



COURT OF COMMON PLEAS OF CLEARFIELD COUNTY  
Trial Division  
Civil Cover Sheet

FOR PROTHONOTARY USE ONLY (DOCKET NUMBER)

2006-1415-C0

PLAINTIFF'S NAME PEGGY BUTLER, Executrix of the Estate of DAVID E. BUTLER, Deceased		DEFENDANT'S NAME CLEARFIELD HOSPITAL		
PLAINTIFF'S ADDRESS 413 Nelson Road Morrisdale, Pennsylvania 16858		DEFENDANT'S ADDRESS 809 Turnpike Avenue Clearfield, Pennsylvania 16830		
PLAINTIFF'S NAME <i>Original</i>		DEFENDANT'S NAME MARK R. SHAW, D.O.		
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 809 Turnpike Avenue Clearfield, Pennsylvania 16830		
PLAINTIFF'S NAME		DEFENDANT'S NAME		
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS		
TOTAL NO. OF PLAINTIFFS 1	TOTAL NO. OF DEFENDANTS 2	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Transfer from Other Jurisdiction		
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Non-Jury <input type="checkbox"/> Other:	<input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input type="checkbox"/> Petition	<input type="checkbox"/> Commerce <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Statutory Appeals	<input type="checkbox"/> Settlement <input type="checkbox"/> Minors <input type="checkbox"/> W/D/Survival
CASE TYPE - Medical Professional Liability Action				
TO THE PROTHONOTARY:  Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant:  Papers may be served at the address set forth below.				
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY David F. Binder, Esquire		ADDRESS  Raynes McCarty 1845 Walnut Street, 20th Floor Philadelphia, PA 19103		
TELEPHONE NUMBER 215 - 568 - 6190	FAX NUMBER 215 - 988 - 0618			
SUPREME COURT IDENTIFICATION NO. 02648	E-MAIL ADDRESS dfbinder@raynesmccarty.com			
SIGNATURE <i>David F. Binder</i>		DATE 8/25/06		

FILED  
 AUG 30 2006  
*m/11/2006*  
 William A. Shaw  
 Prothonotary/Clerk of Courts

1 CERT TO ATT  
 2 CERT TO SHAW

RAYNES, McCARTY  
By: David F. Binder, Esquire  
Identification No.: 02648  
1845 Walnut Street, 20th Floor  
Philadelphia, PA 19103  
(215) 568-6190

Attorneys for Plaintiff

PEGGY BUTLER, Executrix of the Estate of DAVID E. BUTLER, Deceased,	:	CLEARFIELD COUNTY COURT OF COMMON PLEAS
v.	:	
CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.	:	CIVIL ACTION - MEDICAL PROFESSIONAL LIABILITY ACTION
	:	NO. 2006-1415-CV
	:	<u>JURY TRIAL DEMANDED</u>

COMPLAINT

NOTICE

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

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

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

David Meholick  
Court Administration  
P.O. Box 549  
Clearfield, PA 16830-0549  
Telephone No.: 814 -765 - 2641 x 1330

**Raynes McCarty**  
David F. Binder, Esquire  
I.D. No. 02648  
1845 Walnut Street, Suite 2000  
Philadelphia, Pennsylvania 19103  
(215) 568-6190  
dfbinder@raynesmccarty.com

Attorneys for Plaintiff

---

PEGGY BUTLER, Executrix of the	:	COURT OF COMMON PLEAS
Estate of DAVID E. BUTLER, Deceased	:	CLEARFIELD COUNTY
413 Nelson Road	:	
Morrisdale, Pennsylvania 16858	:	
	:	
v.	:	CIVIL ACTION - TRIAL DIVISION
CLEARFIELD HOSPITAL	:	
809 Turnpike Avenue	:	
Clearfield, Pennsylvania 16830	:	NO.
	:	
and	:	CIVIL ACTION - MEDICAL
	:	PROFESSIONAL LIABILITY ACTION
MARK R. SHAW, D.O.	:	
c/o Clearfield Hospital	:	
809 Turnpike Avenue	:	<b><u>JURY TRIAL DEMANDED</u></b>
Clearfield, Pennsylvania 16830	:	

**COMPLAINT**

1. On or about October 13, 2005, at about 12:30 p.m., David E. Butler was injured in a motor vehicle accident in Bradford Township, Clearfield County, Pennsylvania, when he lost control of the Jeep Cherokee that he was driving when he swerved to avoid striking a deer on the roadway and the Jeep rolled over and crashed.
2. David E. Butler was taken from the scene of the accident by Clearfield EMS, Inc. to Clearfield Hospital. After notifying Clearfield Hospital in advance, the ambulance

arrived at the hospital at approximately 1:28 p.m., where the receiving physician in the emergency department was Mark R. Shaw, D.O.

3. David E. Butler remained an inpatient at the co-defendant Clearfield Hospital under the care of co-defendant Mark R. Shaw, D.O. as attending physician from 1:28 p.m. until 8:50 p.m. on October 13, 2005, when he was transferred in critical condition to the Regional Trauma Center at Altoona Hospital.
4. David E. Butler was admitted to Altoona Hospital at approximately 10:00 p.m. on October 13, 2005.
5. Health care personnel at the Regional Trauma Center at Altoona Hospital made valiant efforts to save David E. Butler's life, including giving him multiple blood transfusions and performing emergency abdominal surgery the night of his arrival.
6. Despite the efforts of physicians at the Regional Trauma Center at Altoona Hospital, David E. Butler died on the early morning of October 14, 2005.
7. The death of David E. Butler was caused by, and the risk of death increased by, the negligence of the defendants, jointly and severally, which negligence includes:
  - (a) failure promptly and properly to treat the injuries suffered by David E. Butler in the motor vehicle accident;
  - (b) failure promptly to stabilize David E. Butler and transfer him to the nearest regional trauma center, where he could be promptly and properly treated by physicians and other healthcare personnel who were specialists in treating trauma victims;

- (c) failure to recognize and treat the severity of David E. Butler's injuries, and twice ordering his discharge from Clearfield Hospital when such discharge was medically contraindicated;
- (d) negligently misrepresenting to David E. Butler and his wife that he was not in serious danger from the injuries that he suffered in the automobile accident and was physically fit enough to be discharged to home; and
- (e) inordinately delaying David E. Butler's transfer to a regional trauma center where he could receive prompt life saving treatment for his injuries.

**COUNT ONE - WRONGFUL DEATH ACTION**

- 8. The allegations in the preceding paragraphs are incorporated in this Count.
- 9. David E. Butler was survived by his wife, Peggy Butler Butler, and his parents, Elmer Butler and Patsy Butler. He had no surviving issue.
- 10. Plaintiff, on behalf of the above survivors, makes claim for pecuniary loss suffered by Peggy Butler, and for all other damages encompassed by the Pennsylvania Wrongful Death Act, 42 Pa.C.S. §8301.

**COUNT TWO - SURVIVAL ACT CLAIM**

- 11. The allegations in the preceding paragraphs in this Complaint are incorporated in this Count.
- 12. Plaintiff makes claim for all damages encompassed by the Pennsylvania Survival Act, 42 Pa.C.S. §8302, including pain and suffering undergone by David E. Butler prior to his

death as a result of defendants' negligence, loss of his earning capacity, and loss to his estate.

WHEREFORE, Plaintiff claims damages from Defendants, jointly and severally, in amounts in excess of those requiring referral to arbitration under local court rule, plus delay damages and costs.

**Raynes McCarty**

*David F. Binder*

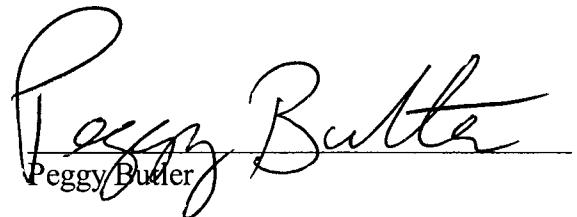
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David F. Binder, Esquire  
Attorneys for Plaintiff

Dated: 8/25/06

**VERIFICATION**

I, Peggy Butler, hereby verify that I am a plaintiff in the foregoing action; that the attached Complaint in Civil Action is based upon information which I have furnished to counsel and information which has been gathered by counsel in the preparation of the lawsuit. The language of the Complaint is that of counsel and not mine. I have read the Complaint, and to the extent the statements therein are based upon information I have given counsel, they are true and correct to the best of my knowledge, information, and belief. To the extent the contents of the Complaint are that of counsel, I have relied upon counsel in making this Verification. I understand that false statements made herein are made subject to the penalties of Pa. C.S.A. §4904 relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Peggy Butler", is written over a horizontal line. Below the signature, the name "Peggy Butler" is printed in a smaller, sans-serif font.

Dated: 9/25/06

**Raynes McCarty**  
David F. Binder, Esquire  
I.D. No. 02648  
1845 Walnut Street, Suite 2000  
Philadelphia, Pennsylvania 19103  
(215) 568-6190  
dfbinder@raynesmccarty.com

Attorneys for Plaintiff

---

PEGGY BUTLER, Executrix of the : COURT OF COMMON PLEAS  
Estate of DAVID E. BUTLER, Deceased : CLEARFIELD COUNTY  
: :  
v. : CIVIL ACTION - MEDICAL  
: PROFESSIONAL LIABILITY ACTION  
: :  
CLEARFIELD HOSPITAL and : NO.  
MARK R. SHAW, D.O. : **JURY TRIAL DEMANDED**

**CERTIFICATE OF MERIT**

**Certificate of Merit as to Clearfield Hospital:**

I, David F. Binder, Esquire, counsel for plaintiff, certify that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant, in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm;

and/or

The claim that this defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned, that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional

standards and that such conduct was a cause in bringing about the harm.

*David F. Binder*  
\_\_\_\_\_  
David F. Binder, Esquire

Dated: 8/25/06

**Raynes McCarty**  
David F. Binder, Esquire  
I.D. No. 02648  
1845 Walnut Street, Suite 2000  
Philadelphia, Pennsylvania 19103  
(215) 568-6190  
dfbinder@raynesmccarty.com

Attorneys for Plaintiff

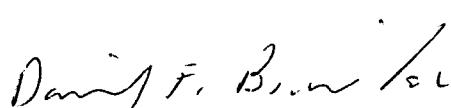
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PEGGY BUTLER, Executrix of the : COURT OF COMMON PLEAS  
Estate of DAVID E. BUTLER, Deceased : CLEARFIELD COUNTY  
: :  
v. : CIVIL ACTION - MEDICAL  
: PROFESSIONAL LIABILITY ACTION  
: :  
CLEARFIELD HOSPITAL and : NO.  
MARK R. SHAW, D.O. : **JURY TRIAL DEMANDED**

**CERTIFICATE OF MERIT**

**Certificate of Merit as to Mark R. Shaw, D.O.:**

I, David F. Binder, Esquire, counsel for plaintiff, certify that an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by this defendant, in the treatment, practice or work that is the subject of the complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm.

  
\_\_\_\_\_  
David F. Binder, Esquire

Dated: 8/23/06

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101881  
NO: 06-1415-CD  
SERVICE # 1 OF 2  
COMPLAINT

PLAINTIFF: PEGGY BUTLER, Executrix of the Estate of  
DAVID E. BUTLER, Deceased  
vs.  
DEFENDANT: CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.

SHERIFF RETURN

---

NOW, September 01, 2006 AT 9:40 AM SERVED THE WITHIN COMPLAINT ON CLEARFIELD HOSPITAL DEFENDANT AT 809 TURNPIKE AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO JON STEEN, ATTORNEY FOR DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

FILED  
03:14 cm  
SEP 05 2006

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101881  
NO: 06-1415-CD  
SERVICE # 2 OF 2  
COMPLAINT

PLAINTIFF: PEGGY BUTLER, Executrix of the Estate of  
DAVID E. BUTLER, Deceased  
vs.  
DEFENDANT: CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.

**SHERIFF RETURN**

---

NOW, September 01, 2006 AT 9:40 AM SERVED THE WITHIN COMPLAINT ON MARK R. SHAW, D.O.  
DEFENDANT AT 809 TURNPIKE AVE., CLEARFIELD, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO  
JON STEEN, ATTORNEY FOR CLEARFIELD HOSPITAL A TRUE AND ATTESTED COPY OF THE ORIGINAL  
COMPLAINT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: HUNTER /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 101881  
NO: 06-1415-CD  
SERVICES 2  
COMPLAINT

PLAINTIFF: PEGGY BUTLER, Executrix of the Estate of  
DAVID E. BUTLER, Deceased

vs.

DEFENDANT: CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.

**SHERIFF RETURN**

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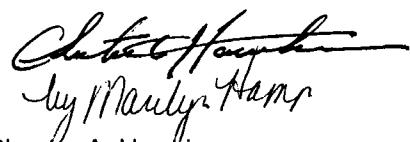
RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	RAYNES	5743	20.00
SHERIFF HAWKINS	RAYNES	5743	26.00

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

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER,  
Deceased,

: No. 2006 - 1415 CD

: ISSUE:  
PRAECIPE FOR APPEARANCE

Plaintiff

vs.

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

Filed on behalf of Defendants

Counsel of Record:  
Frank J. Hartye, Esquire  
PA I.D. #25568

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

Defendants

JURY TRIAL DEMANDED

I HEREBY CERTIFY THAT A TRUE AND  
CORRECT COPY OF THE WITHIN WAS  
MAILED TO ALL COUNSEL OF RECORD  
THIS 12<sup>TH</sup> DAY OF SEPTEMBER, 2006.

\_\_\_\_\_  
Atorneys for Defendants

FILED *(initials)*  
SEP 15 2006  
m/ l: 15/ 06  
William A. Shaw  
Prothonotary/Clerk of Courts  
COPY TO CIR  
no c/c

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

PEGGY BUTLER, Executrix of the : No. 2006 – 1415 CD  
Estate of DAVID E. BUTLER,  
Deceased,

Plaintiff

vs.

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

Defendants

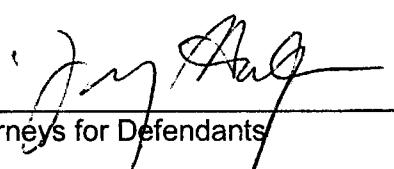
: JURY TRIAL DEMANDED

**PRAECIPE FOR APPEARANCE**

TO: PROTHONOTARY

Enter my Appearance on behalf of Defendants, CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.

Papers may be served at the address set forth below.

  
\_\_\_\_\_  
Attorneys for Defendants

**McINTYRE, HARTYE & SCHMITT**  
Frank J. Hartye, Esquire  
PA I.D. #25568  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
PH: (814) 696-3581  
FAX: (814) 696-9399

Date: September 12, 2006

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

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER,  
Deceased,

: No. 2006 – 1415 CD

: ISSUE:  
Notice of Deposition of  
Peggy Butler

Plaintiff

vs.

Filed on behalf of Defendants

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

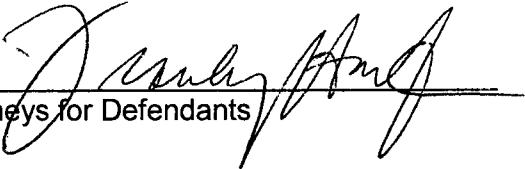
: Counsel of Record:  
Frank J. Hartye, Esquire  
PA I.D. #25568

Defendants

: 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 2<sup>nd</sup> DAY OF FEBRUARY, 2007.

  
\_\_\_\_\_  
Attorneys for Defendants

FEB 05 2007  
FEB 05 2007  
FEB 05 2007  
FEB 05 2007

William A. Shaw  
Prothonotary/Clerk of Courts

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

PEGGY BUTLER, Executrix of the Estate of DAVID E. BUTLER, Deceased,	:	No. 2006 – 1415 CD
Plaintiff	:	
vs.	:	
CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.,	:	
Defendants	:	JURY TRIAL DEMANDED

**NOTICE OF DEPOSITION**

TO: Peggy Butler  
c/o David F. Binder, Esquire  
Raynes McCarty  
1845 Walnut Street  
Suite 2000  
Philadelphia, PA 19103

ASAP Court Reporting  
208 West Sample Street  
P.O. Box 345  
Ebensburg, PA 15931

Please take notice that the deposition of **Peggy Butler** shall be taken upon oral examination by an official Court Reporter at the offices of **McINTYRE, HARTYE & SCHMITT, 1816 Old Route 220 North Business, Duncansville, PA (Across from the Hollidaysburg Veteran's Home)** on the **21<sup>st</sup>** day of **March, 2007**, commencing at **1:00 p.m.**

The scope of said deposition testimony will include inquiry into all facts concerning the happening of the incident complained of and all other matters relevant to the issues raised in the case.

You are invited to attend and participate.

McINTYRE, HARTYE & SCHMITT

  
\_\_\_\_\_  
Attorney for Defendant  
Clearfield Hospital and  
Mark R. Shaw, D.O.

Frank J. Hartye, Esquire  
PA I.D. #25568  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

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

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER,  
Deceased,

Plaintiff

No. 2006 – 1415 CD

ISSUE:

**NOTICE OF SERVICE OF  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO PLAINTIFF DATED  
FEBRUARY 6, 2007**

vs.

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

Defendants

Filed on behalf of Defendants

Counsel of Record:  
Frank J. Hartye, Esquire  
PA I.D. #25568

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 6th DAY OF February, 2007.

\_\_\_\_\_  
Atorneys for Defendants

FILED

FEB 08 2007  
m/12:40pm  
William A. Shaw  
Prothonotary/Clerk of Courts

no C/C (6K)

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

PEGGY BUTLER, Executrix of the Estate of DAVID E. BUTLER, Deceased,	:	No. 2006 – 1415 CD
Plaintiff	:	
vs.	:	
CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.,	:	
Defendants	:	JURY TRIAL DEMANDED

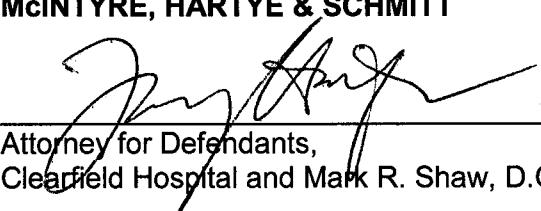
**NOTICE OF SERVICE OF INTERROGATORIES  
AND REQUEST FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO PLAINTIFF DATED 2-06-07**

TO: PROTHONOTARY

You are hereby notified that on the **6th** day of **February, 2007**, Defendants, Clearfield Hospital and Mark R. Shaw, D.O., served Interrogatories and Request for Production of Documents Directed to Plaintiff Dated February 6, 2007, by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

David F. Binder, Esquire  
Raynes McCarty  
1845 Walnut Street  
Suite 2000  
Philadelphia, PA 19103  
(Counsel for Plaintiff)

**McINTYRE, HARTYE & SCHMITT**

  
\_\_\_\_\_  
Attorney for Defendants,  
Clearfield Hospital and Mark R. Shaw, D.O.

**Frank J. Hartye, Esquire**  
PA I.D. No. 25568  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

Raynes McCarty  
David F. Binder, Esquire  
I.D. No. 02648  
1845 Walnut Street, Suite 2000  
Philadelphia, Pennsylvania 19103  
(215) 568-6190  
dfbinder@raynesmccarty.com

Attorneys for Plaintiff

FILED  
MAR 01 2007  
m / 10:05 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
2 copies to NPA

PEGGY BUTLER, Executrix of the : COURT OF COMMON PLEAS  
Estate of DAVID E. BUTLER, Deceased, : CLEARFIELD COUNTY  
: CIVIL ACTION - MEDICAL  
v. : PROFESSIONAL LIABILITY ACTION  
CLEARFIELD HOSPITAL and :  
MARK R. SHAW, D.O. : NO. 2006-1415 CD

COPY TO  
C/A

**WITHDRAWAL OF APPEARANCE**

To the Prothonotary:

Kindly withdraw my appearance on behalf of Plaintiff Peggy Butler, Executrix of the  
Estate of David E. Butler, Deceased.

**Raynes McCarty**

BY: David F. Binder

**David F. Binder**

**ENTRY OF APPEARANCE**

To the Prothonotary:

Kindly enter my appearance on behalf of Plaintiff Peggy Butler, Executrix of the  
Estate of David E. Butler, Deceased.

**Gold, Silverman, Goldenberg & Binder**  
**The Meadows, Suite 115**  
**485 Devon Park Drive**  
**Wayne, PA 19087**  
**(215) 563-6067**

BY: David F. Binder

**David F. Binder**

Date: February 28, 2007

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

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER,  
Deceased,

: No. 2006 – 1415 CD

Plaintiff

: ISSUE:

: Certificate Prerequisite to Service  
of Subpoena Pursuant to  
Rule 4009.22

vs.

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

: Filed on behalf of Defendants

Defendants

: Counsel of Record:  
Frank J. Hartye, Esquire  
PA I.D. #25568  
Laura O. Burke, Esquire  
PA I.D. #200595  
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 20th DAY OF SEPTEMBER, 2007.

Laura O. Burke

Attorneys for Defendants

FILED  
MTO52007  
SEP 27 2007  
NO CC  
LM  
William A. Shaw  
Prothonotary/Clerk of Courts

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

PEGGY BUTLER, Executrix of the : No. 2006 – 1415 CD  
Estate of DAVID E. BUTLER, :  
Deceased, :  
Plaintiff :  
: vs. :  
: :  
CLEARFIELD HOSPITAL and :  
MARK R. SHAW, D.O., :  
Defendants : JURY TRIAL DEMANDED  
**CERTIFICATE PREREQUISITE TO SERVICE  
OF SUBPOENA PURSUANT TO RULE 4009.22**

As a prerequisite to service of subpoena for documents and things pursuant to Rule 4009.22, Defendants, CLEARFIELD HOSPITAL and MARK R. SHAW, D.O., certify 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,
2. a copy of the Notice of Intent, including the proposed subpoena, is attached to this Certificate,
3. a letter was received from plaintiff's counsel indicating that he waived the 20 day notice period on behalf of his client, 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.
5. Please note that any and all information obtained via the Subpoena request shall be used and maintained pursuant to the requirements of the Health Insurance Portability and Accountability Act, otherwise known as HIPAA.

Date: September 20, 2007

*Laura O. Burke*

---

Attorney for Defendant  
FRANK J. HARTYE, ESQUIRE  
PA I.D.# 25568  
LAURA O. BURKE, ESQUIRE  
PA I.D.# 200595  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
814/696-3581

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

PEGGY BUTLER, Executrix of the Estate of DAVID E. BUTLER, Deceased,	:	No. 2006 – 1415 CD
Plaintiff	:	
vs.	:	
CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.,	:	
Defendants	:	JURY TRIAL DEMANDED

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

Defendants, **Clearfield Hospital and Mark R. Shaw, D.O.**, intend 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 no objection is made, the subpoena may be served.

Respectfully submitted,

**McINTYRE, HARTYE & SCHMITT**

BY: Laura O. Burke  
Attorney for Defendants

**Frank J. Hartye, Esquire  
PA I.D. No. 25568**

**Laura O. Burke, Esquire  
PA I.D. No. 200595  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
PH: (814) 696-3581  
FAX: (814) 696-9399**

Date: September 11, 2007

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF CLEARFIELD

Peggy Butler

David E. Butler

Plaintiff(s)

Vs.

\*

No. 2006-01415-CD

Clearfield Hospital

\*

Mark R. Shaw, D.O.

Defendant(s)

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

TO: STAT MedEvac, 800 Airport Road, Clearfield, PA 16830  
(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:

1. All records pertaining to contact with Clearfield Hospital on 10/13/05 in connection with the transportation of David Butler; 2. All records pertaining to contact with Altoona Hospital on 10/13/05 pertaining to the transportation of David Butler; and 3. All records pertaining to the decision not to (Address) transport David Butler by helicopter on 10/13/05.

PO Box 533, Hollidaysburg, PA 16648 - McIntyre, Hartye & Schmitt -

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: Frank J. Hartye, Esquire and Laura O. Burke, Esquire

ADDRESS: PO Box 533

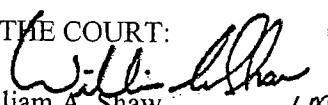
Hollidaysburg, PA 16648

TELEPHONE: (814) 696-3581

SUPREME COURT ID # 25568/200595

ATTORNEY FOR: Defendants

BY THE COURT:

  
William A. Shaw LM

Prothonotary/Clerk, Civil Division

DATE: Tuesday, September 11, 2007

Seal of the Court

Deputy

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

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER,  
Deceased,

Plaintiff

vs.

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

Defendants

: No. 2006 – 1415 CD

: ISSUE:

: Notice of Deposition of  
Gil Stevenson

: Filed on behalf of Defendants

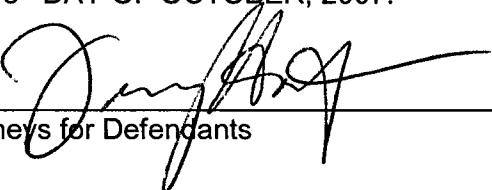
: Counsel of Record:

: Frank J. Hartye, Esquire  
PA I.D. #25568

: 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 8<sup>th</sup> DAY OF OCTOBER, 2007.

  
\_\_\_\_\_  
Attnorneys for Defendants

FILED  
OCT 10 2007  
NOCC  
WAS  
Clerk  
LJ

William A. Shaw  
Prothonotary/Clerk of Courts

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

PEGGY BUTLER, Executrix of the Estate of DAVID E. BUTLER, Deceased,	:	No. 2006 – 1415 CD
Plaintiff	:	
vs.	:	
CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.,	:	
Defendants	:	JURY TRIAL DEMANDED

**NOTICE OF DEPOSITION**

TO: Gil Stevenson  
c/o Clearfield EMS, Inc.  
713 West Front Street  
Clearfield, PA 16830

David F. Binder, Esquire  
Gold, Silverman, Goldenberg & Binder  
The Meadows, Suite 115  
485 Devon Park Drive  
Wayne, PA 19087

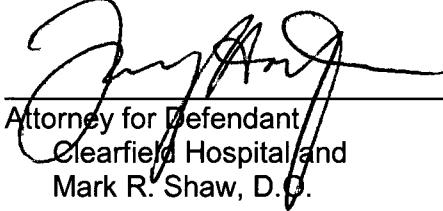
ASAP Court Reporting  
167 South McKean Street  
Kittanning, PA 16201

Please take notice that the deposition of **Gil Stevenson** shall be taken upon oral examination by an official Court Reporter at the offices of **Clearfield EMS, 713 West Front Street, Clearfield, PA 16830** on the **12th day of November, 2007**, commencing at **12:00 p.m.**

The scope of said deposition testimony will include inquiry into all facts concerning the happening of the incident complained of and all other matters relevant to the issues raised in the case.

You are invited to attend and participate.

McINTYRE, HARTYE & SCHMITT

  
\_\_\_\_\_  
Attorney for Defendant  
Clearfield Hospital and  
Mark R. Shaw, D.O.

Frank J. Hartye, Esquire  
PA I.D. #25568  
P.O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

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

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER,  
Deceased,

Plaintiff

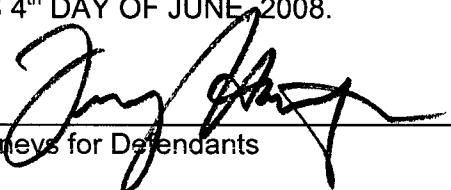
vs.

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

Defendants

: No. 2006 – 1415 CD  
: **ISSUE:**  
: Motion to Schedule Case Management  
: Conference Pursuant to Rule 1042.41  
: Filed on behalf of Defendants  
: Counsel of Record:  
: Frank J. Hartye, Esquire  
: PA I.D. #25568  
: 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 4<sup>th</sup> DAY OF JUNE, 2008.

  
\_\_\_\_\_  
Attorneys for Defendants

FILED <sup>No CC</sup>  
m 10 10 08  
JUN 05 2008

  
William A. Shaw  
Probationary/Clerk of Courts

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

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER,  
Deceased,

: No. 2006 – 1415 CD

Plaintiff

vs.

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

Defendants

: JURY TRIAL DEMANDED

ORDER

AND NOW, this 10<sup>th</sup> day of June, 2008, it is hereby ORDERED, DIRECTED, and  
DECREEED that a Case Management Conference shall be scheduled for  
Friday, July 18, 2008, at 11:00 a.m./p.m., at the Clearfield  
County Courthouse before the Honorable Fredric J. Ammerman.

BY THE COURT:



FILED <sup>1cc</sup>  
07/34 BA Atty Hartje  
JUN 11 2008

William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

**JUN 11 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 6/11/08

You are responsible for serving all appropriate parties.

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

Plaintiff(s)  Plaintiff(s) Attorney  Other

Defendant(s)  Defendant(s) Attorney

Special Instructions:

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

PEGGY BUTLER, Executrix of the Estate of DAVID E. BUTLER, Deceased,	:	No. 2006 – 1415 CD
Plaintiff	:	
vs.	:	
CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.,	:	
Defendants	:	JURY TRIAL DEMANDED

**MOTION TO SCHEDULE CASE MANAGEMENT CONFERENCE PURSUANT TO  
RULE 1042.41**

AND NOW, come defendants, CLEARFIELD HOSPITAL and MARK R. SHAW, D.O., by and through their attorneys, MCINTYRE, HARTYE & SCHMITT, and file the following Motion to Schedule a Case Management Conference Pursuant to Rule 1042.41.

1. It has been more than one year since the Answer was filed in this matter.
2. Discovery is completed.
3. Both plaintiff and defendants agree that a Case Management Conference would be appropriate and helpful.

WHEREFORE, defendants request this Honorable Court to set a date and time for a Case Management Conference pursuant to Rule 1042.41.

MCINTYRE, HARTYE & SCHMITT

  
Attorney for Defendants

FRANK J. HARTYE, ESQUIRE  
PA. I.D. No. 25568  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

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

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER,  
Deceased,

Plaintiff

vs.

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

Defendants

: No. 2006 – 1415 CD

: ISSUE:

: Certificate of Service

: Filed on behalf of Defendants

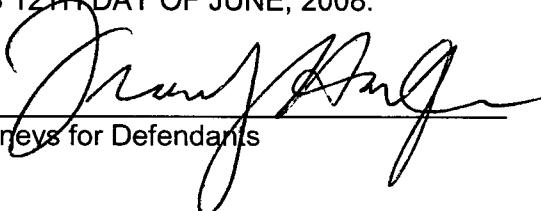
: Counsel of Record:

: Frank J. Hartye, Esquire  
PA I.D. #25568

: 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 12TH DAY OF JUNE, 2008.

  
\_\_\_\_\_  
Attorneys for Defendants

FILED NO CC  
10:44 AM  
SUN 13 2008  
WM  
William A. Shaw  
Prothonotary/Clerk of Courts

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

PEGGY BUTLER, Executrix of the Estate of DAVID E. BUTLER, Deceased,	:	No. 2006 – 1415 CD
Plaintiff	:	
vs.	:	
CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.,	:	
Defendants	:	JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Frank J. Hartye, Esquire, hereby certify that I have served a true and correct copy of the foregoing Order scheduling a Case Management Conference on the following persons by placing the same in the U.S. Mail, postage prepaid, on the 12th day of June, 2008:

David F. Binder, Esquire  
Gold, Silverman, Goldenberg & Binder  
The Meadows, Suite 115  
485 Devon Park Drive  
Wayne, PA 19087

MCINTYRE, HARTYE & SCHMITT

  
Attnorneys for Defendants

FRANK J. HARTYE, ESQUIRE  
PA. ID. No. 25568  
P.O. Box 533  
Hollidaysburg, PA 16648  
814/696-3581

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

PEGGY BUTLER, Executrix of the : No. 2006 – 1415 CD  
Estate of DAVID E. BUTLER, :  
Deceased, :  
Plaintiff :  
vs. :  
CLEARFIELD HOSPITAL and :  
MARK R. SHAW, D.O., :  
Defendants : JURY TRIAL DEMANDED

**ORDER**

AND NOW, this 10<sup>th</sup> day of June, 2008, it is hereby ORDERED, DIRECTED, and  
DECREEED that a Case Management Conference shall be scheduled for  
Friday, July 18, 2008, at 11:00 a.m., at the Clearfield  
County Courthouse before the Honorable Fredric J. Ammerman.

BY THE COURT:  
/S/ Fredric J Ammerman

---

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

JUN 11 2008

Attest.

*William L. Chen*  
Prothonotary/  
Clerk of Courts

**GOLD, SILVERMAN, GOLDENBERG & BINDER**  
David F. Binder, Esquire  
I.D. No. 02648  
485 Devon Park Drive, Suite 115  
Wayne, Pennsylvania 19087  
(215) 563-6067

WA  
JUL 16 2008  
10:45 AM  
William A. Shaw  
Prothonotary/Clerk of Courts  
1 CENT TO ATTY

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER, Deceased, : COURT OF COMMON PLEAS  
: CLEARFIELD COUNTY  
: .  
: v. : JURY TRIAL DEMANDED  
: .  
CLEARFIELD HOSPITAL and : NO. 2006-1415 CD  
MARK R. SHAW, D.O. : .

**PRAECIPE FOR TRIAL**

**TO THE PROTHONOTARY:**

Pursuant to 46 J.D.R.C.P. 212.2, kindly list this case for trial for the following  
reasons:

1. No motions are outstanding, discovery has been completed, and the case  
is ready for trial.
3. The case is to be heard by a jury.
4. Notice of this Praecipe has been given to counsel for defendant, Frank J.

Hartye, Esquire, by faxing a copy to him on July 14, 2008.

Respectfully submitted,

**GOLD, SILVERMAN, GOLDENBERG & BINDER**

By David F. Binder  
DAVID F. BINDER  
Counsel for Plaintiffs

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

FILED  
07/18/2008 D. Binder  
JUL 18 2008 F. Hartje

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER,  
Deceased,

Plaintiff

vs.  
CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

Defendants

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

\* No. 06-1415-CD

ORDER

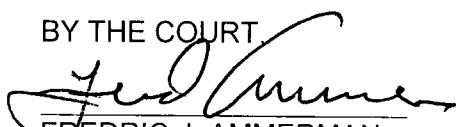
NOW, this 17<sup>th</sup> day of July, 2008, it is the ORDER of this Court as follows:

1. Pending finalization of the 2009 Court calendar, Jury Selection is scheduled for January 6, 2009 at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for January 19, 20, 21, 22, 23, 2009 commencing at 9:00 a.m. each day in Clearfield County Multi Purpose Center, Clearfield, Pennsylvania with Senior Judge Charles Brown, Specially Presiding.
3. Prior to Jury Selection Judge Brown will schedule a pre-trial conference with counsel for the parties.
4. All depositions which are to be used for trial presentation purposes shall be completed by absolutely no later than sixty (60) days prior to the commencement of trial or the same will not be available for use at trial. A copy of the transcript of any such deposition(s) shall be provided to opposing counsel within no more than ten (10) days following completion of the deposition(s).
5. The written report of any expert who will testify at trial which has not previously been provided to opposing counsel shall be delivered within no more than sixty

(60) days from this date. Failure to comply will result in the witness not being available for use at trial.

6. 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.
7. 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.
8. The parties hereby agree to the authenticity of any and all medical records and bills which were previously provided through the discovery process. No party shall be required to produce a medical records witness for purposes of authentication.
9. Copies of any exhibits to be offered at time of trial which have not been previously listed in the parties' discovery process or in pre-trial statements shall be provided to opposing counsel by no later than ten (10) days prior.

BY THE COURT



FREDERICK J. AMMERMAN  
President Judge

**FILED**

**JUL 18 2008**

William A. Shaw  
Prothonotary/Clerk of Courts

Special Instructions:

Plaintiff(s)  Defendant(s)  Plaintiff(s) Attorney  Defendant(s) Attorney

The Prothonotary's office has provided services to the following party:  
You are responsible for serving all correspondence papers.

DATE: 7/18/08

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

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER,  
Deceased,

Plaintiff

No. 2006 – 1415 CD

ISSUE: Notice of Service of Second  
Set of Interrogatories and Second  
Set of Request for Production of  
Documents, dated 8/26/08

vs.

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.,

Defendants

Filed on behalf of Defendants

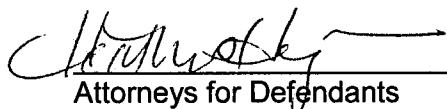
Counsel of Record:  
Frank J. Hartye, Esquire  
PA I.D. #25568

Heather A. Harrington, Esquire  
PA I.D. #62977

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 26<sup>th</sup> DAY OF AUGUST, 2008.

  
\_\_\_\_\_  
Attnorneys for Defendants

7-1-2008  
m/12/08/08  
W.A. Shaw  
NOCC  
W.A. Shaw  
\_\_\_\_\_  
W.A. Shaw

William A. Shaw  
Prothonotary/Clerk of Courts

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

PEGGY BUTLER, Executrix of the Estate of DAVID E. BUTLER, Deceased,	:	No. 2006 – 1415 CD
Plaintiff	:	
vs.	:	
CLEARFIELD HOSPITAL and MARK R. SHAW, D.O.,	:	
Defendants	:	JURY TRIAL DEMANDED

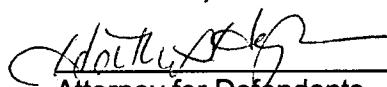
**NOTICE OF SERVICE OF SECOND SET OF INTERROGATORIES  
AND SECOND SET OF REQUEST FOR PRODUCTION OF DOCUMENTS  
DIRECTED TO PLAINTIFF DATED 8/26/08**

TO: PROTHONOTARY

You are hereby notified that on the **26th** day of **August, 2008**, Defendants,  
Clearfield Hospital and Mark R. Shaw, D.O., served Second Set of Interrogatories and  
Second Set of Request for Production of Documents Directed to Plaintiff Dated August  
26, 2008, by mailing the original of same via First Class U.S. Mail, postage prepaid,  
addressed to the following:

David F. Binder, Esquire  
Raynes McCarty  
1845 Walnut Street  
Suite 2000  
Philadelphia, PA 19103  
(Counsel for Plaintiff)

McINTYRE, HARTYE & SCHMITT

  
\_\_\_\_\_  
Attorney for Defendants,  
Clearfield Hospital and Mark R. Shaw, D.O.  
Frank J. Hartye, Esquire  
PA I.D. No. 25568

Heather A. Harrington, Esquire  
PA I.D. No. 62977  
P. O. Box 533  
Hollidaysburg, PA 16648-0533  
(814) 696-3581

GOLD, SILVERMAN, GOLDENBERG & BINDER  
By: David F. Binder, Esquire  
Identification No. 02648  
485 Devon Park Drive, Suite 115  
Wayne, Pennsylvania 19087  
215-563-6067

FILED NOCC  
03:22 PM  
OCT 20 2008  
S William A. Shaw  
Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA

PEGGY BUTLER, Executrix of the : COURT OF COMMON PLEAS  
Estate of DAVID E. BUTLER, Deceased : CLEARFIELD COUNTY  
  
v. :  
  
CLEARFIELD HOSPITAL and :  
MARK R. SHAW, D.O. : NO. 2006 - 1415 - CD

**PETITION TO APPROVE SETTLEMENT OF SURVIVAL ACTION**

Pursuant to 20 Pa.C.S. §3323, plaintiff petitions the Court to approve the compromise settlement of this case, and alleges as follows:

1. This is a medical malpractice suit for the death of the plaintiff's husband, David E. Butler, brought pursuant to the Pennsylvania wrongful death and survival statutes, i.e., 42 Pa.C.S. §§ 8301 and 8302.
2. Defendants have offered \$450,000 in settlement. Plaintiff has accepted the offer, subject to the Court's approval.
3. The decedent never had children. The only potential beneficiaries under the wrongful death statute are the decedent's widow (the plaintiff) and his parents, Elmer and Patsy Butler.
4. The decedent was a Pennsylvania resident. He resided at 413 Nelson Road in Morrisdale, Pa., with his wife (the plaintiff).
5. Elmer and Patsy Butler have lived in Georgia for more than 17 years. They are self-supporting and were not dependent on David Butler. They did not receive

pecuniary benefits from him. Therefore, only the decedent's widow (the plaintiff) has a viable claim under the wrongful death statute.

6. The decedent left a will, copy of which is attached as Exhibit A, that was probated with the Register of Wills of Clearfield County on October 27, 2005. It leaves his entire estate to his wife, except for a motorcycle. However, the decedent sold the motorcycle prior to his death. It was not part of his estate when he died. Therefore, there is no Pennsylvania inheritance tax payable from the decedent's estate. A no-tax acceptance letter was received by the estate from the Inheritance Tax Division of the Pennsylvania Department of Revenue on August 26, 1966.

7. Even if the entire proceeds from this settlement were allocated to the survival action, the decedent's estate would not be big enough to trigger the federal estate tax. Therefore, the federal government has no interest in this case.

8. The estate was duly advertised, as required by law, in October and November of 2005. There are no creditors with a claim to assets in the decedent's estate.

9. Neither the decedent, nor his widow, had children. Neither, therefore, owes any child support. Nonetheless, in accordance with 23 Pa.C.S. §4308.1, lien search results from the Pennsylvania child support enforcement system website are attached as Exhibits B and C, respectively.

10. Since the allocation of damages between wrongful death and survival claims will not adversely affect the Commonwealth, or the federal government, or anyone else, plaintiff proposes, for the sake of convenience, and to avoid additional paperwork and filings with the Register of Wills, to allocate the entire settlement to the wrongful death claim under 42 Pa. C.S. §8301.

11. The proposed settlement is a compromise of disputed claims, and is not

an admission of liability by the defendants.

12. No minor or incapacitated person has an interest in this case. All interested parties are competent adults.

13. Counsel for the defendants has reviewed this petition and has authorized me to state that he agrees with it and joins in the plaintiff's request that it be granted.

WHEREFORE, the plaintiff requests the Court to approve the settlement agreed upon by the parties.

Respectfully submitted,

GOLD, SILVERMAN, GOLDENBERG & BINDER

By David F. Binder  
DAVID F. BINDER  
Counsel for Plaintiff

## VERIFICATION

I, Peggy Butler, individually and as executrix of the estate of David E. Butler, deceased, state that I have read the attached Petition to Approve Settlement of Survival Action, that I understand it, that the facts set forth therein are true and correct to the best of my knowledge, information and belief, and that I request the Court to grant the Petition and approve the proposed settlement.

This Verification is made subject to the penalties of 18 Pa.C.S. §4904, which relates to unsworn falsification to authorities.



Peggy Butler

# EXHIBIT A

*Last Will and Testament*  
of  
*DAVID E. BUTLER*

**COPY**

I, DAVID E. BUTLER, of 413 Nelson Road, Morrisdale, Clearfield County, Pennsylvania 16858, being of sound mind, memory and understanding, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking and making void any and all Wills and Codicils heretofore made by me.

FIRST: I direct that my funeral expenses, the expenses of the administration of my estate, claims duly allowed against my estate, and all State, Inheritance and other taxes in the nature thereof, together with any interest and penalties thereon, becoming payable because of my death with respect to the property constituting my gross estate for death tax purposes, whether or not such property passes under this Will shall be paid by my Executrix hereinafter named, as soon as conveniently may be after my death.

SECOND: I give, devise and bequeath my 2002 Harley Davidson Ultra Classic Motorcycle to my brother, DOUGLAS LEE BUTLER, of 3080 Old 6<sup>th</sup> Avenue, Duncansville, Pennsylvania 16635, to be his, absolutely, provided he survives me and is living sixty (60) days after the date of my death. In the event he should fail to survive me, this bequest shall lapse and this asset shall become part of the residue of my Estate.

*David E. Butler*

THIRD: I give, devise and bequeath all the rest, residue and remainder of my Estate, whether real, personal or mixed and of whatsoever kind and nature and wheresoever situate, unto my wife, PEGGY ANN KEATING BUTLER, provided she survives me and is living sixty (60) days after the date of my death.

FOURTH: In the event that my wife, PEGGY ANN KEATING BUTLER, and myself shall die simultaneously or under such circumstances as to make it impossible to determine which survived the other, then I direct that as to any assets standing in my name alone, I shall be conclusively presumed to have survived her and such assets shall be distributed under this, my Last Will and Testament, and as to any assets held jointly with my wife as tenants by the entireties, then I direct that she shall be conclusively presumed to have survived me and that such assets vested in her as the surviving tenant by the entireties and shall be distributed under her Last Will and Testament.

FIFTH: In the event my wife, PEGGY ANN KEATING BUTLER, should fail to survive me by sixty (60) days after the date of my death, then I direct that all assets, except for the specific bequest herein, shall be sold and those assets shall be distributed as hereinafter set forth.

SIXTH: I give, devise and bequeath one-half (½) of my Estate to my sisters-in-law, KATHLEEN MARGARET KEATING, of 217½ Frederick Street, Hanover, Pennsylvania 17331, and FRANCIS ZONDRA KLAUS, of 306 Hammershire Road, Reisterstown, Maryland 21136, in equal shares, provided they survive me and are living sixty (60) days after the date of my death. In the event that either of them should fail to survive me by sixty (60) days, but have children surviving, then I give, devise and bequeath to their then living children, in equal shares, the share to which their parent would have been entitled. If the named individual should fail to survive me by sixty (60) days and not be survived by children, then their interest hereunder shall lapse and the full share shall go to the survivor of the named sisters-in-law.

SEVENTH: I give, devise and bequeath one-half (½) of my Estate to my brother and sisters, DOUGLAS LEE BUTLER, of 3080 Old 6<sup>th</sup> Avenue, Duncansville, Pennsylvania 16635; SUSAN PATRICIA VAN GORDER, of 1096 Amberton Lane, Powder Springs, Georgia 30127; CYNTHIA MARIE PROUGH, of 2309 Island Road, Lock Haven, Pennsylvania 17745; and TRACY JO RENNER, of 704 Camberly Court, Chesapeake, Virginia 23320, in equal shares, provided they survive me and are living sixty (60) days after the date of my death. In the event that any of them should fail to survive me by sixty (60) days, but

have children surviving, then I give, devise and bequeath to their then living children, in equal shares, the share to which their parent would have been entitled. If any of the named individuals should fail to survive me by sixty (60) days and not be survived by children, then their interest hereunder shall lapse and the full share shall go in equal shares to my surviving siblings named herein.

EIGHTH: I do hereby nominate, constitute and appoint my wife, PEGGY ANN KEATING BUTLER, to be the Executrix of this, my Last Will and Testament. In the event that my Executrix is unable or unwilling to serve, I hereby appoint my great nephew, CHUCK JOSEPH HENN, of 2019 Advisory Court, Sykesville, Maryland, to be the Executor of this my Last Will and Testament. I further direct that any Executrix/Executor under this Will shall not be required to file a bond in this or any other jurisdiction.

NINTH: In addition to the powers vested in her by law, my Executrix shall have the power to sell at public or private sale, to exchange, to convert or to lease for any period of time any real or personal property and to give options for sales,

*David E. Butler*

exchanges or leases, for such prices and upon such terms or conditions as she deems proper, without leave of Court being required.

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this, my Last Will and Testament, and have signed each individual page thereof on the 11th day of January, 2005.



DAVID E. BUTLER

Signed, sealed, published and declared by the above named Testator and for his Last Will and Testament in the presence of us, who at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto.



COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF CLEARFIELD :  
:

I, DAVID E. BUTLER, Testator, whose name is signed to the attached or foregoing Instrument, having been duly qualified according to law, do hereby acknowledge that I signed and executed the Instrument as my Last Will; and that I signed it willingly; and that I signed it as my free and voluntary act for the purposes therein expressed.

*David E. Butler*

DAVID E. BUTLER

SWORN or AFFIRMED to and acknowledged before me by DAVID E. BUTLER, the Testator, this 11th day of January, 2005.

*Nancy M. O'Meal*

NOTARIAL SEAL  
NANCY M. O'MEAL, Notary Public  
Graham Township, Clearfield Co., PA  
My Commission Expires, May 4, 2006

COMMONWEALTH OF PENNSYLVANIA :  
: SS  
COUNTY OF CLEARFIELD :  
:

We, Ann B. Wood and Sandra A. Irwin,

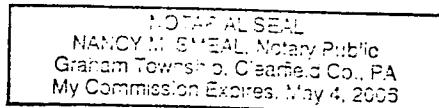
the witnesses whose names are signed to the attached or foregoing Instrument, being duly qualified according to law, do depose and say that we were present and saw the Testator sign and execute the Instrument as his Last Will and Testament; that DAVID E. BUTLER signed it willingly and that DAVID E. BUTLER executed it as his free and voluntary act for the purposes therein expressed; that each of us in the hearing and sight of the Testator signed the Will as witnesses; and that to the best of our knowledge the Testator was at that time eighteen or more years of age, of sound mind and under no constraint or undue influence.

Ann B. Wood

Sandra A. Irwin

SWORN or AFFIRMED to and subscribed to before me by the above named witnesses this 11th day of January, 2005.

Nancy M. Smeal



# EXHIBIT B

[www.childsupport.state.pa.us](http://www.childsupport.state.pa.us)

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11. *Leucosia* (Leucosia) *leucostoma* (Fabricius) (Fig. 11)

The information provided by this Internet site does not constitute an official certification by the Department of Public Welfare of the amount of support arrears. Certifications of arrears amounts must be obtained from the local Domestic Relations Sections under 23 Pa.C.S. § 4352(d)(1)(3) and (7). The Department of Public Welfare is not liable if the information provided by this Internet site is incorrect or out of date.

The information provided by this Internet site does not meet the requirements for insurance intercept purposes defined under 23 Pa.C.S. 4308.1(a) and (b). The arrears balance returned under the search criteria may be utilized to process the insurance intercept action. The Department of Public Welfare is not liable if the information provided by this Internet site is incorrect or out of date. An Insurance Intercept may be disputed in accordance with 23 Pa.C.S. 4308.1(h) and must be based on a mistake in the amount of overdue support, or a mistake in the identity of the obligor.

### Your Search Criteria

Last Name : Butler

First Name : David

Social Security Number : 199388656

Date of Birth : 02/20/1952

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No Results has been found for your Search Criteria

The data is as of Monday October 06 2008. Please try again with different criteria.

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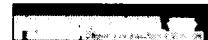
# EXHIBIT C

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Child Support Program



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**Your Search Criteria**

Last Name : Butler

First Name : Peggy

Social Security Number : 170500148

Date of Birth : 07/03/1955

→ [Return To Lien Search](#)

No Results has been found for your Search Criteria

The data is as of Monday October 06,2008. Please try again with different criteria.

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## COMMONWEALTH OF PENNSYLVANIA

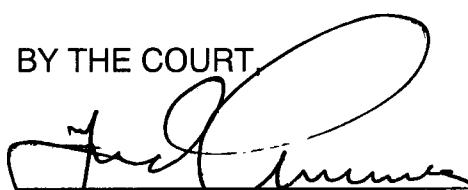
Peggy Butler, Executrix of the Estate : COURT OF COMMON PLEAS  
of David E. Butler, Deceased : CLEARFIELD COUNTY

v. :  
Clearfield Hospital and Mark Shaw, D.O. : No. 2006 – 1415 - CD

## O R D E R

NOW, this 20 day of October, 2008, pursuant to 20 Pa.C.S. §3323, plaintiff's petition to approve settlement of survival action is granted, and the proceeds of settlement are allocated to plaintiff's cause of action under the wrongful death statute, i.e., 42 Pa.C.S. §8301.

BY THE COURT

  
FREDRIC J. AMMERMAN  
President Judge

FILED 3CC  
07/30/2008 Atty Binder  
OCT 20 2008  
S (610)  
William A. Shaw  
Prothonotary/Clerk of Courts

**FILED**

OCT 20 2008

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 10/20/08

You are responsible for serving all appropriate parties.  
 The Prothonotary's office has provided service to the following parties:  
 Plaintiff(s)       Plaintiff(s) Attorney       Other  
 Defendant(s)       Defendant(s) Attorney       Other  
 Special Instructions:

# ORIGINAL

## GOLD, SILVERMAN, GOLDENBERG & BINDER

David F. Binder, Esquire

I.D. No. 02648

485 Devon Park Drive, Suite 115

Wayne, Pennsylvania 19087

(215) 563-6067

PEGGY BUTLER, Executrix of the  
Estate of DAVID E. BUTLER, Deceased,

COURT OF COMMON PLEAS  
CLEARFIELD COUNTY

v.

JURY TRIAL DEMANDED

CLEARFIELD HOSPITAL and  
MARK R. SHAW, D.O.

NO. 2006-1415 CD

## ORDER TO SETTLE, DISCONTINUE AND END

TO THE PROTHONOTARY:

Kindly mark the above matter settled, discontinued and ended.

GOLD, SILVERMAN, GOLDENBERG & BINDER

By David F. Binder  
DAVID F. BINDER  
Counsel for Plaintiff

100-1 Cert of  
FILED disc issued to  
m/a:obm Attn: Binder  
NOV 17 2008 copy to c/a

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**Peggy Butler, Executrix of the Estate of  
David E. Butler, deceased**

**Vs.**

**No. 2006-01415-CD**

**Clearfield Hospital  
Mark R. Shaw, D.O.**

**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 November 17, 2008, marked:

Settled, discontinued and ended

Record costs in the sum of \$85.00 have been paid in full by Raynes McCarty.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 17th day of November A.D. 2008.



WS

William A. Shaw, Prothonotary