

Current Judge: Fredric Joseph Ammerman

Clara Louise Marks vs. DuBois Regional Medical Center, George M. Kosco MD, G. Ali Shah MD, DuBois Magnetic Imaging Center

Medical Professional Liability Action

Date		Judge
02/27/2006	New Case Filed.	No Judge
	X Filing: Complaint in Civil Action. Paid by: Jenkins, Elizabeth L. (attorney for Marks, Clara Louise) Receipt number: 1912655 Dated: 02/27/2006 Amount: \$85.00 (Check) 4CC shff.	No Judge
	X Certificate of Merit as to Defendant, DuBois Magnetic Imaging Center, filed by s/ Elizabeth L. Jenkins Esq. 4CC shff.	No Judge
	X Certificate of Merit as to Defendant, G. Ali Shah, MD., filed by s/ Elizabeth L. Jenkins Esq. 4CC shff.	No Judge
	X Certificate of Merit as to Defendant, DuBois Regional Medical Center, filed by s/ Elizabeth L. Jenkins Esq. 4CC shff.	No Judge
	X Certificate of Merit as to Defendant, George M. Kosco, MD., filed by s/ Elizabeth L. Jenkins Esq. 4CC shff.	No Judge
03/13/2006	X Praeipce for Appearance, filed. Enter my Appearance on behalf of Defendants, DuBois Regional Medical Center and DuBois Magnetic Imaging Center, filed by s/ John L. McIntyre Esq. NO CC.	No Judge
03/16/2006	X Praeipce For Entry of Appearance, filed. Please enter my appearance on behalf of defendant, George M. Kosco, MD, only in the above captioned matter, filed by s/ Tracey G. Benson Esq. No CC.	No Judge
03/24/2006	X Preliminary Objections of Defendant George M. Kosco, M.D., filed by s/ Tracey G. Benson, Esquire. No CC	No Judge
03/27/2006	X Preliminary Objections of Defendant G. Ali Shah, M.D. filed by s/ Mary Lou Maierhofer, Esquire. No CC	No Judge
	X Praeipce For Entry of Appearance, filed. Please enter the Appearance of Mary Lou Maierhofer, Esquire, of Meyer Darragh Buckler Bebenek & Eck P.L.L.C., as counsel of Record on behalf of Defendant, G. Ali Shah M.D., in the above-captioned matter, filed by s/ Mary Lou Maierhofer Esq. No CC.	No Judge
03/28/2006	X Rule To Show Cause, nOW, this 27th day of March, 2006, upon consideration of Def. George M. Kosco, M.D.'s Preliminary Objections to Plaintiff's Complaint, a rule is issued upon the Plaintiffs to Show Cause why said Preliminary Objections should not be granted. This rule is returnable for argument on the 26th day of April, 2006 at 9:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 1CC to Atty. w/memo	Fredric Joseph Ammerman
03/30/2006	X Rule To Show Cause, NOW, this 28th day of March, 2006, upon consideration of Defendant, G. Ali Shah, M.D.'s Preliminary Objections, it is Ordered that argument shall be heard on the 26th day of April, 2006, at 9:30 a.m. in Courtroom 1. By The Court, /s/ Fredric J. Ammerman, Pres. Judge. 4CC Atty. Maierhofer	Fredric Joseph Ammerman
03/31/2006	X Affidavit of Service filed. That a true and correct copy of Judge Ammerman's March 27, 2006 Rule to Show Cause, scheduling hearing on defendant on Defendant George M. Kosco MD's Preliminary Objections to Plaintiff's Complaint in the above-captioned case was served on March 30, 2006 to Neil R. Rosen Esq., Mary Lou Maierhofer Esq., and John J. McIntyre Esq., filed by s/ Tracey E. Benson Esq. No CC.	Fredric Joseph Ammerman
04/05/2006	X Certificate of Service, on the 4th of April, 2006, served a copy of this Court's March 28, 2006 Rule to Show Cause, by first class mail upon Elizabeth L. Jenkins, Esquire, and John L. McIntyre, Esquire. No CC	Fredric Joseph Ammerman

4-18-06 ~~Shoriff~~ Sheriff return

Date: 04/03/2006

Clearfield County Court of Common Pleas

User: LMILLER

Time: 09:01 AM

Civil Disposition Report

Page 3 of 6

CT COMMON PLEAS,

All Case Types

From 03/27/2006 to 03/31/2006

All Judgment Types

Case	Parties	Filing date	Judgment	Disposition	Disposition Date
2006-00194-CD	Cozy Acres Furniture LLC Defendant Flexsteel Industries, Inc. Plaintiff	03/27/2006	Stipulation/Waiver In favor of: Plaintiff Judgment amount or comment: Judgment in the amount of \$13,679.84	Open	03/27/2006
2006-00449-CD	Button, Charles R. Defendant Commonwealth of Pennsylv Plaintiff	03/27/2006	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$1,159.62	Open	03/27/2006
2006-00451-CD	Aughenbaugh, Dwight Defendant Commonwealth of Pennsylv Plaintiff	03/27/2006	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$1,575.40	Open	03/27/2006
2006-00452-CD	Ball, Delbert A. Defendant Ball, Marcella J. Defendant Commonwealth of Pennsylv Plaintiff	03/27/2006	Commonwealth Lien In favor of: Plaintiff Judgment amount or comment: \$4,576.36	Open	03/27/2006
2006-00463-CD	Depew, Jill Defendant Treasure Lake Property Ow Plaintiff	03/28/2006	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$556.94	Open	03/28/2006
2006-00464-CD	Finley, Kevin J. Defendant Treasure Lake Property Ow Plaintiff	03/28/2006	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$613.90	Open	03/28/2006
2006-00466-CD	Martino, Vincent Defendant Treasure Lake Property Ow Plaintiff	03/28/2006	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$1,641.83	Open	03/28/2006
2006-00467-CD	Mooneyham, Graham B. Defendant Mooneyham, Tarin K. Defendant Treasure Lake Property Ow Plaintiff	03/28/2006	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$2,312.86	Open	03/28/2006
2006-00468-CD	Rudman, Mary Jo R. Defendant Treasure Lake Property Ow Plaintiff	03/28/2006	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$1,063.94	Open	03/28/2006
2006-00469-CD	Shaffer, Kevin Defendant Treasure Lake Property Ow Plaintiff	03/28/2006	DJ Transcript Judgme In favor of: Plaintiff Judgment amount or comment: \$613.50	Open	03/28/2006

FILED
m/11.5/1cm Pd \$85.00 AAAy
4CC to AAAy sh st
FEB 27 2006 (m)

William A. Shaw
Prothonotary

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

CLARA LOUISE MARKS,

Plaintiff,


vs.

DuBOIS REGIONAL MEDICAL CENTER;
GEORGE M. KOSCO, M.D.; G. ALI SHAH,
M.D.; and DuBOIS MAGNETIC IMAGING
CENTER,

Defendants.

TO THE WITHIN-NAMED DEFENDANTS:

**YOU ARE HEREBY NOTIFIED TO FILE A
WRITTEN RESPONSE TO THE ENCLOSED
COMPLAINT WITHIN TWENTY (20) DAYS
FROM SERVICE HEREOF OR A JUDGMENT
MAY BE ENTERED AGAINST YOU.**



Attorneys for Plaintiff

CIVIL ACTION – MEDICAL
PROFESSIONAL LIABILITY ACTION

Case No.: 06-313-CD

Code: 007

COMPLAINT IN CIVIL ACTION

Filed on behalf of PLAINTIFF

Counsel for PLAINTIFF:

NEIL R. ROSEN, ESQUIRE
Pa. I.D. #23619

ELIZABETH L. JENKINS, ESQUIRE
Pa. I.D. #85694

ROSEN LOUIK & PERRY, P.C.
Firm #020

Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
412-281-4200

JURY TRIAL DEMANDED

**COMPLAINT IN A CIVIL ACTION
Medical Professional Liability Action**

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint and for any 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 OR KNOW A LAWYER, OR CANNOT AFFORD ONE, THEN YOU SHOULD GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE:

**Court Administrator's Office
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
Telephone: (814)765-2641 x5982**

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

CLARA LOUISE MARKS,	)	CIVIL ACTION--MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Case No.: _____
)	
DuBOIS REGIONAL MEDICAL)	
CENTER; GEORGE M. KOSCO, M.D.;)	
G. ALI SHAH, M.D.; and DuBOIS)	
MAGNETIC IMAGING CENTER,)	
)	
Defendants.)	

COMPLAINT IN CIVIL ACTION

1. Clara Marks, Plaintiff herein, is a resident of Clearfield County, Pennsylvania.

2. George M. Kosco, M.D., Defendant hereinafter referred to as "Defendant Dr. Kosco," is a licensed physician and radiologist in the Commonwealth of Pennsylvania. At all times material to the matter set forth in this Complaint, Defendant Dr. Kosco was engaged in the practice of medicine in the specialty of radiology in Clearfield County.

3. At all times relevant to the matters set forth in this Complaint, Defendant Dr. Kosco was an employee, agent, ostensible agent, and/or servant of Defendant Dubois Medical Imaging Center, LP.

4. At all times relevant to the matters set forth in this Complaint, Defendant Dr. Kosco was an employee, agent, ostensible agent, and/or servant of Defendant, Dubois Regional Medical Center.

5. G. Ali Shah, M.D., Defendant hereinafter referred to as "Defendant Dr. Shah," is a licensed physician and radiologist in the Commonwealth of Pennsylvania. At all times

material to the matter set forth in this Complaint, Defendant Dr. Shah was engaged in the practice of medicine in the specialty of radiology in Clearfield County, Pennsylvania.

6. At all times relevant to the matters set forth in this Complaint, Defendant Dr. Shah was an employee, agent, ostensible agent, and/or servant of Defendant Dubois Medical Imaging Center, LP.

7. At all times relevant to the matters set forth in this Complaint, Defendant Dr. Shah was an employee, agent, ostensible agent, and/or servant of Defendant, Dubois Regional Medical Center.

8. Dubois Magnetic Imaging Center, LP, hereinafter referred to as "Defendant Imaging Center," is a Pennsylvania limited partnership with its principle place of business located at 104 Hospital Avenue, Dubois, Clearfield County, Pennsylvania. At all times material to the matter set forth in the Complaint, Defendant Imaging Center was engaged in the business of providing medical and radiologic services through its agents, servants, and/or employees, including but not limited to Defendant Dr. Shah and Defendant Dr. Kosco.

9. Dubois Regional Medical Center, Defendant hereinafter referred to as "Defendant Hospital," is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, Clearfield County, which provides a facility in which its agents, servants and/or employees provide medical care to patients such as Clara Marks. At all times material to this cause of action, Defendants Dr. Kosco and Dr. Shah were acting as the agents, servants and/or employees of the Medical Center.

10. On February 18, 2005, Clara Marks presented to Defendant Hospital complaining of upper back pain, leg weakness, and urinary incontinence. Plaintiff was thereafter admitted to Defendant Hospital under the care of Jawahar N. Suvarnakar, M.D. On that date, Dr. Suvarnakar

ordered an MRI scan of the thoracic and lumbar spine. The study was performed at Defendant Hospital and interpreted by Defendant Dr. Kosco.

11. Defendant Dr. Kosco interpreted the February 18, 2005 MRI as showing a small focal enhancement of the anterior aspect of the spinal canal. Defendant Dr. Kosco believed this finding represented a small meningioma or a small vascular formation.

12. Plaintiff continued to suffer from back pain and progressive weakening of the extremities and bladder incontinence. A second MRI, of the cervical spine, was performed on February 21, 2005. When Defendant Dr. Shah interpreted the February 21, 2005 study, he had available to him the February 18, 2005 MRI and did or should have reviewed the February 18, 2005 study. Defendant Dr. Shah interpreted the February 21, 2005 MRI as showing indentation of the spinal cord by large osteophytes.

13. Plaintiff's complaints of weakness, back pain and urinary incontinence continued and worsened.

14. On February 25, 2005, the Plaintiff was admitted to Dubois Regional Medical Center's Rehabilitation Unit. She developed lower extremity swelling and was begun on anticoagulation treatment for deep venous thrombosis.

15. Following the anticoagulation therapy, the Plaintiff experienced dense thoracic paraplegia.

16. On March 3, 2005, a repeat MRI was ordered by her attending neurologist, Dr. Myers. The MRI was performed and the study was read and interpreted by Defendant Dr. Kosco. In this study, Defendant Dr. Kosco identified a subarachnoid hemorrhage extending from the cervical to lumbar spine, which he failed to identify in the February 18, 2005 study and was not identified by Defendant Dr. Shah in the 2/21/05 study.

17. As a result of failing to identify the subarachnoid hemorrhage and the Plaintiff receiving contraindicated Coumadin, Plaintiff became paraplegic. She was evaluated for surgery but was not a candidate for surgical intervention.

18. On April 11, 2005, Plaintiff was transferred to a nursing home where she remains. Her paraplegia will be permanent.

19. As a direct and proximate result of the negligence and carelessness of the Defendants, as will be described in greater detail hereafter, Plaintiff suffered permanent paraplegia.

20. The sole and proximate cause of the foregoing occurrences was the negligence of Defendants and their agents, servants and/or employees as herein set forth.

21. Defendants Dr. Kosco, Defendant Imaging Center, and Defendant Hospital and their agents, servants and/or employees were negligent and careless in some or all of the following particulars:

- a. in subjecting Plaintiff to a delay in the diagnosis of a subarachnoid hemorrhage and spinal cord compression;
- b. in failing to identify the extra axial collection that appears on Plaintiff's 2/18/05 MRI films;
- c. in failing to review Plaintiff's medical history and take said history into account prior to, during, and following Defendant's review and interpretation of Plaintiff's February 18, 2005 MRI;
- d. in failing to notify and/or communicate with Plaintiff's treating physicians regarding the need for Plaintiff to be evaluated and/or treated immediately by a neurosurgeon following Plaintiff's February 18, 2005 MRI;
- e. in failing to entertain in Defendant's differential diagnosis a subarachnoid hemorrhage and/or extra axial collection compressing the spinal cord when Defendant knew or should have known that the abnormality represented a subarachnoid hemorrhage which was compressing Plaintiff's spinal cord;

- f. in failing to recommend the discontinuation of Plaintiff's aspirin and/or anticoagulation therapy;
- g. in failing to diagnose Plaintiff's subarachnoid hemorrhage as it was apparent on the MRI of Plaintiff taken on February 18, 2005;
- h. in failing to recognize and report the presence of a subarachnoid hemorrhage on the February 18, 2005 MRI film and then failing to perform additional images and/or additional diagnostic tests of the same;
- i. in failing to inform Plaintiff's treating physicians of a subarachnoid hemorrhage that was compressing her spinal cord in order to permit Plaintiff's treating physicians to order additional necessary testing to better define the nature of the hemorrhage;
- j. in failing to observe abnormalities of Plaintiff's spinal cord as were apparent on Plaintiff's February 18, 2005 MRI which was highly suspicious for a subarachnoid hemorrhage compressing Plaintiff's spinal cord; and
- k. in failing to properly diagnose the subarachnoid hemorrhage, thereby delaying the appropriate diagnostic testing procedures upon Plaintiff to determine the nature and extent of this abnormality;

22. Defendant Dr. Shah and Defendant Dubois Magnetic Imaging Center, LP, and defendant Hospital and their agents, servants, and or employees were negligent and careless in some or all of the following particulars:

- a. in subjecting Plaintiff to a delay in the diagnosis of a subarachnoid hemorrhage and spinal cord compression;
- b. in failing to identify the subarachnoid hemorrhage which was present on the 2/21/05 MRI scan which Defendant Dr. Shah knew or should have known was present;
- c. in failing to review Plaintiff's medical history and take said history into account prior to, during, and following Defendant's review and interpretation of Plaintiff's February 21, 2005 MRI;
- d. in failing to notify and/or communicate with Plaintiff's treating physicians regarding the need for Plaintiff to undergo additional diagnostic studies;

- e. in failing to identify the subarachnoid hemorrhage which was present on the February 18, 2005 MRI scan which Defendant Dr. Shah reviewed or should have reviewed prior to interpreting the February 21, 2005 MRI;
- f. in failing to review Plaintiff's medical history and previous radiologic studies prior to, during and following Defendants review and interpretation of Plaintiff's February 21, 2005 MRI;
- g. in failing to notify and/or communicate with Plaintiff's treating physicians regarding the need for Plaintiff to be evaluated and/or treated immediately by a neurosurgeon following Plaintiff's February 21, 2005 MRI;
- h. in failing to review and/or properly detect a compressing spinal cord lesion on the 2/21/05 MRI and in failing to review Plaintiff's prior radiology studies;
- i. in failing to diagnose a subarachnoid hemorrhage on the 2/21/05 MRI or to consider it in the differential diagnosis;
- j. in failing to entertain in Defendant's differential diagnosis a subarachnoid hemorrhage compressing the spinal cord when Defendant knew or should have known that the abnormality represented a subarachnoid hemorrhage which was compressing Plaintiff's spinal cord;
- k. in failing to recommend the discontinuance of Plaintiff's aspirin therapy treatment;
- l. in failing to recognize and report the presence of a subarachnoid hemorrhage on the February 21, 2005 MRI film and then failing to perform and/or order the performance of additional images and/or additional diagnostic tests of the same;
- m. in failing to note the existence of a hemorrhage compressing Plaintiff's spine as was demonstrated on the February 21, 2005 MRI;
- n. in failing to inform Plaintiff's treating physicians of a hemorrhage that was compressing her spinal cord in order to permit Plaintiff's treating physicians to order additional necessary testing to better define the nature of the hemorrhage; and
- o. in failing to properly diagnose the subarachnoid hemorrhage, thereby delaying the appropriate diagnostic testing procedures upon Plaintiff to determine the nature and extent of this abnormality.

23. As a direct and proximate result of the conduct of the Defendants and their agents, servants and/or employees, Plaintiff suffered a spinal cord compression and paralysis. She suffered injury to her joints, tissues, and other organs or structures in various parts of her body arising out of the disuse and other injuries related to her impaired state. She suffered an impairment of her nervous system and is a paraplegic. Some or all of these injuries are permanent in nature.

24. As a further direct and proximate result of the conduct of the Defendants and their agents, servants, and/or employees, Plaintiff was forced to endure great pain, suffering and inconvenience and will suffer the same in the future. She was forced to submit to medical care and treatment and may be forced to submit to the same in the future. She suffered from limitation of motion in various parts of her body and will suffer the same in the future. She was forced to be confined to hospitals and a nursing home and will be so confined in the future. She suffered disfigurement and embarrassment and humiliation associated therewith. Her health in general has been seriously and permanently impaired.

25. As a further result of the conduct of the Defendants, their agents, servants and/or employees, Plaintiff will be forced to expend large sums of money for physicians, hospitals, nurses, paramedical personnel, medications and other items necessary for her proper care and treatment.

26. Subsequent to her misreading of her MRI studies of February 18 and February 21, 2005, Plaintiff developed pressure ulcers on her back, urinary tract infections, leg weakness and pain.

WHEREFORE, Plaintiff, Clara Marks, claims damages from Defendants in a sum in excess of \$25,000 and demands a trial by jury

Respectfully submitted,

ROSEN LOUIK & PERRY, P.C.

By: 

Neil R. Rosen, Esquire

Elizabeth L. Jenkins, Esquire

Attorney for Plaintiff, Clara Marks

JURY TRIAL DEMANDED

VERIFICATION

I, CLARA MARKS , have read the foregoing COMPLAINT IN CIVIL ACTION. The averments contained therein are, insofar as they are derived from my own knowledge, true and correct to the best of my knowledge, information and belief, and insofar as they are derived from others, such facts are believed to be true and correct.

This statement and verification is made subject to the penalties of 19 Pa. C. S. §4904 relating to unsworn falsification to authorities, which statute provides that false statements are subject to criminal penalties.

1-04-06
Date

Clara Marks
Clara Marks

ROSEN LOUIK
& PERRY, P.C.

ATTORNEYS AT LAW

February 21, 2006

Mad Mail

William A. Shaw, Sr., Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: Clara Louise Marks, Plaintiff, vs. DuBois Regional Medical Center, et al.
Clearfield County Court of Common Pleas

Dear Mr. Shaw:

Enclosed for filing in the above-captioned matter, please find Complaint in Civil Action and Certificates of Merit as to each of the Defendants, together with a check in the amount of \$85.00 to cover the cost of filing. Please "time-stamp" the extra copy of the cover sheets for each pleading and return the same to the undersigned in the enclosed envelope.

Please also forward the enclosed package to the Clearfield County Sheriff for service of the Complaint and Certificates of Merit on each of the Defendants.

Thank you for your cooperation in this matter, and if you have any questions, please call my secretary, Sharon Morgano (412-281-4200 x172).

Very truly yours,

ROSEN LOUIK & PERRY, P.C.


Elizabeth L. Jenkins

ELJ/slm
Enclosure

FILED 4cc ~~soft~~
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FEB 27 2006

William A. Shaw
Prothonotary
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

vs.

DuBOIS REGIONAL MEDICAL CENTER;
GEORGE M. KOSCO, M.D.; G. ALI SHAH,
M.D.; and DuBOIS MAGNETIC IMAGING
CENTER,

Defendants.

CIVIL ACTION – MEDICAL
PROFESSIONAL LIABILITY ACTION

Case No.: 06-313-CD

Code: 007

**CERTIFICATE OF MERIT AS TO
DEFENDANT, DuBOIS MAGNETIC
IMAGING CENTER**

Filed on behalf of PLAINTIFF

Counsel for PLAINTIFF:

NEIL R. ROSEN, ESQUIRE
Pa. I.D. #23619

ELIZABETH L. JENKINS, ESQUIRE
Pa. I.D. #85694

ROSEN LOUIK & PERRY, P.C.
Firm #020

Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
412-281-4200

JURY TRIAL DEMANDED

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

CLARA LOUISE MARKS,	)	CIVIL ACTION--MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Case No.: _____
)	
DuBOIS REGIONAL MEDICAL)	
CENTER; GEORGE M. KOSCO, M.D.;)	
G. ALI SHAH, M.D.; and DuBOIS)	
MAGNETIC IMAGING CENTER,)	
)	
Defendants.)	

CERTIFICATE OF MERIT AS TO DEFENDANT,
DuBOIS MAGNETIC IMAGING CENTER

I, ELIZABETH L. JENKINS, ESQUIRE, certify that the claim that this Defendant deviated from acceptable professional standards is based on allegations that other licensed professionals for whom this Defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm. In addition, an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

ROSEN LOUIK & PERRY, P.C.

By: _____

Neil R. Rosen, Esquire
Elizabeth L. Jenkins, Esquire
Attorneys for Plaintiff

4 cc ~~Shah~~
m/11:51 m/11:51 cm
FEB 27 2006

William A. Shaw
Prothonotary
**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA**

CLARA LOUISE MARKS,

Plaintiff,

vs.

DuBOIS REGIONAL MEDICAL CENTER;
GEORGE M. KOSCO, M.D.; G. ALI SHAH,
M.D.; and DuBOIS MAGNETIC IMAGING
CENTER,

Defendants.

CIVIL ACTION – MEDICAL
PROFESSIONAL LIABILITY ACTION

Case No.: Cle-313-cd

Code: 007

**CERTIFICATE OF MERIT AS TO
DEFENDANT, G. ALI SHAH, M.D.**

Filed on behalf of PLAINTIFF

Counsel for PLAINTIFF:

NEIL R. ROSEN, ESQUIRE
Pa. I.D. #23619

ELIZABETH L. JENKINS, ESQUIRE
Pa. I.D. #85694

ROSEN LOUIK & PERRY, P.C.
Firm #020

Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
412-281-4200

JURY TRIAL DEMANDED

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

CLARA LOUISE MARKS,	:	CIVIL DIVISION
	:	
Plaintiff,	:	
vs.	:	No.
	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
GEORGE M. KOSCO, M.D., G. ALI SHAH,	:	
M.D. and DUBOIS MAGNETIC IMAGING	:	
CENTER,	:	
	:	
Defendants.	:	

CERTIFICATE OF MERIT AS TO DEFENDANT
G. ALI SHAH, M.D.

I, ELIZABETH L. JENKINS, ESQUIRE, certify that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, fell outside accepted professional standards and that such conduct was a cause in bringing about the harm.

ROSEN LOUIK & PERRY, P.C.

By: 

Neil R. Rosen, Esquire
Elizabeth L. Jenkins, Esquire
Attorneys for Plaintiff

m/11:51 am (sm) 4 CC SHCP
FEB 27 2006

William A. Shaw
Prothonotary

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

CLARA LOUISE MARKS,

Plaintiff,

vs.

DuBOIS REGIONAL MEDICAL CENTER;
GEORGE M. KOSCO, M.D.; G. ALI SHAH,
M.D.; and DuBOIS MAGNETIC IMAGING
CENTER,

Defendants.

CIVIL ACTION – MEDICAL
PROFESSIONAL LIABILITY ACTION

Case No.: 06-313-CD

Code: 007

**CERTIFICATE OF MERIT AS TO
DEFENDANT, DuBOIS REGIONAL
MEDICAL CENTER**

Filed on behalf of PLAINTIFF

Counsel for PLAINTIFF:

NEIL R. ROSEN, ESQUIRE
Pa. I.D. #23619

ELIZABETH L. JENKINS, ESQUIRE
Pa. I.D. #85694

ROSEN LOUIK & PERRY, P.C.
Firm #020

Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
412-281-4200

JURY TRIAL DEMANDED

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

CLARA LOUISE MARKS,

Plaintiff,

vs.

DUBOIS REGIONAL MEDICAL CENTER,
GEORGE M. KOSCO, M.D., G. ALI SHAH,
M.D. and DUBOIS MAGNETIC IMAGING
CENTER,

Defendants.

: CIVIL DIVISION

: No.

CERTIFICATE OF MERIT AS TO DEFENDANT
DUBOIS REGIONAL MEDICAL CENTER

I, ELIZABETH L. JENKINS, ESQUIRE, certify that the claim that this Defendant deviated from acceptable professional standards is based on allegations that other licensed professionals for whom this Defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm. In addition, an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

ROSEN LOUIK & PERRY, P.C.

By: 

Neil R. Rosen, Esquire
Elizabeth L. Jenkins, Esquire
Attorneys for Plaintiff

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m/11.51 cm
FEB 27 2006 (5)

William A. Shaw
Prothonotary

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

CLARA LOUISE MARKS,

Plaintiff,

vs.

DuBOIS REGIONAL MEDICAL CENTER;
GEORGE M. KOSCO, M.D.; G. ALI SHAH,
M.D.; and DuBOIS MAGNETIC IMAGING
CENTER,

Defendants.

CIVIL ACTION – MEDICAL
PROFESSIONAL LIABILITY ACTION

Case No.: 06-313-CD

Code: 007

**CERTIFICATE OF MERIT AS TO
DEFENDANT, GEORGE M. KOSCO,
M.D.**

Filed on behalf of PLAINTIFF

Counsel for PLAINTIFF:

NEIL R. ROSEN, ESQUIRE
Pa. I.D. #23619

ELIZABETH L. JENKINS, ESQUIRE
Pa. I.D. #85694

ROSEN LOUIK & PERRY, P.C.
Firm #020

Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
412-281-4200

JURY TRIAL DEMANDED

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

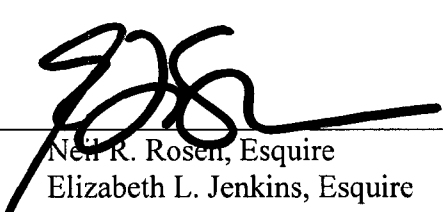
CLARA LOUISE MARKS,	:	CIVIL DIVISION
	:	
Plaintiff,	:	
	:	
vs.	:	No.
	:	
DUBOIS REGIONAL MEDICAL CENTER,	:	
GEORGE M. KOSCO, M.D., G. ALI SHAH,	:	
M.D. and DUBOIS MAGNETIC IMAGING	:	
CENTER,	:	
	:	
Defendants.	:	

CERTIFICATE OF MERIT AS TO DEFENDANT
GEORGE M. KOSCO, M.D.

I, ELIZABETH L. JENKINS, ESQUIRE, certify that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this Defendant in the treatment, practice or work that is the subject of the Complaint, fell outside accepted professional standards and that such conduct was a cause in bringing about the harm.

ROSEN LOUIK & PERRY, P.C.

By: _____


Neil R. Rosen, Esquire
Elizabeth L. Jenkins, Esquire
Attorneys for Plaintiff

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

CLARA LOUISE MARKS,

Plaintiff

vs.

DUBOIS REGIONAL MEDICAL CENTER,
GEORGE M. KOSCO, M.D.; G. ALI SHAH,
M.D.; and DUBOIS MAGNETIC
IMAGING CENTER,

Defendants

No. 06-313-CD

ISSUE:
PRAECIPE FOR APPEARANCE

Filed on behalf of Defendants
DUBOIS REGIONAL MEDICAL
CENTER and DUBOIS MAGNETIC
IMAGING CENTER

Counsel of Record:
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 10TH DAY OF MARCH, 2006.

Attorneys for Named Defendants

FILED
mjl:5361
MAR 13 2006
cc
51

William A. Shaw
Prothonotary/Clerk of Courts

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

CLARA LOUISE MARKS,

Plaintiff

vs.

DUBOIS REGIONAL MEDICAL CENTER;
GEORGE M. KOSCO, M.D.; G. ALI SHAH,
M.D.; and DUBOIS MAGNETIC IMAGING
CENTER,

Defendants

No. 06-313-CD

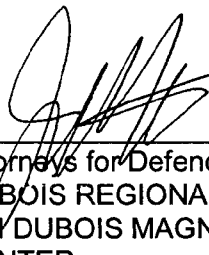
JURY TRIAL DEMANDED

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Enter my Appearance on behalf of Defendants, DUBOIS REGIONAL MEDICAL
CENTER and DUBOIS MAGNETIC IMAGING CENTER.

Papers may be served at the address set forth below



Attorneys for Defendants,
DUBOIS REGIONAL MEDICAL CENTER
and DUBOIS MAGNETIC IMAGING
CENTER

McINTYRE, 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: March 10, 2006


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

CLARA LOUISE MARKS,	)	CIVIL ACTION - MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Civil Action No. 06-313-CD
)	
DUBOIS REGIONAL MEDICAL CENTER;)	
GEORGE M. KOSCO, M.D.; G. ALI SHAH,)	
M.D.; and DUBOIS MAGNETIC IMAGING)	
CENTER,)	
)	
Defendants.)	

PRAECIPE FOR ENTRY OF APPEARANCE

To the Prothonotary of Said Court:

Please enter my appearance on behalf of defendant, George M. Kosco, M.D., only, in the above captioned matter. All papers may be served on the undersigned for purposes of this action.


Tracey G. Benson

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
Telephone No. (814) 355-5474

Counsel for Defendant
George M. Kosco, M.D.

Dated: March 15, 2006

FILED no cc
m/1:32 Bd
MAR 15 2006
William A. Shaw
Prothonotary/Clerk of Courts

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

CLARA LOUISE MARKS,	)	CIVIL ACTION - MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Civil Action No. 06-313-CD
)	
DUBOIS REGIONAL MEDICAL CENTER;)	
GEORGE M. KOSCO, M.D.; G. ALI SHAH,)	
M.D.; and DUBOIS MAGNETIC IMAGING)	
CENTER,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

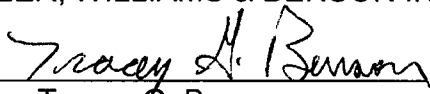
I hereby certify that a copy of the foregoing **Praeceptum for Entry of Appearance** was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

Neil R. Rose, Esq.
Elizabeth L. Jenkins, Esq.
Rosen Louik & Perry, P.C.
Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Plaintiff

John L. McIntyre, Esq.
McIntyre Hartye & Schmidt
P.O. Box 533
Holidaysburg, PA 16648-0533
Counsel for DuBois Regional Medical
Center and DuBois Magnetic
Imaging Center

G. Ali Shah, M.D.
c/o DuBois Radiologists, Inc.
109 N. Brady Street
P.O. Box 1106
DuBois, PA 15801

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: 
Tracey G. Benson

Dated: March 15, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

v.

DUBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DUBOIS
MAGNETIC IMAGING CENTER,

Defendants.

CIVIL DIVISION

No. 06-³13-CD

Code No.

**PRELIMINARY OBJECTIONS OF
DEFENDANT, G. ALI SHAH, M.D.**Filed on Behalf of Defendant, G. Ali
Shah, M.D.

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE
PA. I.D. #62175MEYER DARRAGH BUCKLER
BEBENEK & ECK, P.L.L.C.
120 Lakemont Park Boulevard
Altoona, PA 16602

Telephone No.: (814) 941-4600

Fax No.: (814) 941-4605

JURY TRIAL DEMANDED

m) 11:29 AM No cc
EK

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

v.

DUBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DUBOIS
MAGNETIC IMAGING CENTER,

Defendants.

CIVIL DIVISION

No. 06-613-CD

ORDER OF COURT

NOW THIS _____ day of _____, 2006, upon consideration of the Preliminary Objections of Defendant, G. Ali Shah, M.D., and after hearing upon same, the Court does hereby Order, Direct and Decree that:

The Plaintiff's Complaint is hereby Dismissed With Prejudice pursuant to Pa.R.Civ.P. 1028(1), for lack of jurisdiction over the subject matter of the action and for lack of jurisdiction over the person of Defendant, G. Ali Shah, M.D.

BY THE COURT:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

v.

DUBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DUBOIS
MAGNETIC IMAGING CENTER,

Defendants.

CIVIL DIVISION

No. 06-613-CD

PRELIMINARY OBJECTIONS OF DEFENDANT, G. ALI SHAH, M.D.

NOW COMES the Defendant, G. Ali Shah, M.D., by and through his counsel, MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C., and files these Preliminary Objections to Plaintiff's Complaint of which the following is a statement:

1. This Defendant incorporates the Preliminary Objections filed on behalf of Defendant, George M. Kosco, M.D., as if fully set forth at large, specifically, paragraphs 1 through 10, and the attached exhibits, specifically, Exhibits A and B.

WHEREFORE, Defendant, G. Ali Shah, M.D., prays this Honorable Court dismiss Plaintiff's Complaint with Prejudice pursuant to Pa.R.Civ.P. 1028(1), for lack of jurisdiction

over the subject matter of the action and for lack of jurisdiction over the person of Defendant, G. Ali Shah, M.D.

MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C.

By: 

MARY LOU MAIERHOFER, ESQUIRE

Counsel for Defendant, Patricia Long

120 Lakemont Park Boulevard

Altoona, PA 16602

(814) 941-4600

I.D. # 62175

Date: March 24, 2006

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, Mary Lou Maierhofer, Esquire, of the law firm of MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C., hereby certify that on this **24th day of March, 2006**, I have served the foregoing **Preliminary Objections**, on behalf of Defendant, G. Ali Shah, M.D., by mailing a true and correct copy of same, by United States first class mail, postage prepaid, to all parties/counsel of record as follows:

Elizabeth L. Jenkins, Esquire
Rosen Louk & Perry, P.C.
The Frick Building, Suite 200
437 Grant Street
Pittsburgh, PA 15219-6003
(Counsel for Plaintiff)

John L. McIntyre, Esquire
McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648
(Counsel for Defendants, DuBois Regional Medical
Center and DuBois Magnetic Imaging Center)

Tracey G. Benson, Esquire
Miller, Kistler, Campbell, Miller,
Williams & Benson, Inc.
124 N. Allegheny Street
Bellefonte, PA 16823
(Counsel for Defendant, George M. Kosco, M.D.)

MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C.

By: _____

MARY LOU MAIERHOFER, ESQUIRE
Counsel for Defendant, Patricia Long
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. No. 62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

v.

DUBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DUBOIS
MAGNETIC IMAGING CENTER,

Defendants.

CIVIL DIVISION

No. 06-³13-CD

Code No.

**PRAECIPE FOR ENTRY OF
APPEARANCE**

Filed on Behalf of Defendant, G. Ali
Shah, M.D.

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE
PA. I.D. #62175

MEYER DARRAGH BUCKLER
BEBENEK & ECK, P.L.L.C.
120 Lakemont Park Boulevard
Altoona, PA 16602

Telephone No.: (814) 941-4600
Fax No.: (814) 941-4605

JURY TRIAL DEMANDED

m/11:29/11 no cc
cc
JP

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

v.

DUBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DUBOIS
MAGNETIC IMAGING CENTER,

Defendants.

CIVIL DIVISION

No. 06-613-CD

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter the appearance of MARY LOU MAIERHOFER, ESQUIRE, of MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C., as Counsel of Record on behalf of Defendant, G. Ali Shah, M.D., in the above-captioned matter.

MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C.

By: 

MARY LOU MAIERHOFER, ESQUIRE
Counsel for Defendant, Patricia Long
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. # 62175

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, Mary Lou Maierhofer, Esquire, of the law firm of MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C., hereby certify that on this **24th day of March, 2006**, I have served the foregoing **Praecipe for Entry of Appearance**, on behalf of Defendant, G. Ali Shah, M.D., by mailing a true and correct copy of same, by United States first class mail, postage prepaid, to all parties/counsel of record as follows:

Elizabeth L. Jenkins, Esquire
Rosen Louk & Perry, P.C.
The Frick Building, Suite 200
437 Grant Street
Pittsburgh, PA 15219-6003
(Counsel for Plaintiff)

John L. McIntyre, Esquire
McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648
(Counsel for Defendants, DuBois Regional Medical
Center and DuBois Magnetic Imaging Center)

Tracey G. Benson, Esquire
Miller, Kistler, Campbell, Miller,
Williams & Benson, Inc.
124 N. Allegheny Street
Bellefonte, PA 16823
(Counsel for Defendant, George M. Kosco, M.D.)

MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C.

By: 

MARY LOU MAIERHOFER, ESQUIRE
Counsel for Defendant, Patricia Long
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. No. 62175

CA

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

CLARA LOUISE MARKS,	)	CIVIL ACTION - MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Civil Action No. 06-313-CD
)	
DUBOIS REGIONAL MEDICAL CENTER;)	
GEORGE M. KOSCO, M.D.; G. ALI SHAH,)	
M.D.; and DUBOIS MAGNETIC IMAGING)	
CENTER,)	
)	
Defendants.)	

RULE TO SHOW CAUSE

NOW THIS 27th day of March, 2006, upon consideration of Defendant George M. Kosco, M.D.'s Preliminary Objections to Plaintiff's Complaint, , a Rule is hereby issued upon the Plaintiffs to Show Cause why said Preliminary Objections should not be granted. This rule is returnable for argument on the 26th day of April, 2006 at 9:30 o'clock A.m. in Courtroom # 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

NOTICE

A PETITION OR MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIM SET FORTH IN THE FOLLOWING OTION FOR SANCTIONS BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO, THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

FILED

MAR 28 2006

9/9:00/6
William A. Shaw

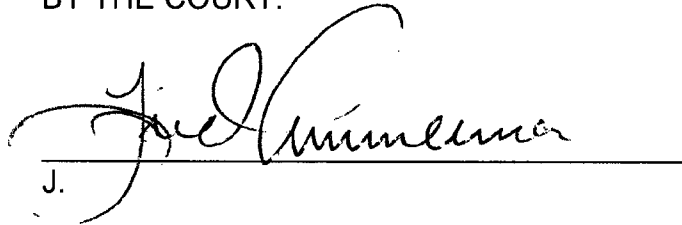
Prothonotary/Clerk of Courts

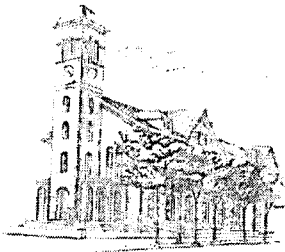
1 Cert to App
w/ memo

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.

Court Administrator
Clearfield County Courthouse
Second and Market Streets
Clearfield, PA 16830
(814) 765-2641, Ext. 1300 Or 1301

BY THE COURT:


J.



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 3-28-06

X You are responsible for serving all appropriate parties.

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

_____ Plaintiff(s)/Attorney(s)

_____ Defendant(s)/Attorney(s)

_____ Other

_____ Special Instructions:

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

CLARA LOUISE MARKS,	)	CIVIL ACTION - MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Civil Action No. 06-313-CD
)	
DUBOIS REGIONAL MEDICAL CENTER;)	
GEORGE M. KOSCO, M.D.; G. ALI SHAH,)	
M.D.; and DUBOIS MAGNETIC IMAGING)	
CENTER,)	
)	
Defendants.)	

ORDER

AND NOW, to-wit, this _____ day of _____, 2006 upon consideration of the Preliminary Objections of Defendant George M. Kosco, M.D., and it appearing to the Court that the named plaintiff, Clara L. Marks, died prior to commencement of the instant action, said preliminary objections be, and the same hereby are, SUSTAINED.

1. Plaintiff's Complaint is dismissed based upon a lack of capacity to sue by any identified person or entity who is authorized to bring a medical malpractice action.
2. The action is dismissed as against Dr. Kosco based upon a lack of subject matter jurisdiction.
3. The action is dismissed as against Dr. Kosco based upon a lack of personal jurisdiction over the objecting defendant.

BY THE COURT:

J.

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

CLARA LOUISE MARKS,	)	CIVIL ACTION - MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Civil Action No. 06-313-CD
)	
DUBOIS REGIONAL MEDICAL CENTER;)	
GEORGE M. KOSCO, M.D.; G. ALI SHAH,)	
M.D.; and DUBOIS MAGNETIC IMAGING)	
CENTER,)	
)	
Defendants.)	

M 11:50 AM
MAR 27 2006
William A. Shaw
Prothonotary/Clerk of Courts
No cc
CCK

**PRELIMINARY OBJECTIONS OF
DEFENDANT GEORGE M. KOSCO, M.D.**

Defendant George M. Kosco, M.D. ("Dr. Kosco"), by his counsel Tracey G. Benson, Esquire and Miller, Kistler, Campbell, Miller, Williams & Benson, Inc. interposes these preliminary objections in the nature of: 1) a motion to dismiss for lack of capacity to sue; and 2) a motion to dismiss for lack of personal jurisdiction over Dr. Kosco; and 3) a motion to dismiss for lack of subject matter jurisdiction. In support of these preliminary objections, Dr. Kosco states as follows:

1. The instant action seeking recovery for alleged professional negligence was commenced with the filing of a Complaint on February 27, 2006. A true and correct copy of the docket sheet, as well as the cover page reflecting the filing date and time, are attached hereto as Exhibit A.
2. The named plaintiff is Clara Louise Marks, an adult individual who is alleged to reside in DuBois, Clearfield County, Pennsylvania.

3. According to death and obituary notices that were published in The Courier-Express, the newspaper of general circulation for the DuBois, Clearfield County, area, Clara Louise Marks died on February 26, 2006. A copy of the death notice and obituary as obtained from The Courier-Express via e-mail, is attached hereto as Exhibit B.

I. MOTION TO DISMISS FOR LACK OF CAPACITY TO SUE

4. Pennsylvania law requires that in order to maintain a civil action, a would-be plaintiff must have an actual or legal existence. Pennsylvania law further requires that any action brought by or against a decedent, must be prosecuted or defended in the name of a personal dully appointed representative for the decedent. 20 Pa.C.S.A. §3373.

5. Here, the only named plaintiff, Clara Louise Marks, died on February 26, 2006. The Complaint, purporting to pursue the professional negligence claims was filed in the decedent's own name on the day following her death. The named plaintiff's capacity to sue at that time had already abated as a matter of law. The Complaint does not contain any allegations that a personal representative was appointed to pursue any claims on behalf of the decedent, and the Complaint is devoid of any allegations regarding the identity any party-plaintiff recognized under Pennsylvania law.

6. Because the instant action was not filed or brought by Clara Louis Marks during her lifetime, and was not filed or brought by any legally recognized person or entity at the time it was filed on February 27, 2006, there is no party-plaintiff recognized by law, or identified in the Complaint, with the requisite capacity to sue.

WHEREFORE, Defendant George M. Kosco, M.D. moves to dismiss the Complaint for lack of capacity to sue, pursuant to Pa.R.Civ.P. 1028(5).

II. MOTION TO DISMISS FOR LACK OF PERSONAL AND SUBJECT MATTER JURISDICTION


7. Dr. Kosco incorporates by reference herein the averments contained in paragraphs 1 through and including 6 of these preliminary objections.

8. Because the instant action was commenced in the name of Clara L. Marks after she had died, the action itself is a nullity, based upon the lack of any capacity to sue by, or in the name of, the plaintiff.

9. The filing of the Complaint on February 27, 2006 was not effective to vest this Court with subject matter jurisdiction over the matters raised in the Complaint, because there was no legally-recognized person or entity to file and pursue the instant claims on behalf of the decedent, Clara Louise Marks.

10. The purported service of original process on Dr. Kosco effectuated on or about March 7, 2006, under the facts and circumstances identified herein, was insufficient as a matter of Pennsylvania law to vest the Court with personal jurisdiction over Dr. Kosco, with respect to any claims purportedly arising out of medical care rendered to Clara L. Marks by Dr. Kosco or the other named defendants.

WHEREFORE, Defendant George M. Kosco, M.D. moves to dismiss this action pursuant to Pa.R.Civ.P. 1028(1), for lack of jurisdiction over the subject matter of the action, and for lack of jurisdiction over the person of defendant Dr. Kosco.


Tracey G. Benson

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

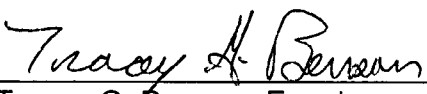
Counsel for Defendant
George M. Kosco, M.D.

Dated: March 23, 2006

VERIFICATION

I, **Tracey G. Benson, Esquire**, Counsel for Defendant **George M. Kosco, M.D.** state that the facts contained in the foregoing **Preliminary Objections** are true and correct to the best of my knowledge, information and belief.

I make this Verification pursuant to 18 Pa.C.S.A., Section 4904 pertaining to unsworn falsification to authorities.



Tracey G. Benson, Esquire

EXHIBIT A

Date: 03/16/2006

Clearfield County Court of Common Pleas

User: LBENDER

Time: 02:03 PM

ROA Report

Page 1 of 1

Case: 2006-00313-CD

Current Judge: No Judge

Clara Louise Marks vs. DuBois Regional Medical Center, George M. Kosco MD, G. Ali Shah MD, DuBois Magnetic Imaging Center

Med Prof Liability Action-Transf In

Date		Judge
02/27/2006	New Case Filed.	No Judge
	Filing: Complaint in Civil Action. Paid by: Jenkins, Elizabeth L. (attorney for Marks, Clara Louise) Receipt number: 1912655 Dated: 02/27/2006 Amount: \$85.00 (Check) 4CC shff.	No Judge
	Certificate of Merit as to Defendant, DuBois Magnetic Imaging Center, filed by s/ Elizabeth L. Jenkins Esq. 4CC shff.	No Judge
	Certificate of Merit as to Defendant, G. Ali Shah, MD., filed by s/ Elizabeth L. Jenkins Esq. 4CC shff.	No Judge
	Certificate of Merit as to Defendant, DuBois Regional Medical Center, filed by s/ Elizabeth L. Jenkins Esq. 4CC shff.	No Judge
	Certificate of Merit as to Defendant, George M. Kosco, MD., filed by s/ Elizabeth L. Jenkins Esq. 4CC shff.	No Judge
03/13/2006	Praecipe for Appearance, filed. Enter my Appearance on behalf of Defendants, DuBois Regional Medical Center and DuBois Magnetic Imaging Center, filed by s/ John L. McIntyre Esq. NO CC.	No Judge

FILED

m/1:51pm Pd \$85.00 AAA
4cc to AAA, sh, ll
FEB 27 2006 (L)

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

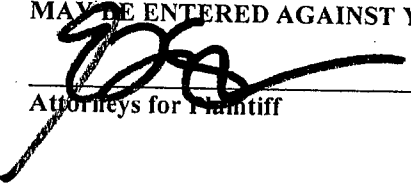
vs.

DuBOIS REGIONAL MEDICAL CENTER;
GEORGE M. KOSCO, M.D.; G. ALI SHAH,
M.D.; and DuBOIS MAGNETIC IMAGING
CENTER,

Defendants.

TO THE WITHIN-NAMED DEFENDANTS:

YOU ARE HEREBY NOTIFIED TO FILE A
WRITTEN RESPONSE TO THE ENCLOSED
COMPLAINT WITHIN TWENTY (20) DAYS
FROM SERVICE HEREOF OR A JUDGMENT
MAY BE ENTERED AGAINST YOU.


Attorneys for Plaintiff

CIVIL ACTION - MEDICAL
PROFESSIONAL LIABILITY ACTION

Case No.: 06-313-CD

Code: 007

COMPLAINT IN CIVIL ACTION

Filed on behalf of PLAINTIFF

Counsel for PLAINTIFF:

NEIL R. ROSEN, ESQUIRE
Pa. I.D. #23619

ELIZABETH L. JENKINS, ESQUIRE
Pa. I.D. #85694

ROSEN LOUIK & PERRY, P.C.
Firm #020

Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
412-281-4200

JURY TRIAL DEMANDED

EXHIBIT B

Chris Sciabica

From: Kim Finnigan [kfinnigan@thecourierexpress.com]
Sent: Monday, March 20, 2006 4:01 PM
To: csciabica@mkclaw.com
Subject: Clara Marks obituary information

Here is the information you requested. -Kim-

This is what ran Monday, Feb. 27

Clara L. Marks

Clara L. Marks, 84, Reed Street, DuBois, died Sunday at Christ the King Manor, DuBois. Obituary information is incomplete.

q q q

MARKS: Clara L., Reed Street, DuBois, died Feb. 26, 2006. Arrangements are incomplete and will be announced by the Goble-Baronick Funeral Home Inc., DuBois.

This is the full obituary which ran Feb. 28

Clara L. Marks

Clara L. Marks, 84, Reed Street, DuBois, died Sunday at Christ the King Manor in DuBois.

Born June 23, 1921, in DuBois, she was the daughter of the late William R. and Mary M. Goodford Olis. She was married to Alexander J. Marks May 20, 1945. He preceded her in death Nov. 7, 2001.

She was a member of St. Michael the Archangel Roman Catholic Church in DuBois.

She is survived by two sons, Max Marks of Gibsonia and Barry Marks of Reynoldsville; one daughter, Marilyn Meighen of York; and seven grandchildren.

She was the last surviving member of her immediate family.

She was also preceded in death by one brother, Edward M. Olis.

q q q

MARKS: Clara L., Reed Street, DuBois, died Feb. 26, 2006. There will be no public visitation. A Mass of Christian Burial will be held at 10 a.m. Saturday at St. Michael the Archangel Roman Catholic Church in DuBois with the Rev. Fr. David Foradori officiating. Burial will be in the church cemetery. Memorial donations may be made to Christ the King Manor. Arrangements are under the direction of the Goble-Baronick Funeral Home in DuBois.

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

CLARA LOUISE MARKS,	)	CIVIL ACTION - MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Civil Action No. 06-313-CD
)	
DUBOIS REGIONAL MEDICAL CENTER;)	
GEORGE M. KOSCO, M.D.; G. ALI SHAH,)	
M.D.; and DUBOIS MAGNETIC IMAGING)	
CENTER,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Preliminary Objections of Defendant George M. Kosco, M.D.** was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

Neil R. Rosen, Esq.
Elizabeth L. Jenkins, Esq.
Rosen Louik & Perry, P.C.
Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Plaintiff

John L. McIntyre, Esq.
McIntyre Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Medical
Center and DuBois Magnetic
Imaging Center

Mary Lou Maierhofer, Esq.
Meyer Darragh
120 Lakemont Park Blvd.
Altoona, PA 16602

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: Tracey G. Benson
Tracey G. Benson

Dated: March 23, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

v.

DUBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DUBOIS
MAGNETIC IMAGING CENTER,

Defendants.

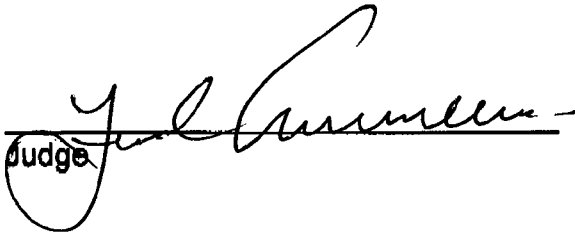
CIVIL DIVISION

No. 06-³13-CD

RULE TO SHOW CAUSE

AND NOW, this 28th day of March, 2006, upon consideration of Defendant, G. Ali Shah, M.D.'s Preliminary Objections, it is hereby ORDERED that argument shall be heard on said Preliminary Objections the 26th day of April, 2006, at 9:30 A.m., in Courtroom 1 of the Clearfield County, Courthouse, Clearfield, Pennsylvania.

BY THE COURT:

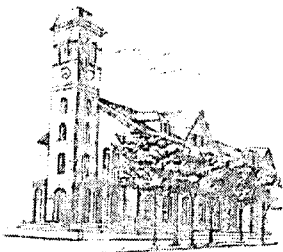

Judge

FILED

012:06301
MAR 30 2006

4cc
Amy Maierhofer
(EK)

William A. Shaw
Prothonotary/Clerk of Courts



Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw
Prothonotary/Clerk of Courts

David S. Ammerman
Solicitor

Jacki Kendrick
Deputy Prothonotary

Bonnie Hudson
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

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

Sincerely,

William A. Shaw
Prothonotary

DATE: 3/30/06

X You are responsible for serving all appropriate parties.

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

 Plaintiff(s)/Attorney(s)

 Defendant(s)/Attorney(s)

 Other

 Special Instructions:

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

CLARA LOUISE MARKS,	)	CIVIL ACTION - MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Civil Action No. 06-313-CD
)	
DUBOIS REGIONAL MEDICAL CENTER;)	
GEORGE M. KOSCO, M.D.; G. ALI SHAH,)	
M.D.; and DUBOIS MAGNETIC IMAGING)	
CENTER,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE


I hereby certify that a copy of the foregoing **Affidavit of Service** was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

Neil R. Rosen, Esq.
Elizabeth L. Jenkins, Esq.
Rosen Louik & Perry, P.C.
Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Plaintiff

John L. McIntyre, Esq.
McIntyre Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Medical
Center and DuBois Magnetic
Imaging Center

Mary Lou Maierhofer, Esq.
Meyer Darragh
120 Lakemont Park Blvd.
Altoona, PA 16602

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: 
Tracey G. Benson

Dated: March 30, 2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

v.

DUBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DUBOIS
MAGNETIC IMAGING CENTER,

Defendants.

CIVIL DIVISION

No. 06-³13-CD

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, Mary Lou Maierhofer, Esquire, of the law firm of MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C., hereby certify that on this **4th day of April, 2006**, I have served a copy of this Court's March 28, 2006 **Rule to Show Cause**, on behalf of Defendant, G. Ali Shah, M.D., by mailing a true and correct copy of same, by United States first class mail, postage prepaid, to all parties/counsel of record as follows:

Elizabeth L. Jenkins, Esquire
Rosen Louk & Perry, P.C.
The Frick Building, Suite 200
437 Grant Street
Pittsburgh, PA 15219-6003
(Counsel for Plaintiff)

John L. McIntyre, Esquire
McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648
(Counsel for Defendants, DuBois Regional Medical
Center and DuBois Magnetic Imaging Center)

FILED
APR 05 2006
m/l:05/4L
William A. Shaw
Prothonotary/Clerk of Courts
No Cent

Tracey G. Benson, Esquire
Miller, Kistler, Campbell, Miller,
Williams & Benson, Inc.
124 N. Allegheny Street
Bellefonte, PA 16823
(Counsel for Defendant, George M. Kosco, M.D.)

MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C.

By: 

MARY LOU MAIERHOFER, ESQUIRE

Counsel for Defendant, Patricia Long
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. No. 62175

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101298
NO: 06-313-CD
SERVICE # 1 OF 4
COMPLAINT & (4) CERTIFICATE OF MERIT

PLAINTIFF: CLARA LOUISE MARKS

vs.

DEFENDANT: DUBOIS REGIONAL MEDICAL CENTER; GEORGE M. KOSKO, M.D.;
G. ALI SHAH, M.D. & DUBOIS MAGNETIC IMAGING CENTER

SHERIFF RETURN

NOW, March 06, 2006 AT 10:45 AM SERVED THE WITHIN COMPLAINT & (4) CERTIFICATE OF MERIT ON DUBOIS REGIONAL MEDICAL CENTER DEFENDANT AT ATTN: LEGAL DEPT. 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO PARTICIA ABELL, RISK MANAGEMENT ASSISTANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT & (4) CERTIFICATE OF MERIT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN /

FILED
9/9/40301
APR 18 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101298
NO: 06-313-CD
SERVICE # 2 OF 4
COMPLAINT & (4)CERTIFICATE OF MERIT

PLAINTIFF: CLARA LOUISE MARKS

vs.

DEFENDANT: DUBOIS REGIONAL MEDICAL CENTER; GEORGE M. KOSKO, M.D.;
G. ALI SHAH, M.D. & DUBOIS MAGNETIC IMAGING CENTER

SHERIFF RETURN

NOW, March 06, 2006 AT 10:45 AM SERVED THE WITHIN COMPLAINT & (4)CERTIFICATE OF MERIT ON G. ALI SHAH, M.D. DEFENDANT AT c/o D.R.M.C., 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO PATRICIA ABELL, RISK MANAGEMENT ASSISTANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT & (4)CERTIFICATE OF MERIT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101298
NO: 06-313-CD
SERVICE # 3 OF 4
COMPLAINT & (4)CERTIFICATE OF MERIT

PLAINTIFF: CLARA LOUISE MARKS

vs.

DEFENDANT: DUBOIS REGIONAL MEDICAL CENTER; GEORGE M. KOSKO, M.D.;
G. ALI SHAH, M.D. & DUBOIS MAGNETIC IMAGING CENTER

SHERIFF RETURN

NOW, March 06, 2006 AT 10:45 AM SERVED THE WITHIN COMPLAINT & (4)CERTIFICATE OF MERIT ON
GEORGE M. KOSKO, M.D. DEFENDANT AT c/o D.R.M.C., 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY,
PENNSYLVANIA, BY HANDING TO PATRICIA ABELL, RISK MANAGEMENT ASSISTANT A TRUE AND
ATTESTED COPY OF THE ORIGINAL COMPLAINT & (4)CERTIFICATE OF MERIT AND MADE KNOWN THE
CONTENTS THEREOF.

SERVED BY: DEHAVEN /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101298
NO: 06-313-CD
SERVICE # 4 OF 4
COMPLAINT & (4) CERTIFICATE OF MERIT

PLAINTIFF: CLARA LOUISE MARKS

vs.

DEFENDANT: DUBOIS REGIONAL MEDICAL CENTER; GEORGE M. KOSKO, M.D.;
G. ALI SHAH, M.D. & DUBOIS MAGNETIC IMAGING CENTER

SHERIFF RETURN

NOW, March 06, 2006 AT 10:45 AM SERVED THE WITHIN COMPLAINT & (4) CERTIFICATE OF MERIT ON DUBOIS MAGNETIC IMAGING CENTER DEFENDANT AT c/o D.R.M.C., 100 HOSPITAL AVE., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO PATRICIA ABELL, RISK MANAGEMENT ASSISTANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT & (4) CERTIFICATE OF MERIT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: DEHAVEN /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101298
NO: 06-313-CD
SERVICES 4
COMPLAINT & (4) CERTIFICATE OF MERIT

PLAINTIFF: CLARA LOUISE MARKS

vs.

DEFENDANT: DUBOIS REGIONAL MEDICAL CENTER; GEORGE M. KOSKO, M.D.;
G. ALI SHAH, M.D. & DUBOIS MAGNETIC IMAGING CENTER

SHERIFF RETURN



RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	ROSEN	1377	40.00
SHERIFF HAWKINS	ROSEN	1377	52.91

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 ACTION - LAW**

CLARA LOUISE MARKS,	)	CIVIL ACTION - MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Civil Action No. 06-313-CD
)	
DUBOIS REGIONAL MEDICAL CENTER;)	
GEORGE M. KOSCO, M.D.; G. ALI SHAH,)	
M.D.; and DUBOIS MAGNETIC IMAGING)	
CENTER,)	
)	
Defendants.)	

2006
CLERK OF COURT
OFFICE

**BRIEF IN SUPPORT OF PRELIMINARY
OBJECTIONS OF DEFENDANT GEORGE M. KOSCO, M.D.**

Defendant George M. Kosco, M.D. ("Dr. Kosco"), by his counsel Tracey G. Benson, Esquire and Miller, Kistler, Campbell, Miller, Williams & Benson, Inc. has interposed preliminary objections to plaintiff's Complaint which attack the fundamental basis for this medical malpractice action. Dr. Kosco contends that the Complaint is fatally defective, and the instant action should be dismissed, because: 1) the named plaintiff lacks capacity to sue under Pennsylvania law; and 2) the Court lacks subject matter jurisdiction over the claims asserted in the Complaint; and 3) the Court lacks personal jurisdiction over Dr. Kosco. This brief is submitted in support of those preliminary objections.

I. BACKGROUND

The instant medical malpractice action was commenced with the filing of plaintiff's Complaint on February 26, 2006. (See docket sheet and filing receipt attached to Preliminary Objections as Exhibit A). The Complaint identifies Clara Louise

Marks as the plaintiff (Complaint, ¶ 1), and asserts a claim for professional negligence against Dr. Kosco with respect to radiologic care allegedly rendered to Ms. Marks on February 18, and March 3, 2005. (Complaint, ¶¶ 11 & 16). Also named as defendants were G. Ali Shah, M.D.; Dubois Regional Medical Center; and DuBois Magnetic Imaging Center. (Complaint, ¶¶ 5 - 9).

Although not alleged in the Complaint, counsel for Dr. Kosco has confirmed that the named plaintiff, Clara Louise Marks, died on February 26, 2006 -- one day before the instant action was commenced on the docket in Clearfield County. A copy of the death notice and obituary for Clara L. Marks, as obtained from The Courier-Express, is attached to the Preliminary Objections as Exhibit B. Accordingly, the instant litigation was commenced at a time when there was no person or legal entity recognized pursuant to Pennsylvania law, as having the required capacity to file the action on behalf of the decedent's estate or others entitled to recover.

II. ARGUMENT

Rule 1028 of the Pennsylvania Rules of Civil Procedure provides for the filing of preliminary objections to raise the following grounds:

(a) Lack of jurisdiction over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a Writ of Summons or Complaint;

* * *

(5) Lack of capacity to sue, non-joinder of a necessary party or mis-joinder of a cause of action. . . .

Pa.R.Civ.P. 1028.

Based upon the chronology set forth above, the commencement of this action through the filing of a complaint in the name of “Clara Louise Marks, Plaintiff” is a nullity, because the identified plaintiff was non-existent when the Complaint was filed, and thus could not have the legal capacity to sue. As a result, the action abated, and the Court lacks subject matter jurisdiction and personal jurisdiction over Dr. Kosco.

A. The Complaint Should Be Dismissed Based Upon The Lack Of Capacity To Sue.

It is well-settled in Pennsylvania law that in order to maintain a suit, a would-be plaintiff must have an actual or legal existence. Philadelphia Facilities Management Corp. v. Biester, 60 Pa.Commw. 366, 431 A.2d 1123 (1981). The plaintiff may be a natural or artificial person, but must be an entity that the law recognizes. Id. See also 3 Standard PA Practice 2d, §14:16, p. 48 (2002).

When a statute creating a cause of action designates the person who may sue, the person so designated is the only party with the capacity to be the plaintiff. In this connection, it should also be noted that where a statute creating a cause of action designates the person who may sue, the issue of standing becomes interwoven with that of subject matter jurisdiction.

3 Standard PA Practice 2d, §14:17, p. 49 (2002).

Pennsylvania law requires that any action brought in the name of a deceased individual be pursued by the personal representative for the estate, as appointed by the Register of Wills. 20 Pa.C.S.A. §3373. Once an individual dies, she is no longer a legal person recognized by Pennsylvania law to pursue a cause of action in court. Finn v. Dugan, 260 Pa.Super. 367, 394 A.2d 595 (1978)(all actions that survive a decedent must be brought by or against the personal representative duly appointed by the

Register of Wills); McGuire v. Erie Lackawanna Railway Company, 253 Pa.Super. 531, 385 A.2d 466 (1978)(a decedent's estate cannot be a party to litigation unless a personal representative exists).

Here, any cause of action that was owned by Clara Louise Marks, was abated at the time of her death on February 26, 2006. The decedent no longer had any capacity to sue under Pennsylvania law, and the filing of the instant Complaint was a nullity for purposes of commencing any action for professional negligence against Dr. Kosco.

Where grounds for abatement of an action are shown and raised through preliminary objections, the pending action should be dismissed.

The term "abatement" is also used to mean the complete distinguishment of the cause of action. In this sense, the cause of action "abates" when the right of action is extinguished by the death of the person in whose favor or against whom the cause of action existed, while the cause of action "survives" when the right to bring the action is not affected by the death of such a person.

2 Standard PA Practice 2d, ¶12:1, p. 321 (2002).

Although wrongful death and survival actions may be pursued by a duly-appointed personal representative, the Complaint filed in this case identifies no such person serving as party-plaintiff. Similarly, the right to maintain a wrongful death action may survive the individual's death, and the person's personal representative may be substituted to maintain the action on the deceased person's behalf. See Thompson v. Southeastern Pennsylvania Transportation Authority, 280 Pa.Super. 193, 421 A.2d 471 (1980). In the instant situation, however, the underlying complaint was not filed at a time when Clara Louise Marks was alive. For that simple reason, the filing of the instant complaint against Dr. Kosco was not proper, because there was no plaintiff in existence

with the requisite capacity to sue. Substitution of a personal representative cannot cure the fundamental defects created by filing the complaint after the plaintiff had died. Accordingly, Dr. Kosco has moved to dismiss the action for lack of capacity to sue pursuant to Pa.R.Civ.P. 1028(5).

B. The Court Lacks Subject Matter and Personal Jurisdiction Over Dr. Kosco For The Matters Raised In The Complaint.

Lack of jurisdiction is a ground of abatement for which an action may be dismissed. 2 Standard PA Practice 2d, §12:5 (2002). Defects and objections as to parties are grounds for abatement, such as where there is lack of actual or legal existence of a party at the beginning of the suit, Philadelphia Facilities Management Corp. v. Biester, 60 Pa.Commw. 366, 431 A.2d 1123 (1981); or where there is an incapacity stemming from the lack of right to sue. Commonwealth v. Pennsylvania State University, 12 Pa.Commw. 561, 317 A.2d 661 (1974).

An action requires a party or entity which has the right to bring the action, and a party or entity against which the action can be maintained. Thus, because a dead person cannot be a party to an action, any proceeding brought against or purportedly by a dead person is completely void and of no effect.

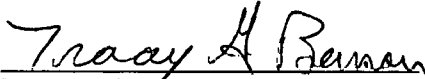
2 Standard PA Practice 2d, §12:31, p. 374 (2002). See also 20 Pa.C.S.A. §3375.

Had this case been filed while the plaintiff was still alive, her personal representative could substitute as party-plaintiff as provided by law. Under the current circumstances, however, the filing of the Complaint was a nullity at the outset, and could not effectively vest this Court with subject matter jurisdiction. Similarly, service of the Complaint on Dr. Kosco, could not vest the Court with personal jurisdiction over him,

since the service of original process was made with respect to a matter that was void at the outset and at the time service of process was effectuated on Dr. Kosco.

In light of the foregoing, Dr. Kosco urges that the instant action has abated, and that the Complaint filed on February 26, 2006 should be dismissed as to him.

Respectfully submitted,


Tracey G. Benson

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON, INC.
124 North Allegheny Street
Bellefonte, PA 16823
(814) 355-5474

Counsel for Defendant
George M. Kosco, M.D.

Dated: March 23, 2006

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

CLARA LOUISE MARKS,	)	CIVIL ACTION - MEDICAL
	)	PROFESSIONAL LIABILITY
Plaintiff,	)	ACTION
)	
vs.	)	Civil Action No. 06-313-CD
)	
DUBOIS REGIONAL MEDICAL CENTER;)	
GEORGE M. KOSCO, M.D.; G. ALI SHAH,)	
M.D.; and DUBOIS MAGNETIC IMAGING)	
CENTER,)	
)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Brief in Support of Preliminary Objections of Defendant George M. Kosco, M.D.** was hereby served by depositing the same within the custody of the United States Postal Service, First Class, postage prepaid, addressed as follows:

Neil R. Rosen, Esq.
Elizabeth L. Jenkins, Esq.
Rosen Louik & Perry, P.C.
Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
Counsel for Plaintiff

John L. McIntyre, Esq.
McIntyre Hartye & Schmidt
P.O. Box 533
Hollidaysburg, PA 16648-0533
Counsel for DuBois Regional Medical
Center and DuBois Magnetic
Imaging Center

Mary Lou Maierhofer, Esq.
Meyer Darragh
120 Lakemont Park Blvd.
Altoona, PA 16602

MILLER, KISTLER, CAMPBELL,
MILLER, WILLIAMS & BENSON INC.

By: Tracey G. Benson
Tracey G. Benson

Dated: March 23, 2006

up/b

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

v.

DUBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DUBOIS
MAGNETIC IMAGING CENTER,

Defendants.

CIVIL DIVISION

No. 06-³13-CD

Code No.

**BRIEF IN SUPPORT OF
PRELIMINARY OBJECTIONS OF
DEFENDANT, G. ALI SHAH, M.D.**

Filed on Behalf of Defendant, G. Ali
Shah, M.D.

Counsel of Record for this Party:

MARY LOU MAIERHOFER, ESQUIRE
PA. I.D. #62175

MEYER DARRAGH BUCKLER
BEBENEK & ECK, P.L.L.C.
120 Lakemont Park Boulevard
Altoona, PA 16602

Telephone No.: (814) 941-4600
Fax No.: (814) 941-4605

JURY TRIAL DEMANDED

*She entered
her appearance
by Praecipe as well
(I didn't send you
a copy)* →

2006

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARA LOUISE MARKS,

Plaintiff,

v.

DUBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DUBOIS
MAGNETIC IMAGING CENTER,

Defendants.

CIVIL DIVISION

No. 06-613-CD

**BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS
OF DEFENDANT, G. ALI SHAH, M.D.**

Defendant, G. ALI SHAH, M.D., by and through his counsel, has filed Preliminary Objections in the above-referenced matter and now incorporates, by reference thereto, the Brief in Support of Preliminary Objections filed on behalf of Defendant, George M. Kosco, M.D., as if fully set forth at length.

CONCLUSION

For the reasons set forth in the Preliminary Objections and Brief in Support thereof, filed on behalf of Defendant, George M. Kosco, M.D., this Defendant, G. Ali Shah, M.D., requests that Plaintiff's Complaint be dismissed with prejudice.

MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C.

By: 

MARY LOU MAIERHOFER, ESQUIRE

Counsel for Defendant, Patricia Long

120 Lakemont Park Boulevard

Altoona, PA 16602

(814) 941-4600

I.D. # 62175

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, Mary Lou Maierhofer, Esquire, of the law firm of MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C., hereby certify that on this **24th day of March, 2006**, I have served the foregoing **Brief in Support of Preliminary Objections of Defendant, G. Ali Shah, M.D.**, on behalf of Defendant, G. Ali Shah, M.D., by mailing a true and correct copy of same, by United States first class mail, postage prepaid, to all parties/counsel of record as follows:

Elizabeth L. Jenkins, Esquire
Rosen Louk & Perry, P.C.
The Frick Building, Suite 200
437 Grant Street
Pittsburgh, PA 15219-6003
(Counsel for Plaintiff)

John L. McIntyre, Esquire
McIntyre, Dugas, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648
(Counsel for Defendants, DuBois Regional Medical
Center and DuBois Magnetic Imaging Center)

Tracey G. Benson, Esquire
Miller, Kistler, Campbell, Miller,
Williams & Benson, Inc.
124 N. Allegheny Street
Bellefonte, PA 16823
(Counsel for Defendant, George M. Kosco, M.D.)

MEYER DARRAGH BUCKLER BEBENEK & ECK, P.L.L.C.

By: 

MARY LOU MAIERHOFER, ESQUIRE
Counsel for Defendant, Patricia Long
120 Lakemont Park Boulevard
Altoona, PA 16602
(814) 941-4600
I.D. No. 62175

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

CLARA LOUISE MARKS,

Plaintiff,

vs.

DuBOIS REGIONAL MEDICAL CENTER;
GEORGE M. KOSCO, M.D.; G. ALI SHAH,
M.D.; and DuBOIS MAGNETIC IMAGING
CENTER,

Defendants.

CIVIL ACTION – MEDICAL
PROFESSIONAL LIABILITY ACTION

Case No.: 06-313-CD

Code: 007

**PRAECIPE TO VOLUNTARILY
WITHDRAW COMPLAINT IN CIVIL
ACTION**

Filed on behalf of PLAINTIFF

Counsel for PLAINTIFF:

NEIL R. ROSEN, ESQUIRE
Pa. I.D. #23619

ELIZABETH L. JENKINS, ESQUIRE
Pa. I.D. #85694

ROSEN LOUIK & PERRY, P.C.
Firm #020

Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
412-281-4200

JURY TRIAL DEMANDED

FILED No cc
M 12:11 PM
APR 24 2006
copy to C/A
William A. Shaw
Prothonotary/Clerk of Courts
(GR)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE TO VOLUNTARILY WITHDRAW COMPLAINT IN CIVIL ACTION, was served upon all counsel of record by United States first-class mail, postage prepaid, or hand delivery, on the 20th day of April, 2006, as follows:


Walter F. Wall, Esquire
Mary Lou Maierhofer, Esquire
Meyer Darragh Buckler Bebenek & Eck
120 Lakemont Park Boulevard
Altoona, PA 16602
(Attorneys for G. Ali Shah, M.D.)

John L. McIntyre, Esquire
McIntyre Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648-0533
(Attorneys for DuBois Regional Medical Center and DuBois Magnetic Imaging Center)

Tracey G. Benson, Esquire
Miller Kistler Campbell Miller Williams & Benson, Inc.
124 North Allegheny Street
Bellefonte, PA 16823-1695
(Attorneys for George M. Kosco, M.D.)

ROSEN LOUIK & PERRY, P.C.

By: _____


Neil R. Rosen, Esquire
Elizabeth L. Jenkins, Esquire
Attorneys for Plaintiff

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

CLARA LOUISE MARKS,

Plaintiff,

vs.

DuBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DuBOIS
MAGNETIC IMAGING CENTER,

Defendants.

CIVIL ACTION – MEDICAL
PROFESSIONAL LIABILITY ACTION

Case No.: 06-313-CD

Code: 007

**PRAECIPE TO DISCONTINUE
WITHOUT PREJUDICE**

Filed on behalf of PLAINTIFF

Counsel for PLAINTIFF:

NEIL R. ROSEN, ESQUIRE
Pa. I.D. #23619

ELIZABETH L. JENKINS, ESQUIRE
Pa. I.D. #85694

ROSEN LOUIK & PERRY, P.C.
Firm #020

Suite 200, The Frick Building
437 Grant Street
Pittsburgh, PA 15219
412-281-4200

JURY TRIAL DEMANDED

FILED

m/2:09 pm Nucc
Cert of disc
APR 27 2006 issued to Atty
Jenkins +
Copy to C/A

William A. Shaw
Prothonotary

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

CLARA LOUISE MARKS,

Plaintiff,

vs.

DuBOIS REGIONAL MEDICAL
CENTER; GEORGE M. KOSCO, M.D.;
G. ALI SHAH, M.D.; and DuBOIS
MAGNETIC IMAGING CENTER,

Defendants.

: CIVIL ACTION – MEDICAL
: PROFESSIONAL LIABILITY ACTION
:
:
: Case No.: 06-313-CD

PRAECIPE TO DISCONTINUE WITHOUT PREJUDICE

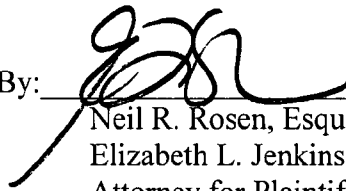
To: Prothonotary, Clearfield County

KINDLY settle and discontinue the above-captioned matter, *without prejudice*, of record
on the Court docket.

Respectfully submitted,

ROSEN LOUIK & PERRY, P.C.

By: _____


Neil R. Rosen, Esquire
Elizabeth L. Jenkins, Esquire
Attorney for Plaintiff, Clara Marks

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within PRAECIPE TO DISCONTINUE WITHOUT PREJUDICE was served upon all counsel of record by United States first-class mail, postage prepaid, or hand delivery, on the 25th day of April, 2006, as follows:

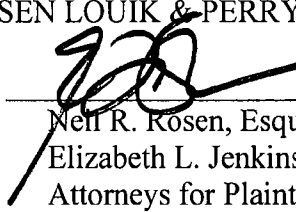
Walter F. Wall, Esquire
Mary Lou Maierhofer, Esquire
Meyer Darragh Buckler Bebenek & Eck
120 Lakemont Park Boulevard
Altoona, PA 16602
(Attorneys for G. Ali Shah, M.D.)

John L. McIntyre, Esquire
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P.O. Box 533
Hollidaysburg, PA 16648-0533
(Attorneys for DuBois Regional Medical Center and DuBois Magnetic Imaging Center)

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124 North Allegheny Street
Bellefonte, PA 16823-1695
(Attorneys for George M. Kosco, M.D.)

ROSEN LOUIK & PERRY, P.C.

By: _____


Neil R. Rosen, Esquire
Elizabeth L. Jenkins, Esquire
Attorneys for Plaintiff

ROSEN LOUIK
& PERRY, P.C.

ATTORNEYS AT LAW

April 25, 2006

William A. Shaw, Sr., Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: Clara Louise Marks, Plaintiff, vs. DuBois Regional Medical Center, et al.
Clearfield County Case No.: 06-313-CD

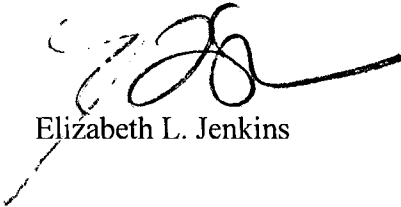
Dear Mr. Shaw:

Enclosed for filing in the above-captioned matter please find Plaintiff's Praecipe to Discontinue Without Prejudice. Please date stamp the extra copy of the cover sheet which is enclosed and return it to me in the envelope provided.

Thank you in advance for your cooperation in this regard.

Very truly yours,

ROSEN LOUIK & PERRY, P.C.



Elizabeth L. Jenkins

ELJ:pt

Enclosures

cc: Honorable Fredric J. Ammerman
Walter F. Wall, Esquire
John L. McIntyre, Esquire
Tracey G. Benson, Esquire
(all w/enclosure)

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

CIVIL DIVISION

COPY

Clara Louise Marks

Vs.

No. 2006-00313-CD

**DuBois Regional Medical Center
George M. Kosco MD
G. Ali Shah MD
DuBois Magnetic Imaging 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 27, 2006, marked:

Settle and discontinued without prejudice

Record costs in the sum of \$85.00 have been paid in full by Elizabeth L. Jenkins Esq. .

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 27th day of April A.D. 2006.



William A. Shaw, Prothonotary