said sum will be maintained in an interest bearing account and will be the property of the minor with the balance payable on his 18<sup>th</sup> birthday.

10. As regards healthcare liens, I enclose for the Court's review the letter of The Commonwealth of Pennsylvania, Department of Public Welfare dated August 29, 2011 setting forth the lien in the gross sum of \$4,503.18 (Exhibit 4) . Attached to the letter is an

itemization of the bills paid by such entity. I have had the opportunity to speak to Angela S. Bonner, the author of the above-mentioned letter and she has indicated that the Public Welfare will agree to accept the sum of \$3,002.12 in full and complete satisfaction of its lien.

11. Counsel requests a fee in the amount of \$130,000.00 which represents 40% of the gross settlement. A copy of the retainer agreement executed by the minor's parents providing for a 40% contingency fee is attached hereto as Exhibit 5. Given the complexity of the issues involved in this litigation and the amount of work involved in the representation, I believe that the award of such fee is appropriate.

It should be immediately noted that the matter in question is a complex medical malpractice case. It involves the birth process and a variety of medical issues as to the causation of the brachial plexus palsy suffered by the minor plaintiff. Therefore, this office had to retain an obstetrical expert to testify as to the standard of care applicable to the defendant obstetrician. Unfortunately, such originally retained obstetrician had to be replaced in the middle of litigation due to a change in the circumstances of his personal practice which made his qualification to testify at time of trial questionable. Resultantly, this office had to obtain an additional expert obstetrician. This necessitated reviews by two other obstetricians before an expert was settled upon. This standard of care testimony was further supplemented by the retention of a pediatric neurologist to testify as to the causation of the injury in question and as to the nature and extent of the minor plaintiff's injuries. In trying shoulder dystocia medical malpractice action on prior occasions,, I have learned that use of these experts is essential to the preparation and presentation of the child's case.

My office agreed to handle this matter on a contingency fee basis. As the Court is

aware, there was no promise of any return to my office by way of fee. There was, however, the affirmative obligation to invest a significant sum of money to prepare the case for trial. Resultantly, the Petition also seeks reimbursement of the costs expended in the handling of this matter in the sum of \$25,639.34 (Exhibit 6 )

My office does not maintain contemporaneous time records in the handling of contingency fee litigation. However, I can state that the expenditure of time in this matter was extensive. After the matter was initially investigated, this case was submitted to multiple experts for review. Expert reports were drafted and then reviewed by this office. I attended depositions involving the defendant physician, the minor plaintiff's parents and the delivery room nurse. My office answered interrogatories and propounded and reviewed the defendant's answers to interrogatories. My office reviewed the defendant's expert reports and discussed same in detail with plaintiff's own experts.

In light of all of the above, I believe that the requested fee of \$130,000.00, representing 40% of the gross recovery is justified and appropriate under the circumstances. I am experienced in the handling of such claims and have litigated similar cases in multiple jurisdictions throughout the United States and, therefore, believe that my own experience played a significant role in the obtaining of a favorable result on behalf of the plaintiff. As set forth above, I believe that contingency fee litigation can only be undertaken when plaintiffs' attorneys are encouraged to perform this work which is done without promise of reimbursement for the substantial costs incurred or the earning of fees for the handling of such matters.

12. It is not anticipated that a judicial determination of capacity will be necessary when

the minor attains majority.

13. Non-disclosure of the terms of the proposed settlement is not a condition of such settlement and, therefore, there is no request that the Petition and Decree be sealed.

14. The contingent beneficiary of the annuity payments and the saving deposit account is The Estate of Dwight Smith, a minor. Petitioner, Dwight Smith, a minor, shall have the right to alter the contingent beneficiary designation upon attainment of majority.

WHEREFORE, Petitioner request the minor plaintiff be permitted to enter into the settlement recited above and that the Court enter an Order of Distribution as follows:

A. Requiring defendant issue its settlement draft in the amount of \$150,000.00 payable to John Hancock Assignment Company, for purchase of the structured annuity described herein;

B. To The Law Offices of Michael J. Weiss, reimbursement of costs - \$25,639.34

C. To The Law Offices of Michael J. Weiss, legal fees - \$130,000.00

D. To the Commonwealth of Pennsylvania, Department of Public Welfare the sum of \$3,002.12 for satisfaction of the outstanding medical lien.

E. To Dwight Smith, a minor, the sum of \$16,358.54, which funds shall be deposited in an F.D.I.C. insured savings account in the name of Dwight Smith, a minor.

THE LAW OFFICES OF MICHAEL J. WEISS

BY: \_\_\_\_\_

MICHAEL J. WEISS

## **EXHIBIT 1**



**Daniel Adler, M.D., L.L.C.**  
Specializing in Pediatric Neurology

---

200 Grand Avenue • Englewood, New Jersey 07631  
Tel: 201.894.1551 • Fax: 212.504.8100 • drdanadler@cs.com

October 17, 2007

Michael J. Weiss, Esq.  
1236 Brace Road  
Suite B  
Cherry Hill, NJ 08034

RE: SMITH, DWIGHT

Dear Mr. Weiss:

I have reviewed numerous documents that pertain to the above-named child among which include the following:

1. A Copy of the Complaint;
2. Prenatal Records of Elizabeth Smith from Bart L. Matson, D.O.;
3. Prenatal Records from the office of Michael Kush, M.D.;
4. Outpatient Records from Sola Osundeko, M.D.;
5. Hospital Chart of Elizabeth Smith from the DuBois Regional Medical Center dated October 30, 2003;
6. Hospital Chart of Elizabeth Smith from the DuBois Regional Medical Center dated November 10, 2003;
7. Hospital Chart of Elizabeth Smith from the DuBois Regional Medical Center dated November 17, 2003;
8. Hospital Chart from the DuBois Regional Medical Center for Elizabeth Smith dated November 24, 2003;
9. Hospital Chart from the DuBois Regional Medical Center for Elizabeth Smith dated November 28, 2003;
10. Labor and Delivery Records of Elizabeth Smith from the DuBois Regional Medical Center dated November 29, 2003;
11. Fetal Heart Monitoring Strips;
12. Newborn Records of Dwight James Smith from the DuBois Regional Medical Center dated November 29, 2003;
13. Hospital Chart from the Children's Hospital of Pittsburgh dated July 27, 2004;
14. Outpatient Records from the office of Thomas Sneeringer, D.O.;
15. Outpatient Records from the Apnea Reflux Clinic of the DuBois Regional Medical Center;
16. Outpatient Records from the Division of Pediatric Cardiology of the Children's Hospital of Pittsburgh;

PATIENT: SMITH, DWIGHT

DATE: October 17, 2007

PAGE: Two

17. Outpatient Records from the Medical Neurology Department of the Children's Hospital of Pittsburgh;
18. Outpatient Records from the Physical Therapy Brachial Plexus Clinic of the Children's Hospital of Pittsburgh;
19. Outpatient Records from the Department of Pediatric Neurosurgery of the Children's Hospital of Pittsburgh;
20. Outpatient Records from Cornerstone Physical Therapy;
21. Outpatient Records including Individual Family Service Plan from Cen-Clear Child Services, Inc.;
22. Deposition Transcript of Michael Kush, M.D. dated April 9, 2007;
23. Deposition Transcript of David Smith dated April 9, 2007; and
24. Deposition Transcript of Elizabeth Smith dated April 9, 2007.

Elizabeth Smith was pregnant in 2003. Elizabeth Smith was 24-years-of-age and in her third pregnancy. She was an insulin-dependent diabetic. She used an insulin pump. During her pregnancy, she was followed in an endocrinology clinic. During her pregnancy, Elizabeth Smith had multiple hospitalizations for nonstress tests. On November 29, 2003, Elizabeth Smith was hospitalized when she was at 35-weeks gestation. She was in active labor. The fetal heart monitoring was unremarkable. The labor and delivery records indicate that after delivery of the fetal head, a shoulder dystocia was encountered. The baby weighed 4,621 grams.

The newborn records confirm that there was a shoulder dystocia. Apgar scores are recorded as 3 and 8 at one and five minutes respectively. The baby had grunting respirations. The left arm was characterized as "limp." The fingers did have some movement.

Apart from the problems with his arm, Dwight Smith had a PDA, mild cardiomegaly, and jaundice. He also had mild hypoglycemia. A cranial ultrasound during the newborn hospitalization was unremarkable.

The doctors at the Children's Hospital of Pittsburgh followed Dwight. The members of the pediatric neurology staff and pediatric neurosurgery staff were among those who saw Dwight and noted that he had limited improvement.

When he was 8-months-of-age, Dwight Smith was hospitalized at the Children's Hospital of Pittsburgh. Dr. Adelson took Dwight to the operating room on July 27, 2004 where he performed a left-sided brachial plexus neurolysis. No nerve grafts were required. In his dictated operative report, Dr. Adelson wrote that he found that the anterior scalene muscle was "significantly scarred" and "adhesed to C5, C6 and C7." He noted a neuroma at the level of the suprascapular nerve.

PATIENT: SMITH, DWIGHT  
DATE: October 17, 2007  
PAGE: Three

Apart from his brachial plexus injury, Dwight Smith had a patent ductus arteriosus which closed spontaneously.

Dwight Smith received physical therapy at the Children's Hospital of Pittsburgh. He received therapy from Cornerstone Physical Therapy. He received therapy through Cen-Clear Child Services.

Dr. Kush gave a deposition. He indicated that he supplied downward traction on two occasions. He was unable to quantify how much traction he supplied nor how long he supplied the traction.

David Smith gave a deposition. On page 19 he indicated "when the head came out, I can remember the doctor pulling, trying to get - to help the baby come along basically, and he would turn his head."

Elizabeth Smith gave a deposition. She recalls that Dr. Kush "was pulling the baby." She recalls that Dr. Kush "was pulling the baby." She further indicated that her husband told her that "the doctor had both hands on the baby's head and he was pulling aggressively, forcing the head down and forcing it over to one side and then back to the other side."

I saw Dwight Smith in pediatric neurological consultation on October 17, 2007. His mother brought him to the office. Dwight is 3-years and 11-months-of-age. Mrs. Smith confirmed facts in the medical records that indicate that she was a diabetic and that her baby weighed 10 pounds 3 ounces at his birth. She further confirmed that Dwight's delivery was complicated and afterwards, his left arm was paralyzed.

Lastly, she confirmed that Dwight has had two surgeries. The first was a primary nerve repair procedure and the second a tendon transfer procedure.

Dwight enjoyed normal development. He walked at 14-months-of-age and he spoke in full sentences by the age of 2. He has difficulties with asthma. He has no other significant past medical history.

Dwight receives various therapies through an Early Intervention Plan. He continues to receive physical therapy at school. He has problems with dressing and undressing. He has problems with toileting in that he cannot button and unbutton his pants. He has trouble pulling up a zipper. He has trouble cleaning himself.

PATIENT: SMITH, DWIGHT

DATE: October 17, 2007

PAGE: Four

The general physical examination reveals a pulse of 90 and respirations of 14. The head circumference is 53 cm. There is a horizontally oriented 7 cm scar in the left side of the neck. There is a 5 cm scar under the axilla on the left. There is scapula winging on the left. There is a positive Clarion or trumpet sign on the left at 60 degrees. The shoulder is not dislocated. The heart and lungs are unremarkable.

I took measurements of both upper extremities. The results are in the following chart:

MEASUREMENTS	RIGHT	LEFT
Circumference Upper Arm	20.0 cm	19.0 cm
Circumference Forearm	17.0 cm	16.0 cm
Width-Hand	7.0 cm	7.0 cm
Length	45.0 cm	41.0 cm

I measured passive and active range of motion. I produced the passive movements. Dwight produced the active movements himself. The results are in the following two charts:

Passive Range of Motion	Right Upper Extremity	Left Upper Extremity
Shoulder flexion	180 degrees	170 degrees
Shoulder extension	60 degrees	30 degrees
Shoulder horizontal abduct.	180 degrees	160 degrees
Shoulder external rotation	90 degrees	45 degrees
Shoulder internal rotation	60 degrees	45 degrees
Elbow flexion/extension	150 degrees/0 degrees	150 degrees/0 degrees
Forearm supination	0-180 degrees	0-180 degrees
Forearm pronation	0-180 degrees	0-180 degrees
Wrist extension	0-90 degrees	0-90 degrees
Wrist Flexion	0-90 degrees	0-90 degrees
Finger flexion/extension	Normal	Normal

Active Range of Motion	Right Upper Extremity	Left Upper Extremity
Shoulder flexion	180 degrees	160 degrees
Shoulder extension	60 degrees	10 degrees
Shoulder horizontal abduct.	180 degrees	100 degrees
Shoulder external rotation	90 degrees	10 degrees
Shoulder internal rotation	To T5	Unable
Elbow flexion/extension	150 degrees/0 degrees	150 degrees/20 degrees
Forearm supination	180 degrees	100 degrees

PATIENT: **SMITH, DWIGHT**  
 DATE: October 17, 2007  
 PAGE: Five

Forearm pronation	180 degrees	180 degrees
Wrist extension	75 degrees	60 degrees
Wrist Flexion	75 degrees	75 degrees
Finger flexion/extension	Normal	Normal
Thumb flexion/ext/abd/add	Normal	Normal

The neurological examination revealed a cooperative and friendly boy. His speech and language were normal. There were no cranial nerve abnormalities. There is no Horner syndrome. There are no reflexes in the left arm. Reflexes in the right arm are 1+. Reflexes in the legs are 2+. Dwight has a normal gait. There is no incoordination.

Manual muscle strength testing was performed. The results are in the following chart:

Muscle Strength	Right Side	Left Side
Shoulder flexion	5/5	5/5
Shoulder extension	5/5	4/5
Shoulder horizontal abduct.	5/5	4/5
Shoulder external rotation	5/5	4/5
Shoulder internal rotation	5/5	5/5
Elbow flexion	5/5	5/5
Elbow extension	5/5	5/5
Forearm supination	5/5	4/5
Forearm pronation	5/5	5/5
Wrist flexion/ext.	5/5	5/5
Finger flexion	5/5	5/5
Finger extension	5/5	5/5
Thumb abduction/adduction	5/5	5/5

Manual muscle strength testing measurements are based on a scale of 5. 5/5 is a measure of normal strength and resistance. 4/5 is a measure of reduced strength and resistance. 3/5 is a measure of movement only against gravity and the child cannot offer any resistance. 2/5 is a movement that is only possible in a perpendicular to gravity with no resistance. 1/5 is a flicker of movement. 0/5 is no movement of any kind.

- CLINICAL IMPRESSION:**
1. Brachial plexus traction injury involving the 5<sup>th</sup> and 6<sup>th</sup> cervical nerves of the left brachial plexus with incomplete recovery.
  2. Internal rotation contracture of the shoulder.
  3. Status post primary nerve repair.
  4. Status post tendon transfer and release surgery.

PATIENT: SMITH, DWIGHT  
DATE: October 17, 2007  
PAGE: Six

**FORMULATION:** Today's examination demonstrates a pattern of weakness that indicates that the fifth and sixth cervical nerves of the brachial plexus have been injured. These neurological disabilities are permanent.

Operative findings indicate that there has been tearing of the nerves of the brachial plexus. During a vaginal delivery, this type of injury can only be caused by excessive traction on the nerves of the brachial plexus together with significant lateral movement of the head.

Sufficient lateral movement of the head and traction to cause permanent brachial plexus injury does not occur on an intrauterine basis (absent certain abnormalities none of which are defined here by the medical records). Such traction and lateral deviation of the head to cause this permanent injury cannot be caused by maternal expulsive forces. Here, only the birth attendant after the head delivered can supply the traction that exceeds the nerves' ability to be stretched and cause them to be torn apart, and ruptured.

The physical and occupational therapies provided to Dwight Smith to date have been appropriate and medically necessary because of the injury to the brachial plexus that he sustained at birth. Physical and occupational therapies will be necessary until his 21<sup>st</sup> year of life. Because of his incomplete recovery, Dwight Smith developed progressive orthopedic consequences of a chronic brachial plexus injury and required surgery. Range of motion testing still documents the presence of an internal rotation contracture. There is also a contracture at the elbow. As a result, additional orthopedic surgery may be required on the shoulder.

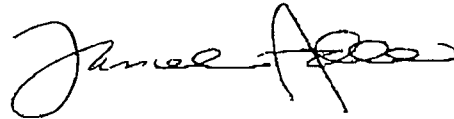
Additional therapy and surgery may allow Dwight Smith to function better in activities of daily living but will not change his employability. Dwight Smith is a young boy whose opportunities in the competitive job market will be restricted by the problems with his arm. Any job that requires heavy lifting and carrying, or elevation of the arms above the head will be impossible. Any job that requires the use of two arms or two hands will be impossible. Bimanual tasks will be difficult.

There is already a discrepancy in the length between the left and right arms. As Dwight Smith grows and matures and enters puberty, this arm length discrepancy will increase and a significant cosmetic deformity will be apparent.

PATIENT: SMITH, DWIGHT  
DATE: October 17, 2007  
PAGE: Seven

These opinions are provided with a reasonable degree of medical certainty.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Daniel Adler", with a stylized, cursive script.

Daniel Adler, M.D.

DA/lct

**Daniel Adler, MD, L.L.C.**  
Specializing in Pediatric Neurology

---

25 Rockwood Place Suite 110 • Englewood, New Jersey 07631  
Tel: 201.894.1551 • Fax: 212.504.8100 • drdanadler@cs.com

August 1, 2012

Michael J. Weiss, Esq.  
1236 Brace Road  
Suite B  
Cherry Hill, NJ 08034

RE: **SMITH, DWIGHT**

Dear Mr. Weiss:

I saw Dwight Smith in pediatric neurological consultation on August 1, 2012. Dwight is 8 years and 10 months of age. His parents provided the interval history. I last saw Dwight in pediatric neurological consultation on October 17, 2007. Since his last visit there have been no new interval health problems or additional surgery.

Dwight does have limitations with the arm such as reaching behind himself to dress with such activities such as putting on a belt. He continues to be followed by Dr. Adelson, his treating neurological surgeon from Children's Hospital of Pittsburgh.

Dwight has not had therapy since he was 3 years-of-age. He is predominately right-handed.

The general physical examination reveals a pulse of 70, a blood pressure of 104/70 and a respiratory rate of 18. There is a scar on the left side of the neck. There is a scar in the axilla on the left. The spine is straight. The left arm is held with the shoulder depressed and internally rotated. The elbow is flexed and the hand is pronated on the left side. There is scapular winging on the left. There is a 90-degree trumpet sign on the left. Dwight cannot touch his stomach with his left hand. He is able to touch his waist with his left hand. He is able to touch the top of his head with his left hand.

I took measurements of both upper extremities. The results are in the following chart:

MEASUREMENTS	LEFT	RIGHT
Circumference Upper Arm	21 cm.	22 cm.
Circumference Forearm	15 cm.	16 cm.
Width-Hand	11 cm.	11 cm.
Length	57 cm.	59 cm.



PATIENT: **SMITH, DWIGHT**  
DATE: August 1, 2012  
PAGE: Two

I measured passive and active range of motion. I produced the passive movements. Dwight produced the active movements himself. The results are in the following two charts:

Passive Range of Motion	Left Upper Extremity	Right Upper Extremity
Shoulder flexion	160 degrees	180 degrees
Shoulder extension	20 degrees	60 degrees
Shoulder horizontal abduct.	150 degrees	180 degrees
Shoulder external rotation	45 degrees	90 degrees
Shoulder internal rotation	60 degrees	60 degrees
Elbow flexion/extension	150 degrees/20 degrees	150 degrees/0 degrees
Forearm supination	0-180 degrees	0-180 degrees
Forearm pronation	0-180 degrees	0-180 degrees
Wrist extension	0-90 degrees	0-90 degrees
Wrist Flexion	0-90 degrees	0-90 degrees
Finger flexion/extension	Normal	Normal

Active Range of Motion	Left Upper Extremity	Right Upper Extremity
Shoulder flexion	150 degrees	180 degrees
Shoulder extension	Unable	60 degrees
Shoulder horizontal abduct.	135 degrees	180 degrees
Shoulder external rotation	0 degrees	90 degrees
Shoulder internal rotation	Unable	To T5
Elbow flexion/extension	150 degrees/30 degrees	150 degrees /0 degrees
Forearm supination	120 degrees	180 degrees
Forearm pronation	180 degrees	180 degrees
Wrist extension	75 degrees	75 degrees
Wrist Flexion	75 degrees	75 degrees
Finger flexion/extension	Normal	Normal
Thumb flexion/ext/abd/add	Normal	Normal

The neurological examination revealed a boy who was friendly and cooperative. I heard him speak in sentences. There is symmetrical movement of the face and tongue. Extraocular movements are full. There is no Horner's syndrome. Muscle tone is normal in all four extremities. There are no reflexes in the left arm. Reflexes in the right arm are 1+. Reflexes in the legs are 1+. Dwight has a normal gait.

PATIENT: **SMITH, DWIGHT**  
DATE: August 1, 2012  
PAGE: Three

Manual muscle strength was performed. The results are in the following chart.

Muscle Strength-Arm	Left Side	Right Side
Shoulder flexion	5/5	5/5
Shoulder extension	Unable	5/5
Shoulder horizontal abduct.	5/5	5/5
Shoulder external rotation	4/5	5/5
Shoulder internal rotation	5/5	5/5
Elbow flexion	5/5	5/5
Elbow extension	5/5	5/5
Forearm supination	4/5	5/5
Forearm pronation	5/5	5/5
Wrist flexion/ext.	5/5	5/5
Finger flexion	5/5	5/5
Finger extension	5/5	5/5
Thumb abduction/adduction	5/5	5/5

Manual muscle strength testing measurements are based on a scale of 5. 5/5 is a measure of normal strength and resistance. 4/5 is a measure of reduced strength and resistance. 3/5 is a measure of movement only against gravity and the child cannot offer any resistance. 2/5 is a movement that is only possible in a perpendicular to gravity with no resistance. 1/5 is a flicker of movement. 0/5 is no movement of any kind.

- CLINICAL IMPRESSION:**
1. Brachial plexus traction injury involving the 5<sup>th</sup> and 6<sup>th</sup> cervical nerves of the left brachial plexus with incomplete recovery.
  2. Internal rotation contracture of the shoulder.
  3. Status post primary nerve repair.
  4. Status post tendon transfer and release surgery.

**FORMULATION:** Dwight Smith continues to be a boy with significant neurological disabilities as a result of a brachial plexus injury involving the left arm. My examination demonstrates a pattern of weakness that indicates the fifth and sixth cervical nerves of the brachial plexus have been injured. These neurological disabilities are permanent.

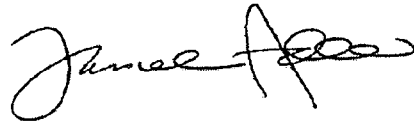
The secondary orthopedic impairments associated with chronic brachial plexus injury remain. The discrepancy in the length between the left and right arms is once again present as well.

Today's examination sustains all of the opinions that I offered to you in my last report.

PATIENT: SMITH, DWIGHT  
DATE: August 1, 2012  
PAGE: Four

These opinions are provided with a reasonable degree of medical probability.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Daniel Adler". The signature is fluid and cursive, with the first name "Daniel" written in a larger, more prominent script than the last name "Adler".

Daniel Adler, M.D.

## **EXHIBIT 2**



Who do you trust with your future?

A market leader since 1862

In a world of financial uncertainty and market volatility, the financial strength and stability of your annuity carrier makes all the difference. John Hancock, together with our parent company, Manulife Financial Corporation (Manulife Financial), is among the highest-rated life insurance companies. But don't just take our word for it. Take the word of A.M. Best, Fitch Ratings, Standard & Poor's, and Moody's—the financial rating agency experts.

#### JOHN HANCOCK—EXCELLENT FINANCIAL STRENGTH

Rating Agency	John Hancock Life Insurance Companies
A.M. Best Company	<b>A+ (2nd of 15 ratings)</b> Superior ability to meet ongoing obligations.
Fitch Ratings	<b>AA- (4th of 21 ratings)</b> Very strong capacity to meet policyholder and contract obligations.
Standard & Poor's	<b>AA- (4th of 21 ratings)</b> Very strong financial security characteristics.
Moody's Investors Service	<b>A1 (5th of 21 ratings)</b> Good financial security.

Financial strength ratings are current as of October 1, 2012, are subject to change, and apply to John Hancock Life Insurance Company (U.S.A.) and John Hancock Life Insurance Company of New York as a measure of the companies' claims-paying ability to honor any guarantees provided by the contract and any applicable optional riders, but not specifically to its products.

#### John Hancock's A.M. Best Financial Size Category: XV (\$2 billion or greater, largest of 15 categories)

The Financial Size Category (FSC) is assigned specifically by A.M. Best, based on adjusted policyholders' surplus. The FSC is intended to provide a convenient indicator of the size of a company in terms of its statutory surplus and related accounts.



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please contact your  
Structured Settlement  
professional.

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John Hancock is one of the nation's most recognized brands. It's a name people have grown to trust to help them meet key financial needs throughout their lives. John Hancock is the U.S. division of Manulife Financial Corporation, a highly esteemed global enterprise based in Toronto, Ontario.

Manulife Financial operates in 22 countries and territories worldwide and ranks as one of the largest publicly traded life insurers in the world.

### A Signature Brand

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2006-09 The American Brands Council lists John Hancock as one of America's greatest brands.

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2007<sup>1</sup> A Chadwick Martin Bailey study reports a John Hancock brand recognition of 98% among the affluent and 94% overall.

---

1999 *The New York Times* placed John Hancock on its list of the "100 Most Powerful Corporate, Media and Product Brands of the 20th Century."

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<sup>1</sup> Total Brand Awareness of John Hancock: Chadwick Martin Bailey 2007.

### Owner and Issuer Information

#### Annuity contract issued by:

John Hancock Life Insurance Company (U.S.A.) (JHUSA) or John Hancock Life Insurance Company of New York (JHNY)

#### For assigned cases, contract owned by:

John Hancock Assignment Company

#### Letter of Guarantee issued by:

John Hancock Life Insurance Company (U.S.A.)\*

\*JHUSA provides the guarantee whether the annuity is issued by JHUSA or JHNY.

The logo for John Hancock, featuring the name in a stylized, cursive script.

John Hancock Life Insurance Company (U.S.A.), Bloomfield Hills, MI 48304 (not licensed in New York)  
John Hancock Life Insurance Company of New York, Valhalla, NY 10595  
[www.jhstructures.com](http://www.jhstructures.com)

### **EXHIBIT 3**

# John Hancock Life Insurance Company (U.S.A.)

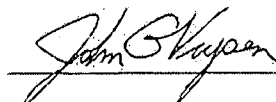
Bloomfield Hills, Michigan



## EVIDENCE OF GUARANTEE

John Hancock Life Insurance Company (U.S.A.) ("John Hancock") guarantees any payment or other obligation required to be made or performed by John Hancock Assignment Company ("JHAC"), a wholly-owned subsidiary of John Hancock, under the terms of any and all qualified assignments (as defined under Section 130 of the United States Internal Revenue Code) that JHAC enters into on or after January 1, 2010 in connection with which JHAC purchases annuities from John Hancock or its subsidiaries.

# SAMPLE



John G. Vrysen  
Senior Vice President & General Manager  
John Hancock Annuities

This Evidence of Guarantee is not an insurance policy.



## **EXHIBIT 4**



August 29, 2011

flu

THE LAW OFFICES OF MICHAEL J WEISS  
MICHAEL J WEISS  
1236 BRACE ROAD - SUITE B  
CHERRY HILL NJ 08034

Re: Dwight Smith (minor)  
CIS #: 260165816  
Incident Date: 11/29/2003

Dear Attorney Weiss:

Pursuant to our previous correspondence, please be advised that our claim against your client's personal injury award is detailed on the attached statement of claim. Social Security Act §1902(a)(7) requires that this recipient information be safeguarded, used by you solely to recover funds that we provided. Disclosure for other purposes is subject to criminal and monetary penalties.

Please contact this office well in advance of settlement so that we can provide you with an updated statement of claim.

In the event that the Department continues to provide your client with medical and/or cash assistance, the amount of our claim will increase accordingly. This statement does not include any other claims which may exist.

If copies of bills are needed, please contact the providers directly. Refer them to the Medical Assistance Bulletin, No. 99-09-03 (Effective Date 03/20/09).

Checks should be made payable to the Department of Public Welfare and sent to my attention at the above address. **We request that with all transmittal of funds, you provide the Department with a copy of the final distribution sheet.**

Please advise us of your position regarding payment of the Department's claim in this matter, as well as the present status of this case.



pennsylvania  
DEPARTMENT OF PUBLIC WELFARE

If you have any further questions, please contact me. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink that reads "Angela S. Bonner".

Angela S. Bonner  
Claims Investigation Agent  
717-705-9701  
717-772-6553 FAX

Enclosure



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE  
BUREAU OF FINANCIAL OPERATIONS  
TPL SECTION - CASUALTY UNIT  
PO BOX - 8486  
HARRISBURG PA 17105-8486

August 29, 2011

STATEMENT OF CLAIM SUMMARY

NAME	SMITH, DWIGHT
ID	260 165 816

MEDICAL	USUAL CHARGES	AMT APPROVED
CLAIMS	11,814.54	4,503.18

CASH	PERIOD COVERED	DOLLAR AMOUNT
CURRENT SOC	--	.00

REIMBURSEMENT TO DPW	4,503.18
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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE

August 29, 2011

STATEMENT OF CLAIM

NAME	SMITH, DWIGHT
ID	260 165 816

CHILDRENS HOSPITAL PGH  
3705 5TH AVENUE

PITTSBURGH PA 15251

DATE OF SERVICE	PAYMENT DATE	ORIGINAL CRN	ADJUSTED CRN	USUAL CHARGES	AMOUNT APPROVED
07/11/05 - 07/11/05 DIAGNOSIS 1 : 9120 DIAGNOSIS 2 : 0 PROC CODE : W0663	08/15/05	20052003527180002	20052003527180002	105.00	40.00
ABRASION SHOULDER/ARM OUTPATIENT HOSPITAL,PHYSICAL THERAPY					
07/11/05 - 07/11/05 DIAGNOSIS 1 : 9120 DIAGNOSIS 2 : 0 PROC CODE : 73030	09/26/05	20052423568880001	20052423568880001	456.00	33.00
ABRASION SHOULDER/ARM RADIOLOGIC EXAMINATION, SHOULDER; COMPLE					
09/08/05 - 09/08/05 DIAGNOSIS 1 : 9534 DIAGNOSIS 2 : 0 PROC CODE : 72141	10/10/05	20052573554390002	20052573554390002	1,174.00	269.00
BRACHIAL PLEXUS INJURY MAGNETIC RESONANCE (EG, PROTON) IMAGING,					
10/21/05 - 10/22/05 DIAGNOSIS 1 : V5849 DIAGNOSIS 2 : 0 PROC CODE : 000000	12/05/05	20053113111110001	20053113111110001	2,244.68	2,918.56
OTHER SPEC AFTERCARE FOLL					
PROVIDER SUB TOTAL	CHILDRENS HOSPITAL PGH 01 100734799 0017 NPI :			3,979.68	3,260.56

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE

August 29, 2011

STATEMENT OF CLAIM

NAME	SMITH, DWIGHT
ID	260 165 816

MCCABE R DRUG  
229 MAIN ST  
  
BROOKVILLE PA 15825

DATE OF SERVICE	PAYMENT DATE	ORIGINAL CRN	ADJUSTED CRN	USUAL CHARGES	AMOUNT APPROVED
07/28/04 - 07/28/04	08/23/04	25042105727160001	25042105727160001	19.98	8.17
DIAGNOSIS 1 : 0					

NDC CODE : 00472141916 ACETAMINOPHEN-CODEINE ELIXIR - NARCOTIC ANALGESICS

PROVIDER SUB TOTAL	MCCABE R DRUG 24 001242857 0001 NPI :	19.98	8.17
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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE

August 29, 2011

STATEMENT OF CLAIM

NAME	SMITH, DWIGHT
ID	260 165 816

WAL-MART PHARMACY 10-1820  
SUITE 1  
HILLTOP PLAZA/RD 8  
KITTANNING PA 16201

DATE OF SERVICE	PAYMENT DATE	ORIGINAL CRN	ADJUSTED CRN	USUAL CHARGES	AMOUNT APPROVED
10/22/05 - 10/22/05	11/21/05	25052955465110001	25052955465110001	10.88	6.24
DIAGNOSIS 1 : 0					

NDC CODE : 50383007916 ACETAMINOPHEN-CODEINE ELIXIR - NARCOTIC ANALGESICS

PROVIDER SUB TOTAL	WAL-MART PHARMACY 10-1820 24 100745531 0060 NPI :	10.88	6.24
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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE

August 29, 2011

STATEMENT OF CLAIM

NAME	SMITH, DWIGHT
ID	260 165 816

COUCE MARTA E  
3705 5TH AVE

PITTSBURGH PA 15213

DATE OF SERVICE	PAYMENT DATE	ORIGINAL CRN	ADJUSTED CRN	USUAL CHARGES	AMOUNT APPROVED
07/27/04 - 07/27/04	01/10/05	10043626251550001	10043626251550001	163.00	25.00
DIAGNOSIS 1 : 3559 MONONEURITIS NOS					
PROC CODE : 88305 SURGICAL PATHOLOGY, GROSS AND MICROSCOPI					

PROVIDER SUB TOTAL	COUCE MARTA E 31 001814149 0001 NPI :	163.00	25.00
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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE

August 29, 2011

STATEMENT OF CLAIM

NAME	SMITH, DWIGHT
ID	260 165 816

UNIVERSITY OF PITTSBURGH PHYSICIANS  
200 LOTHROP ST

PITTSBURGH PA 15213

DATE OF SERVICE	PAYMENT DATE	ORIGINAL CRN	ADJUSTED CRN	USUAL CHARGES	AMOUNT APPROVED
07/11/05 - 07/11/05 DIAGNOSIS 1 : 9534 PROC CODE : 73030	10/03/05	10052646180670001	10052646180670001	70.00	22.00
BRACHIAL PLEXUS INJURY RADIOLOGIC EXAMINATION, SHOULDER; COMPLE					
07/11/05 - 07/11/05 DIAGNOSIS 1 : 7676 PROC CODE : 99213	10/03/05	10052646180680001	10052646180680001	135.00	27.00
BRACH PLEXUS INJ-BIRTH OFFICE/OUTPATIENT VISIT EST					
09/08/05 - 09/08/05 DIAGNOSIS 1 : 71902 PROC CODE : 73218	09/19/05	20052596120970001	20052596120970001	386.00	171.24
JOINT EFFUSION-UP/ARM MAGNETIC RESONANCE IMAGING,UPPER EXTREMI					
10/21/05 - 10/21/05 DIAGNOSIS 1 : 71841 PROC CODE : 23406	10/31/05	20052996135150002	20052996135150002	2,704.00	88.00
JT CONTRACTURE-SHLDER TENOMYOTOMY, SHOULDER AREA; MULTIPLE THR					
10/21/05 - 10/21/05 DIAGNOSIS 1 : 7676 PROC CODE : 64713	10/31/05	20052996135150003	20052996135150003	2,812.00	598.50
BRACH PLEXUS INJ-BIRTH NEUROPLASTY, MAJOR PERIPHERAL NERVE, ARM					
10/21/05 - 10/21/05 DIAGNOSIS 1 : 7676 PROC CODE : 01610	11/07/05	20053056333910001	20053056333910001	1,215.00	241.97
BRACH PLEXUS INJ-BIRTH ANESTH SURGERY OF SHOULDER					
04/19/06 - 04/19/06 DIAGNOSIS 1 : 75550 PROC CODE : 99212	05/01/06	20061116181710001	20061116181710001	93.00	29.25
UPPER LIMB ANOMALY NOS OFFICE/OUTPATIENT VISIT EST					
07/19/06 - 07/19/06 DIAGNOSIS 1 : 75550 PROC CODE : 99212	12/25/06	69063346125160001	69063346125160001	93.00	1.00
UPPER LIMB ANOMALY NOS OFFICE/OUTPATIENT VISIT EST					

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE

August 29, 2011

STATEMENT OF CLAIM

NAME	SMITH, DWIGHT
ID	260 165 816

UNIVERSITY OF PITTSBURGH PHYSICIANS  
200 LOTHROP ST

PITTSBURGH PA 15213

DATE OF SERVICE	PAYMENT DATE	ORIGINAL CRN	ADJUSTED CRN	USUAL CHARGES	AMOUNT APPROVED
11/07/07 - 11/07/07	12/17/07	20073236178390001	20073236178390001	93.00	4.25
DIAGNOSIS 1 : 75550	UPPER LIMB ANOMALY NOS				
PROC CODE : 99212	OFFICE/OUTPATIENT VISIT EST				

PROVIDER SUB TOTAL	UNIVERSITY OF PITTSBURGH PHYSICIANS 31 100727810 0124 NPI : 1548233174	7,601.00	1,183.21
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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF PUBLIC WELFARE

August 29, 2011

STATEMENT OF CLAIM

NAME :	SMITH, DWIGHT
ID :	260 165 816

PRIMARY CARE ASSOC OF WESTERN PENN  
248 ALLEGHENY BLVD

BROOKVILLE PA 15825

DATE OF SERVICE	PAYMENT DATE	ORIGINAL CRN	ADJUSTED CRN	USUAL CHARGES	AMOUNT APPROVED
08/09/04 - 08/09/04	09/27/04	11042656240040001	11042656240040001	40.00	20.00
DIAGNOSIS 1 : 3530 BRACHIAL PLEXUS LESIONS					
PROC CODE : 99212 OFFICE/OUTPATIENT VISIT EST					

PROVIDER SUB TOTAL	PRIMARY CARE ASSOC OF WESTERN PENNA 31 100761043 0004 NPI :	40.00	20.00
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**EXHIBIT 5**

# THE LAW OFFICES OF MICHAEL J. WEISS

*Attorneys at Law*

MICHAEL J. WEISS\*+

1236 Brace Road - Suite B  
Cherry Hill, New Jersey 08034

-----  
Mary Wagner, Paralegal

-----  
(856) 428-1236  
1-888-886-7076

Member of PA Bar\*  
Certified Civil Trial Attorney +

FAX (856)428-5303

## CONTINGENT FEE AGREEMENT

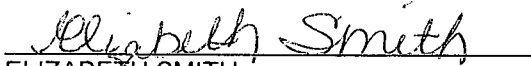
I, the undersigned client, do hereby retain and employ The Law Offices of Michael J. Weiss, as my attorney to represent the interests of my son, Dwight Smith, in a claim for all damages resulting from personal injuries that occurred on or about 11/29/03.

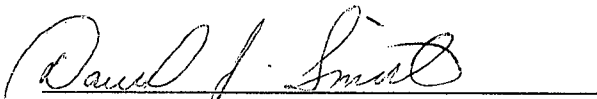
It is agreed and understood that this employment is upon a contingent fee basis, if no recovery is made, I will not be indebted to The Law Offices of Michael J. Weiss for any sum whatsoever as attorney fees.

If there is a recovery of money damages, whether by way of settlement, verdict or judgment, The Law Offices of Michael J. Weiss, shall receive forty percent (40%) of said settlement, verdict or judgment as compensation for its professional services. Should a settlement be obtained whether all or a portion thereof be structured, said compensation shall be the same as above and based upon the actual cost of the total settlement package.

I further agree to pay for all costs incurred that were necessary to process my successful claim such as investigation fees, filing costs, medical reports, discovery costs and other similar expenses related to this case.

I have read this Agreement, understand its contents and have received a copy of this agreement.

  
ELIZABETH SMITH

  
DAVID SMITH

218106

## **EXHIBIT 6**

DEPT. OF THE ARMY  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20315

**TOTAL - \$25,639.34**

CA

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

DWIGHT SMITH, A MINOR, BY HIS  
PARENTS AND NATURAL GUARDIANS  
ELIZABETH SMITH AND DAVID SMITH,  
ET AL

Plaintiffs

vs.

MICHAEL KUSH, M.D.

Defendant

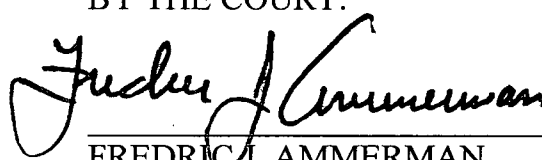
NO. 2005-1832-CD

ORDER

AND NOW, this 17<sup>th</sup> day of October, 2012, upon consideration of  
Plaintiff's Petition for Order Approving Settlement of Minor's Action in the  
above captioned case, it is the ORDER of the Court that a hearing shall be and is  
hereby scheduled for Wednesday, November 21, 2012, at 3:00 o'clock P.M. in  
Courtroom #1, Court of Common Pleas of Clearfield County, Pennsylvania.

One half hour has been reserved for this hearing.

BY THE COURT:

  
FREDRICK J. AMMERMAN  
PRESIDENT JUDGE

**FILED**  
OCT 18 2012  
William A. Shaw  
Prothonotary/Clerk of Courts  
302  
Atty Weiss  
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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

DWIGHT SMITH, a Minor, BY HIS PARENTS  
and NATURAL GUARDIANS ELIZABETH SMITH  
and DAVID SMITH, ET AL

Plaintiffs

vs

MICHAEL KUSH, M.D.

Defendant

\* NO. 05-1832-CD

\*

\*

\*

\*

\*

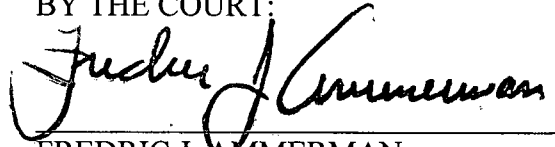
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**ORDER**

NOW, this 22<sup>nd</sup> day of October, 2012, due to a scheduling conflict, it is

the ORDER of this Court that the hearing on the Plaintiffs' Petition for Settlement of  
Minor's Action be and is hereby **rescheduled** from November 21, 2012 at 3:00 p.m. to  
**November 7, 2012 at 11:30 a.m.** in Courtroom No. 1 of the Clearfield County  
Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



FREDRIC J. AMMERMAN

President Judge

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Prothonotary/Clerk of Courts  
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OCT 22 2012

William A Shaw  
Prothonotary/Clerk of Courts

DATE: 10/22/12

☒ 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 ACTION - LAW

DWIGHT SMITH, A MINOR BY  
HIS PARENTS AND NATURAL GUARDIANS  
ELIZABETH SMITH AND DAVID SMITH, ET AL:

: No. 2005-1832-C.D.

vs.

MICHAEL KUSH, M.D.

: ATTORNEY I. D. 26135

**FILED**

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William A. Shaw

Notary Public/Clerk of Court

Case to

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Defn

ORDER APPROVING SETTLEMENT OF MINOR'S  
ACTION AND DISTRIBUTION OF FUNDS INCLUDING  
ALLOWANCE OF COUNSEL FEES AND COSTS

AND NOW, this 7<sup>th</sup> day of November, 2012, upon consideration of the  
within Petition of Michael J. Weiss, Esquire, attorney for plaintiff, Dwight Smith, a minor, by and  
through his parents and natural guardians, Elizabeth Smith and David Smith, and it appearing that  
the best interests of said minor will be served, settlement is approved as follows:

1. Settlement in the gross sum of \$325,000.00 is approved;.
2. The Pennsylvania Professional Liability Joint Underwriting Association ("PAJUA"),  
on behalf of its insured, shall arrange for the following future guaranteed payments (the "Periodic  
Payments"), to be made to Dwight Smith, under the following terms:

\$25,000, payable annually, guaranteed for 4 years, beginning on 11/29/2021, with the last  
guaranteed payment on 11/29/2024;

A guaranteed lump sum payment of \$30,000.00 payable on 11/29/2027;

A guaranteed lump sum payment of \$40,000.00, payable on 11/29/2030;

A guaranteed lump sum payment of \$56,622.39, payable on 11/29/2033.

The cost of the annuity to fund the Periodic Payments is \$150,000.00, an amount which PAJUA will pay to John Hancock Assignment Company.

The aforementioned Periodic Payments stated as guaranteed shall be paid whether or not Dwight Smith is alive. In the event that Dwight Smith dies at any time prior to the receipt of all Periodic Payments described as guaranteed, the remaining guaranteed payments shall be paid to his Estate, or to any such person(s) he may so designate on or after attaining his age of majority.

The said Periodic Payments constitute damages on account of personal injury or sickness in a case involving physical injury or physical sickness within the meaning of Sections 104(a)(2) and 130(c) of the Internal Revenue Code of 1986, as amended.

PAJUA shall assign, and John Hancock Assignment Company shall assume and accept, all of PAJUA's liability to make the aforementioned Periodic Payments by a "qualified assignment" within the meaning of and subject to the conditions of Section 130(c) of the Internal Revenue Code of 1986 as amended. PAJUA shall be released from all liability for the Periodic Payments.

John Hancock Assignment Company shall fund the obligation assumed for the Periodic Payments by the purchase of an annuity from John Hancock Life Insurance Company (U.S.A.) an A.M. Best Company rated A+ insurer licensed to do business in the State of Pennsylvania. It is understood that John Hancock Life Insurance Company (U.S.A.) shall guarantee the performance of John Hancock Assignment Company.


3. From the above-mentioned gross sum, all of the additional amounts shall be paid:

(a) \$16,358.54 to Dwight Smith, a minor, and maintained in an interest-bearing account which is FDIC insured until such minor reaches his 18<sup>th</sup> birthday;

(b) To The Law Offices of Michael J. Weiss, for reimbursement of costs - \$25,639.34;

(d) To the Commonwealth of Pennsylvania, Department of Public Welfare the sum of \$3,002.12 for satisfaction of the medical lien.

4. ORDERED that upon completion of the payment of all of the above amounts, or, with respect to only future periodic payments listed above, the completion of the qualified assignment as described therein, Michael Kush, M.D. shall be discharged from any claim that said minor or guardian had or might have against him by reason of an incident which occurred on November 29, 2003 .

  
J.

# J

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

DWIGHT SMITH, a minor, by his :  
parents and natural guardians, ELIZABETH : *Medical Professional*  
SMITH and DAVID SMITH, and : *Liability Action*  
ELIZABETH SMITH and DAVID :  
SMITH, as individuals, : JURY TRIAL DEMANDED  
:  
Plaintiffs, : No: 2005 - 1832 - C.D.  
:  
vs. :  
:  
MICHAEL KUSH, M.D., :  
:  
Defendant. :  
:

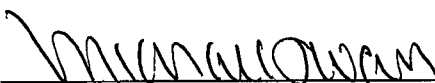
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NOV 30 2012  
William A. Shaw  
Prothonotary/Clerk of Courts  
Copy to CIA

PRAECIPE TO DISCONTINUE ACTION

TO THE PROTHONOTARY

Please mark all claims in the above entitled matter as SETTLED, ENDED, and DISCONTINUED, WITH PREJUDICE, per Court approval obtained November 7, 2012.

Respectfully submitted,

By:   
Michael J. Weiss, Esquire  
Attorney for Plaintiffs

1236 Brace Road Suite B  
Cherry Hill, NJ 08034  
(856) 428-1236  
Fax: (856) 428-5303

Dated: 11/27/12

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

DWIGHT SMITH, a minor, by his	:	
parents and natural guardians, ELIZABETH	:	<i>Medical Professional</i>
SMITH and DAVID SMITH, and	:	<i>Liability Action</i>
ELIZABETH SMITH and DAVID	:	
SMITH, as individuals,	:	JURY TRIAL DEMANDED
	:	
Plaintiffs,	:	No: 2005 - 1832 - C.D.
	:	
vs.	:	
	:	
MICHAEL KUSH, M.D.,	:	
	:	
Defendant.	:	

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the Praeipue to Discontinue Action in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, Cherry Hill, New Jersey on this 27 day of NOV, 2012 to the attorney(s) of record:

Darryl R. Slimak, Esquire  
McQuaide Blasko, Inc.  
811 University Drive  
State College, PA 16801

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

*Michael J. Weiss*  
Michael J. Weiss  
Attorneys for Plaintiff  
1236 Brace Road Suite B  
Cherry Hill, PA 08034  
(856) 428-1236  
Fax: (856) 428-5303

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

DWIGHT SMITH, a minor, by his parents and natural  
guardians, ELIZABETH SMITH and DAVID SMITH, and  
ELIZABETH SMITH and DAVID SMITH as individuals,  
Plaintiffs

vs.

MICHAEL KUSH, M.D.,  
Defendant

NO. 2005-1832-CD

ACC to Weiss  
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**FILED**

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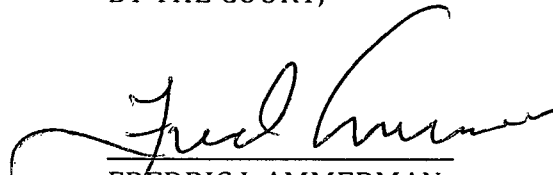
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William A. Shaw KK  
Prothonotary/Clerk of Courts

**ORDER**

NOW, this 15<sup>th</sup> day of March, 2013, upon the Court's review of the record, with the Court noting that on November 30, 2012 a Praecipe for Discontinuance was filed by Attorney Michael J. Weiss, Esquire, the Court considers this case to be settled, dismissed and discontinued. The Prothonotary shall code the case in Full Court as Z-SETTLA.

BY THE COURT,

  
FREDRIC J. AMMERMAN  
President Judge