

08-1121-CD

Kimberly Acey vs Praxidio Tagala et

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLISKI

CIVIL DIVISION, MEDICAL
PROFESSIONAL LIABILITY ACTION

Plaintiff,
vs.

No.: 2008-1121-CD

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. M.D., P.C., and
CLEARFIELD HOSPITAL,

Pleading:
COMPLAINT and CERTIFICATES
OF MERIT

Defendants.

Filed On Behalf Of:
Plaintiff

Counsel Of Record For This Party:

Kevin R. Lomupo, Esquire
PA I.D. # 40996

GILARDI, COOPER & LOMUPO
Firm #157

The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

(412) 391-9770

krломupo@lawgcl.com

FILED
in 10:59 a.m. CL
JUN 20 2008
3CC TO SHERIFF

William A. Shaw
Prothonotary/Clerk of Courts

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	]	CIVIL DIVISION – MEDICAL PROFESSIONAL LIABILITY ACTION
Plaintiff,]	
vs.	]	No.:
PRAXIDO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,]	
Defendants.	]	JURY TRIAL DEMANDED

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 or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

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

Lawyer Referral Service
Daniel J. Nelson, Court Administrator
Clearfield County Courthouse
230 E. Market Street
Clearfield, PA 16830
(814) 765-2641 Ext. 5982

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY	]	CIVIL DIVISION - MEDICAL
a/k/a KIMBERLY A. PODLISKI	]	PROFESSIONAL LIABILITY
	]	ACTION
Plaintiff,]	
]	
vs.	]	No.:
]	
PRAXIDIO H. TAGALA, M.D. ,]	
PRAXIDIO H. TAGALA, M.D., P.C., and]	
CLEARFIELD HOSPITAL,]	
	]	JURY TRIAL DEMANDED
Defendants.]	

COMPLAINT

AND NOW comes the plaintiff, Kimberly A. Acey a/k/a/ Kimberly A. Podliski, by her attorneys, Gilardi, Cooper & Lomupo, and Kevin R. Lomupo, Esquire, and claims damages of the defendants based upon the following causes of action.

COUNT I

Negligence

**Kimberly A. Acey a/k/a Kimberly A. Podliski vs.
Praxidio H. Tagala, M.D., Praxidio H. Tagala, M.D., P.C. and Clearfield Hospital**

FIRST: The plaintiff is an individual who resides at 1708 State Street, Osceola Mills, Clearfield County, Pennsylvania, 16666.

SECOND: Defendant Praxidio H. Tagala, M.D. is a physician who is licensed to practice medicine in the Commonwealth of Pennsylvania and whose principle place of business is located at 615 Thompson Street, Clearfield, Clearfield County,

Pennsylvania, 16830.

THIRD: Defendant Praxidio H. Tagala, M.D., P.C. is a Pennsylvania Corporation having its registered office at 615 Thompson Street, Clearfield, Clearfield County, Pennsylvania, 16830.

FOURTH: Defendant Clearfield Hospital is a Pennsylvania Corporation having its registered office at 809 Turnpike Avenue, Clearfield, Clearfield County, Pennsylvania, 16830.

FIFTH: At all times relevant hereto, defendant Praxidio H. Tagala, M.D was officer, director, president and agent of Praxidio H. Tagala, M.D., P.C. and was acting on behalf of and in furtherance of the business of the defendant corporation.

SIXTH: At all times relevant hereto, defendant Praxidio H. Tagala, M.D, P.C. was acting through its officers, directors, agents, ostensible agents, servants and employees, who were engaged in furtherance of the business of the defendant.

SEVENTH: At all times relevant hereto Praxidio H. Tagala, M.D. was an agent, ostensible agent, servant and employee of Clearfield Hospital and was acting on behalf of and in furtherance of the business of the defendant corporation.

EIGHTH: At all times relevant hereto, defendant Clearfield Hospital was acting through its agents, ostensible agents, servants and employees, who were engaged in furtherance of the business of the defendant.

NINTH: Hereinafter, defendants Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C. shall collectively be referred to as "Dr. Tagala".

TENTH: The plaintiff entered the Ambulatory Care Unit of Clearfield Hospital on June 29, 2006.

ELEVENTH: Dr. Tagala performed a diagnostic laparoscopy and adhesiolysis with left salpingectomy on the plaintiff.

TWELFTH: The plaintiff was discharged to home at 1635 on June 29, 2006.

THIRTEENTH: The plaintiff returned to Clearfield Hospital Emergency Room on June 30, 2006 at approximately 1204 complaining of severe abdominal pain and blood in her urine.

FOURTEENTH: Dr. Tagala was notified and admitted the plaintiff for "suspect pelvic peritoneal irritation from adhesiolysis" noting "need to watch closely for possible incident bowel injury".

FIFTEENTH: The plaintiff experienced little relief from pain medications and, despite several reassessments, Dr. Tagala delayed until 1030 on July 1, 2006 before writing for a routine consultation with a general surgeon;

SIXTEENTH: At 1400 on July 1, 2006 an emergency exploratory laparotomy was begun by the consulting surgeon, who found a perforation of the lower sigmoid colon with cauterized effect around it adjacent to the left ovary, and measuring at least two and one-half by three centimeter.

SEVENTEENTH: There was extensive fecal contamination present within the abdomen with evidence of peritonitis.

EIGHTEENTH: A ten and one-half centimeter portion of the plaintiff's sigmoid colon was removed and Hartmann's pouch with end sigmoid colostomy was

performed.

NINETEENTH: The colostomy was reversed on August 9, 2006.

TWENTIETH: The plaintiff was injured as a result of the negligence of the defendants both jointly and severally and in the following particulars:

AS TO DR. TAGALA:

- a) In negligently using higher voltage settings on the electrocautery equipment than was required for the procedure;
- b) In negligently using an electrocautery device without a clear vision of the surrounding tissues;
- c) In negligently failing to realize that the plaintiff's bowel was in close proximity to the electrocautery device;
- d) In negligently failing to thoroughly and competently inspect the bowel for evidence of burn injury prior to completion of the laparoscopic procedure;
- e) In negligently proceeding with a laparoscopic procedure upon plaintiff without sufficient training, knowledge and experience concerning the safe use of laparoscopic electrocautery equipment;
- f) In negligently failing to insist upon having up-to-date equipment available for use during plaintiff's laparoscopic gynecologic surgery;
- g) In negligently failing to insist upon having electrocautery equipment checked for proper function and insulation integrity prior to use during plaintiff's laparoscopic gynecologic surgery;

- h) In negligently failing to obtain specialized training and certification to perform laparoscopic gynecologic surgery;
- i) In negligently failing to appreciate that the plaintiff had signs and symptoms of acute abdomen upon presentation to the emergency room on June 30, 2008;
- j) In negligently delaying consultation with a general surgeon, thus adding to the plaintiff's already significant risk of death from bowel injury and acute peritonitis.

AS TO CLEARFIELD HOSPITAL:

- a) In negligently failing to visually inspect for insulation failure of the electrocautery instruments prior to use in the plaintiff's laparoscopy;
- b) In negligently failing to take over-aged electrocautery equipment out of circulation but rather allow it to be used for the plaintiff's laparoscopy;
- c) In negligently failing to identify in the plaintiff's chart both the electrocautery unit used and the type of cutting electrodes used during the procedure;
- d) In negligently failing to train operating room personnel and physicians on inspection, safe use, and limitations of generator equipment;
- e) In negligently failing to have a credentialing program for electrosurgery;
- f) In negligently failing to establish and implement protocols to minimize risks of patient injury from faulty electrocautery equipment;

g) In negligently failing to establish and implement protocols to minimize risks of patient injury from improper inspection, setup and use of electrocautery equipment by operating room staff and physicians.

TWENTIETH: As a result of the negligence of the defendants jointly and severally as aforesaid the plaintiff incurred the following injuries:

- a) Resection of a ten and one-half centimeter segment of her bowel;
- b) Life threatening peritonitis;
- c) Need for temporary colostomy and its attendant risks and displeasure;
- d) Significant depression and anxiety stemming from her experience;
- e) Exacerbation of abdominal adhesions;
- f) External abdominal scarring.

TWENTY-FIRST: As a result of the negligence of the defendants, jointly and severally, and the injuries as above stated, the plaintiff has been damaged as follows:

- a) She has in the past and will in the future suffer great physical pain, suffering, embarrassment and inconvenience;
- b) She has had to live with a colostomy;
- c) She has in the past and will in the future suffer from nervous and emotional tension and anxieties;
- d) She has in the past and may in the future be unable to carry out normal life activities;
- e) She has in the past and may in the future sustain significant financial loss as the result of being unable to work at gainful employment;

- f) Her earning power has been impaired;
- g) She has in the past and may in the future be required to spend substantial sums of money for medical treatment and care;
- h) Her general health, strength, vitality and life expectancy have been severely and permanently compromised;
- i) All of the foregoing injuries and damages are permanent in nature.

WHEREFORE, plaintiff demands judgment against the defendants in an amount in excess of Twenty Five Thousand (\$25,000.00) Dollars, exclusive of costs and interest.

JURY TRIAL DEMANDED

Respectfully submitted,

GILARDI, COOPER & LOMUPO

By


Kevin R. Lomupo
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	]	CIVIL DIVISION - MEDICAL PROFESSIONAL LIABILITY ACTION
Plaintiff,]	
vs.	]	No.:
PRAXIDO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,]	
Defendants.	]	JURY TRIAL DEMANDED

Certificate of Merit as to Praxidio H. Tagala, M.D.

I, Kevin R. Lomupo, 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 acceptable professional standards and that such conduct was a cause in bringing about the harm;

OR

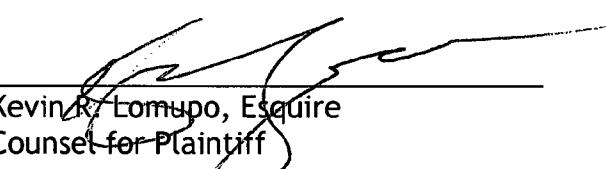
the claim that this defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement 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;

OR

- expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant.

Date: June 19, 2008


Kevin R. Lomuto, Esquire
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,]	CIVIL DIVISION - MEDICAL PROFESSIONAL LIABILITY ACTION
Plaintiff,]	
vs.]	No.:
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PRAXIDIO H. TAGALA, M.D., P.C., and]	
CLEARFIELD HOSPITAL,]	
Defendants.]	JURY TRIAL DEMANDED

Certificate of Merit as to Praxidio H. Tagala, M.D., P.C.

I, Kevin R. Lomupo, 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 acceptable professional standards and that such conduct was a cause in bringing about the harm;

OR

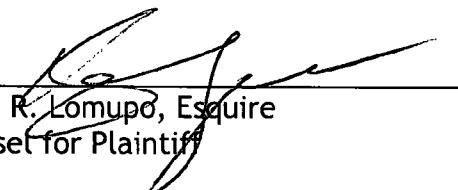
the claim that this defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement 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;

OR

- expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant.

Date: June 19, 2008



Kevin R. Lomupo, Esquire
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	]	CIVIL DIVISION - MEDICAL PROFESSIONAL LIABILITY ACTION
Plaintiff,]	
vs.	]	No.:
PRAXIDO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,]	
Defendants.	]	JURY TRIAL DEMANDED

Certificate of Merit as to Clearfield Hospital

I, Kevin R. Lomupo, 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 acceptable professional standards and that such conduct was a cause in bringing about the harm;

OR

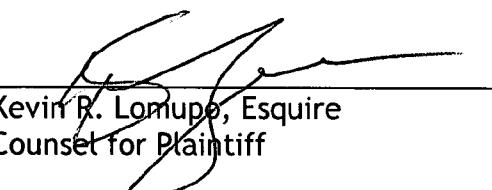
the claim that this defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement 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;

OR

- expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this defendant.

Date: June 19, 2008



Kevin R. Lomujo, Esquire
Counsel for Plaintiff

VERIFICATION

Kimberly A. Podliski says that she is the plaintiff in the foregoing action; that the attached Civil Action Complaint is based upon information which she has furnished to her counsel and information which has been gathered by her counsel in the preparation of the lawsuit. The language of the Complaint is that of counsel and not of plaintiff. Plaintiff has read the Complaint and to the extent that the Complaint is based upon information which she has given to her counsel, it is true and correct to the best of her Knowledge, information and belief. To the extent that the content of the Complaint is that of counsel, she has relied upon counsel in making this verification.

I understand that my statements are made subject to 18 Pa. C.S. §4904 providing for criminal penalties for unsworn falsification to authorities.

✓ Kimberly A. Podliski

Date: June 19, 2008

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-1121-CD

KIMBERLY A. ACEY aka KIMBERLY A. PODLISKI

vs

PRAZIDIO H. TAGALA, M.D.; PRAXIDIO H. TAGALA, M.D., P.C.; CLEARFIELD HOSPITAL
COMPLAINT AND CERTIFICATES OF MERIT

SERVE BY: 07/20/2008

HEARING: 104301

SERVICE # 2 OF 3

DEFENDANT: PRAXIDIO H. TAGALA, M.D., P.C.
ADDRESS: 615 THOMPSON ST.
CLEARFIELD, PA 16830

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/PIC

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT

OCCUPIED William A. Shaw
Prothonotary/Clerk of Courts

ATTEMPTS _____

FILED

07/25/08

JUN 25 2008

(S)

SHERIFF'S RETURN

NOW, 6/25/08 AT 1034 AM PM SERVED THE WITHIN

COMPLAINT AND CERTIFICATES OF MERIT ON PRAXIDIO H. TAGALA, M.D., P.C. DEFENDANT

BY HANDING TO Marie Ayres, receptionist

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 615 Thompson st Clearfield Pa

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT AND CERTIFICATES OF MERIT FOR PRAXIDIO H. TAGALA, M.D., P.C.

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO PRAXIDIO H. TAGALA, M.D., P.C.

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

DAY OF 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy S. Hunter
Deputy Signature

S. Hunter
Print Deputy Name

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-1121-CD

KIMBERLY A. ACEY aka KIMBERLY A. PODLISKI

vs

PRAZIDIO H. TAGALA, M.D.; PRAXIDIO H. TAGALA, M.D., P.C.; CLEARFIELD HOSPITAL
COMPLAINT AND CERTIFICATES OF MERIT

SERVE BY: 07/20/2008

HEARING:

PAGE: 104301

DEFENDANT: PRAXIDIO H. TAGALA, M.D.
ADDRESS: 615 THOMPSON ST.
CLEARFIELD, PA 16830

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/PIC

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT

FILED
07/15/08
JUN 25 2008
MS

William A. Shaw
Prothonotary/Clerk of Courts
OCCUPIED

ATTEMPTS

SHERIFF'S RETURN

NOW, 6/25/08 AT 1034 AM / PM SERVED THE WITHIN

COMPLAINT AND CERTIFICATES OF MERIT ON PRAXIDIO H. TAGALA, M.D., DEFENDANT

BY HANDING TO Marie Ayres, receptionist

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 615 Thompson st, Clearfield Pa

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT AND CERTIFICATES OF MERIT FOR PRAXIDIO H. TAGALA, M.D.

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO PRAXIDIO H. TAGALA, M.D.

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

DAY OF July 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy S. Hunter
Deputy Signature
S. Hunter
Print Deputy Name

0
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
NO: 08-1121-CD

KIMBERLY A. ACEY aka KIMBERLY A. PODLISKI

VS

PRAZIDIO H. TAGALA, M.D.; PRAXIDIO H. TAGALA, M.D., P.C.; CLEARFIELD HOSPITAL
COMPLAINT AND CERTIFICATES OF MERIT

SERVE BY: 07/20/2008

HEARING:

PAGE: 104301

DEFENDANT: CLEARFIELD HOSPITAL
ADDRESS: 809 TURNPIKE AVE.
CLEARFIELD, PA 16830

ALTERNATE ADDRESS

SERVE AND LEAVE WITH: DEFENDANT/PIC

CIRCLE IF THIS HIGHLIGHTED ADDRESS IS: VACANT OCCUPIED

ATTEMPTS

FILED

0/3:15 cm

JUN 25 2008

William A. Shaw
Prothonotary/Clerk of Courts

SHERIFF'S RETURN

NOW, 6/25/08 AT 10:28 AM / PM SERVED THE WITHIN

COMPLAINT AND CERTIFICATES OF MERIT ON CLEARFIELD HOSPITAL, DEFENDANT

BY HANDING TO Theresa Polacheck-Beveridge, Admin. Asst.

A TRUE AND ATTESTED COPY OF THE ORIGINAL DOCUMENT AND MADE KNOW TO HIM / HER THE CONTENTS THEREOF.

ADDRESS SERVED 809 Turnpike Ave Clearfield Pa

NOW _____ AT _____ AM / PM POSTED THE WITHIN

COMPLAINT AND CERTIFICATES OF MERIT FOR CLEARFIELD HOSPITAL

AT (ADDRESS) _____

NOW _____ AT _____ AM / PM AFTER DILIGENT SEARCH IN MY BAILIWICK,

I MAKE RETURN OF **NOT FOUND** AS TO CLEARFIELD HOSPITAL

REASON UNABLE TO LOCATE _____

SWORN TO BEFORE ME THIS

DAY OF 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy S. Hunter
Deputy Signature
S. Hunter
Print Deputy Name

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

KIMBERLY A. ACEY a/k/a §
KIMBERLY A. PODLISKI §
§
Plaintiff §
§
v. § CIVIL ACTION -Medical Professional
§ Liability Action
§
PRAXIDIO H. TAGALA, M.D.; §
PRAXIDIO H. TAGALA, M.D., P.C.; § Docket No: 2008-1121-CD
and CLEARFIELD HOSPITAL §
§
Defendants

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Please enter our appearance on behalf of the Defendants, Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C., in the above-captioned matter.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: 6/30, 2008

FILED
M 10:24 a.m. 6/6
JUL 01 2008 NO CC

William A. Shaw
Prothonotary/Clerk of Courts

THE STATE OF ALABAMA
PROTHONOTARY - CLERK OF COURTS

FILED

JUL 01 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.;
PRAXIDIO H. TAGALA, M.D., P.C.;
and CLEARFIELD HOSPITAL

§
§
§
§
§
CIVIL ACTION -Medical Professional
Liability Action

§
§
§
§
Docket No: 2008-1121-CD

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Praeclipe for Entry of Appearance on Behalf of Defendants, Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C., in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 30 day of June, 2008, to the attorney(s) of record:

Kevin R. Lomupo, Esq.
GILARDI, COOPER & LOMUPO
223 Fourth Avenue
10th Floor
Pittsburgh, PA 15222

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 
John W. Blasko

Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED
M 10:24AM 08
JUL 01 2008 NOCC

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

No. 2008 - 1121 - CD

ISSUE:
PRAECIPE FOR APPEARANCE

Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

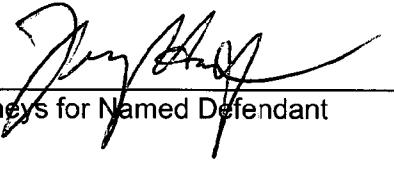
Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

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 27TH DAY OF JUNE, 2008.



Attorneys for Named Defendant

FILED
in 10:34 a.m. GK
JUL 01 2008 no cc

William A. Shaw
Prothonotary/Clerk of Courts 

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

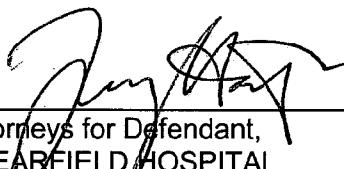
KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	:	No. 2008 - 1121 - CD
Plaintiff	:	
vs.	:	
PRAXIDIO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,	:	
Defendants	:	JURY TRIAL DEMANDED

PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Enter my Appearance on behalf of Defendant, CLEARFIELD HOSPITAL.

Papers may be served at the address set forth below.



Attorneys for Defendant,
CLEARFIELD HOSPITAL

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: June 27, 2008

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL §
§
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Request for Production (Set Two), directed to plaintiff in the above-captioned matter, was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 17th day of July, 2008, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: John W. Blasko

John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED ^{10cc}
JUL 18 2008
William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 18 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL §
§
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Special Damages
Interrogatories and Request for Production (Set Three), directed to plaintiff in the above-
captioned matter, was mailed by regular mail, postage prepaid, at the Post Office, State College,
Pennsylvania, on this 17th day of July, 2008, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: John W. Blasko

John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED ^{NOCC}
JUL 18 2008
WM

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 18 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL §
§
Defendants

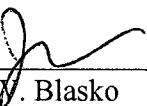
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Interrogatories and Request for Production (Set One), directed to plaintiff in the above-captioned matter, was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 17th day of July, 2008, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED NOCC
JUL 22 2008
10:38 AM
JAN
William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 22 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL §
§
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Expert Interrogatories, directed to plaintiff in the above-captioned matter, was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 17th day of July, 2008, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED NOCC
M10:38/671
JUL 22 2008
WM

William A. Shaw
Prothonotary/Clerk of Courts

FILED

JUL 22 2008

William A. Shaw
Prothonotary/Clerk of Courts

ORIGINAL

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

: No. 2008 - 1121 - CD

: ISSUE: ANSWER AND NEW MATTER

Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

: Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

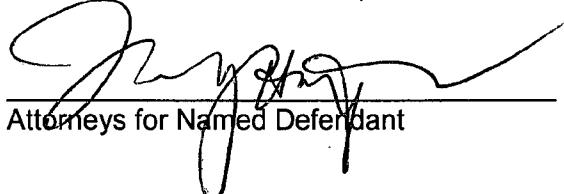
: Counsel of Record:
Frank J. Hartye, Esquire
PA I.D. #25568

: 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 7TH DAY OF AUGUST, 2008.



Atorneys for Named Defendant

FILED NO. CC
M 10:47 AM
AUG 14 2008
60

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	:	No. 2008 – 1121 – CD
Plaintiff	:	
vs.	:	
PRAXIDIO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,	:	
Defendants	:	JURY TRIAL DEMANDED

ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT

AND NOW, comes defendant, CLEARFIELD HOSPITAL, by and through its attorneys, MCINTYRE, HARTYE & SCHMITT, and files the following Answer and New Matter to Plaintiff's Complaint.

1. The allegations contained in Paragraph No. 1 are true to the best of defendant's knowledge.
- 2.-3. The allegations contained in Paragraphs No. 2 and 3 are not directed to answering defendant and no further response is required.
4. Admitted.
- 5.-6. The allegations contained in Paragraphs No. 5 and 6 are not directed to answering defendant and no further response is required.
7. The allegations contained in Paragraph No. 7 are denied. It is denied that Dr. Tagala was an actual or ostensible agent, servant, or employee of Clearfield Hospital. As a result all the allegations in this paragraph are denied.
8. The allegations contained in Paragraph No. 8 are overly broad in that no individuals are listed and therefore the allegations are denied as stated.

9. The allegations contained in Paragraph No. 9 are not directed to answering defendant.

10. It is admitted that the plaintiff came to the ambulatory care unit of Clearfield Hospital on June 29, 2006 for the purpose of having a laparoscopy performed by Dr. Tagala.

11. Admitted to the extent that the same is reflected in the operative report of Dr. Tagala.

12. Admitted.

13. Admitted.

14. Admitted that Dr. Tagala was notified and that he admitted the patient.

The remaining allegations are admitted to the extent that the impression of Dr. Tagala is more specifically set forth in his history and physical for that date.

15. The patient's condition and treatment is more specifically set forth in her records for this admission and therefore the initial allegations in this paragraph are denied as stated. As to the allegations concerning Dr. Tagala, the same are not directed to answering defendant and no further response is required.

16. It is admitted that an exploratory laparotomy was performed by Dr. Douglas Yingling as more specifically set forth in his operative report. The remaining allegations are admitted to the extent that they are consistent with Dr. Yingling's operative report and denied to the extent that they are inconsistent with or incompletely describe the findings of Dr. Yingling as set forth in his report.

17.-18. The allegations contained in Paragraphs No. 17 and 18 are admitted to the extent that they are consistent with the operative report of Dr. Douglas Yingling and denied to the extent that they are inconsistent with or incompletely state the findings and procedures performed by Dr. Yingling as set forth in his report.

19. Denied as stated. The colostomy was taken down by Dr. Yingling on September 12, 2006.

20. The allegations contained in Paragraph No. 20 are denied. It is denied that Clearfield Hospital or any of its actual or ostensible agents, servants, or employees were negligent or careless in any manner. It is further denied that any action or inaction on the part of Clearfield Hospital or any of its actual or ostensible agents, servants, or employees either caused or contributed to the alleged injuries and damages set forth and therefore all the allegations contained in Paragraph No. 20 and the subparagraphs thereof are denied.

20.-21. The allegations contained in Paragraphs No. 20 and 21 are denied. It is denied that Clearfield Hospital or any of its actual or ostensible agents, servants, or employees were negligent or careless in any manner. It is further denied that any action or inaction on the part of Clearfield Hospital or any of its actual or ostensible agents, servants, or employees either caused or contributed to the alleged injuries and damages set forth and therefore all the allegations contained in Paragraphs No. 20 and 21 and the subparagraphs thereof are denied.

WHEREFORE, defendant, CLEARFIELD HOSPITAL, demands judgment in its favor with costs of suit awarded to defendant.

NEW MATTER

By way of further and more complete answer defendant avers the following New Matter.

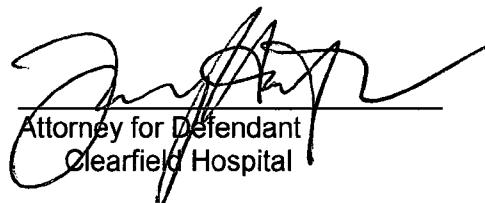
22. All injuries and damages suffered by the plaintiff are the direct, sole, and proximate result of preexisting medical conditions and not as a result of a violation of the standard of care.

23. To the extent that plaintiff establishes a right to recover for her alleged injuries and damages, the same were the direct result of the conduct of others over whom this defendant had no duty to exercise control.

24. Defendant hereby affirmatively pleads all bars, rights, and limitations pursuant to the Health Care Services Malpractice Act, 40 P.S. Section 1301.103, et seq., and the Medical Care Availability and Reduction of Error (MCARE) Act, 40 P.S. 1300, et seq. and the Pennsylvania Rules of Civil Procedure.

WHEREFORE, defendant, CLEARFIELD HOSPITAL, demands judgment in its favor with costs of suit awarded to Clearfield Hospital.

MCINTYRE, HARTYE & SCHMITT

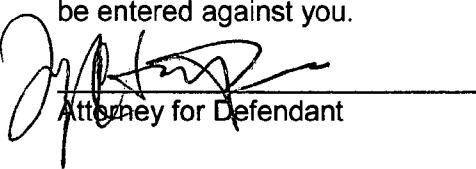


Attorney for Defendant
Clearfield Hospital

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

Notice to Plead

To: Plaintiff
You are hereby notified to file a written response to the enclosed **New Matter** within twenty (20) days from service hereof or a judgment may be entered against you.



Attorney for Defendant

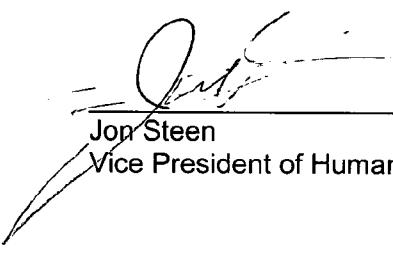
CHT 071 MH

VERIFICATION

I, **Jon Steen**, Vice President of Human Resources of **CLEARFIELD HOSPITAL** do hereby verify that I have read the foregoing **ANSWER AND NEW MATTER TO PLAINTIFF'S COMPLAINT**. The statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

CLEARFIELD HOSPITAL



Jon Steen
Vice President of Human Resources

Date: 7/25/08

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

: No. 2008 - 1121 - CD

ISSUE:

NOTICE OF SERVICE OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PLAINTIFF -
DATED: 8/13/08

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

Defendants

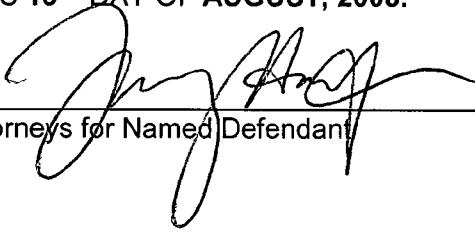
Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

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 13TH DAY OF AUGUST, 2008.



Attorneys for Named Defendants

FILED *no cc*
mtb:0150
AUG 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	:	No. 2008 - 1121 - CD
Plaintiff	:	
vs.	:	
PRAXIDIO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,	:	
Defendants	:	JURY TRIAL DEMANDED

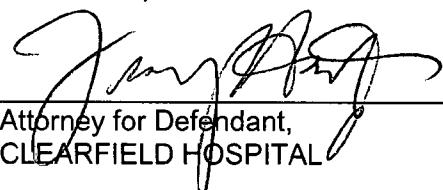
**NOTICE OF SERVICE OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
DIRECTED TO PLAINTIFF – DATED: 8/13/08**

TO: PROTHONOTARY

You are hereby notified that on the 13th day of **AUGUST, 2008**, Defendant,
CLEARFIELD HOSPITAL, served Interrogatories and Request for Production of
Documents Directed to Plaintiff – Dated: 8/13/08, by mailing the original of same via
First Class U.S. Mail, postage prepaid, addressed to the following:

Kevin R. Lomupo, Esquire
Gilardi, Cooper & Lomupo
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

McINTYRE, HARTYE & SCHMITT



Attorney for Defendant,
CLEARFIELD HOSPITAL

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

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

Kimberly A. Acey)
a/k/a Kimberly A. Podliski,)
1708 State Street)
Osceola Mills, PA 16666,)
Plaintiff)
vs.)
Praxidio H. Tagala, M. D.,)
Praxidio H. Tagala, M. D., P.C.)
615 Thompson Street)
Clearfield, PA 16630, and)
Clearfield Hospital)
809 Turnpike Avenue)
Clearfield, PA 16830,)
Defendants.)
Docket No. 2008 - 1121- CD
Type of Case: Civil Action
 Medical Professional Liability
Action (check if applicable)
Type of Pleading:
Certificate of Service
Filed on Behalf of Defendant
Counsel of Record for this Party:
John W. Blasko, Esquire
PA I.D. Number 6787
Attorneys for Praxidio H. Tagala, M. D.
811 University Drive
State College, PA 16802
(814) 238-4926


John W. Blasko, Esquire

FILED NO CC
AUG 15 2008
WM

William A. Shaw
Prothonotary/Clerk of Courts

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

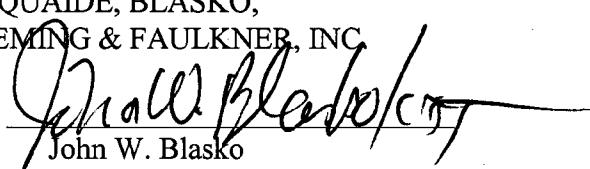
KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL §
§
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Notice of Intent to Serve a Subpoena to Produce Documents and Things Pursuant to Rule 4009.21, in the above-referenced matter, regarding subpoenas to Dr. Regino Flores and Glen O. Hawbaker, was mailed through Litigation Services, Inc, on the 7th day of August 2008 to:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC
By: 
John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

AUG 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

2008-2008-1000

FILED No CC.
m111:15 cm
AUG 18 2008
PA

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLISKI

CIVIL DIVISION, MEDICAL
PROFESSIONAL LIABILITY ACTION

Plaintiff,

No.: 2008 - 1121 - CD

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C.,
and CLEARFIELD HOSPITAL,

Pleading:
REPLY TO NEW MATTER OF
DEFENDANT CLEARFIELD HOSPITAL

Defendants.

Filed On Behalf Of:
Plaintiff

Counsel Of Record For This Party:

Kevin R. Lomupo, Esquire
PA I.D. # 40996

GILARDI, COOPER & LOMUPO
Firm #157

The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

(412) 391-9770

krlomupo@lawgcl.com

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY	]	CIVIL DIVISION - MEDICAL
a/k/a KIMBERLY A. PODLISKI,	]	PROFESSIONAL LIABILITY
	]	ACTION
Plaintiff,]	
]	
vs.	]	No.: 2008-1121-CD
]	
PRAXIDO H. TAGALA, M.D.,]	
PRAXIDIO H. TAGALA, M.D., P.C., and]	
CLEARFIELD HOSPITAL,]	
	]	JURY TRIAL DEMANDED
Defendants.]	

REPLY TO NEW MATTER OF DEFENDANT CLEARFIELD HOSPITAL

AND NOW comes the plaintiff, by and through her attorneys, Gilardi, Cooper & Lomupo, and Kevin R. Lomupo, Esquire and files the following Reply to New Matter.

1. Paragraphs 22, 23 and 24 of Defendant's New Matter states conclusions of law to which no responsive pleading is required. By way of further answer, it is denied that any of the Plaintiff's damages and injuries were the result of pre-existing medical conditions but rather the result of the negligence of the Defendants as outlined more fully in Plaintiff's Complaint incorporated herein.

Wherefore, Plaintiff demands judgment in her favor and against each of the defendants in an amount excess of Twenty-Five Thousand Dollars (\$25,000.00) exclusive of fees, costs, and interest.

Respectfully submitted,

GILARDI, COOPER & LOMUPO

By


Kevin R. Lomupo, Esquire
Counsel for Plaintiff

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA }
} } *SS:*
COUNTY OF ALLEGHENY }

BEFORE ME, the undersigned authority, a Notary Public, in and for said County and Commonwealth, personally appeared, Kimberly A. Podliski who being duly sworn according to law, deposes and says that the averments of fact contained in the foregoing Reply to New Matter are true and correct to the best of his knowledge, information and belief.

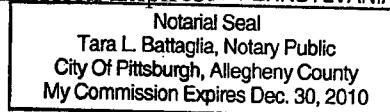
✓ Kimberly A. Podlaski

Sworn to and subscribed before me this

14th day of August, 2008

Tara Kattel
Notary Public

My Commonwealth of Pennsylvania



Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within *Reply to New Matter of Defendant Clearfield Hospital* has been served on the following by first class mail, postage prepaid on this 14th day of August, 2008.

TO: John W. Blasko, Esquire
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801-6699
Counsel for Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C.

Frank J. Hartye, Esquire
McIntyre, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648
Counsel for Clearfield Hospital


Kevin R. Lomupo, Esquire
Counsel for Plaintiff

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

Kimberly A. Acey
a/k/a Kimberly A. Podliski,
1708 State Street
Osceola Mills, PA 16666,
Plaintiff

)
Docket No. 2008 - 1121- CD
)
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vs.
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)
)
Praxidio H. Tagala, M. D.,
Praxidio H. Tagala, M. D., P.C.
615 Thompson Street
Clearfield, PA 16630, and
Clearfield Hospital
809 Turnpike Avenue
Clearfield, PA 16830,
Defendants.

)
Type of Case: Civil Action
)
)
)
)
X Medical Professional Liability
Action (check if applicable)
)
)
Type of Pleading:
Answer and New Matter
)
File on Behalf of Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
)
Counsel of Record for this Party:
)
John W. Blasko, Esquire
PA I.D. Number 6787
Attorneys for Praxidio H. Tagala, M. D.
811 University Drive
State College, PA 16802
(814) 238-4926
)
FILED NO CC
M J H. 2008
AUG 20 2008
⑥
William A. Shaw
Prothonotary/Clerk of Courts


John W. Blasko, Esquire

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

KIMBERLY A. ACEY a/k/a §
KIMBERLY A. PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional
v. § Liability Action
§
PRAXIDIO H. TAGALA, M.D.; §
PRAXIDIO H. TAGALA, M.D., P.C.; § Docket No: 2008-1121-CD
and CLEARFIELD HOSPITAL §
§
Defendants §

NOTICE TO PLEAD

TO: Kimberly A. Acey a/k/a Kimberly A. Podliski c/o Kevin R. Lomupo, Esq.

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

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 
JOHN W. BLASKO
Attorney for Defendant
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
811 University Drive
State College, PA 16801

Dated: 8/19/08

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

KIMBERLY A. ACEY a/k/a §
KIMBERLY A. PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional
v. § Liability Action
§
§
PRAXIDIO H. TAGALA, M.D.; §
PRAXIDIO H. TAGALA, M.D., P.C.; § Docket No: 2008-1121-CD
and CLEARFIELD HOSPITAL §
§
§
Defendants

ANSWER AND NEW MATTER OF DEFENDANTS
PRAXIDIO H. TAGALA, M.D. AND PRAXIDIO H. TAGALA, M.D., P.C.

FIRST: After reasonable investigation, Dr. Tagala is without information sufficient to form a belief as to the truth of paragraph FIRST, and, the averments are denied.

SECOND: Paragraph SECOND is admitted.

THIRD: Paragraph THIRD is admitted.

FOURTH: Paragraph FOURTH is admitted.

FIFTH: Paragraph FIFTH is admitted

SIXTH: Paragraph SIXTH is admitted

SEVENTH: Paragraph SEVENTH is denied. At all times relevant to Plaintiff's alleged cause of action, Dr. Tagala was an independent contractor and not in the employment with the defendant, Clearfield Hospital.

EIGHTH: Paragraph EIGHTH is directed to a defendant other than Dr. Tagala, and, a response is unnecessary.

NINTH: Paragraph NINTH is a statement of Plaintiff's editorial. For purposes of this pleading, Dr. Tagala is responding personally. It has been stipulated that Plaintiff is not pursuing an action against Praxidio H. Tagala, M.D., P.C. on direct negligence, but only on a theory of vicarious liability for the actions and inactions of Dr. Tagala.

TENTH: Paragraph TENTH is admitted.

ELEVENTH: Paragraph ELEVENTH is admitted to the extent the averments are consistent with the medical records of Plaintiff at the Clearfield Hospital on June 29, 2006, and, to the extent the averments are inconsistent with those records, the same are denied.

TWELFTH: Paragraph TWELFTH is admitted.

THIRTEENTH: It is admitted that Plaintiff returned to the Clearfield Hospital on June 30, 2006. The remainder of Paragraph THIRTEENTH is admitted to the extent the averments are consistent with the medical records of Plaintiff at the Clearfield Hospital on June 30, 2006, and, to the extent the averments are inconsistent, same are denied.

FOURTEENTH: Paragraph FOURTEENTH is denied as stated. It is admitted that Dr. Tagala was notified and admitted Plaintiff to the Clearfield Hospital. As to the remainder of averments, the history and physical of Dr. Tagala of July 1, 2006 set forth in the medical records of Plaintiff at the Clearfield Hospital, are by this reference, incorporated herein.

FIFTEENTH: Paragraph FIFTEENTH is denied as stated. In response, the medical records of the Plaintiff at the Clearfield Hospital for the admission on July 1, 2006 are by this reference, incorporated herein.

SIXTEENTH: Paragraph SIXTEENTH, to the extent it is consistent with the medical records of the Plaintiff at the Clearfield Hospital and operative report, is admitted, and, to the extent the averments are inconsistent, they are denied.

SEVENTEENTH: Paragraph SEVENTEENTH, to the extent it is consistent with the medical records of the Plaintiff at the Clearfield Hospital and operative report, is admitted, and, to the extent the averments are inconsistent, they are denied

EIGHTEENTH: Paragraph EIGHTEENTH, to the extent it is consistent with the medical records of the Plaintiff at the Clearfield Hospital and operative report, is admitted, and, to the extent the averments are inconsistent, they are denied.

NINETEENTH: Paragraph NINETEENTH is admitted.

TWENTIETH: Paragraph TWENTIETH, a, b, c, d, e, f, g, h, i and j are denied as per Pa.R.C.P 1029(e). Paragraph TWENTIETH as to the Clearfield Hospital is directed to a defendant other than Dr. Tagala, and an answer is unnecessary. To the extent an answer is necessary, same are denied as per Pa.R.C.P 1029(e).

TWENTIETH (sic): Paragraph TWENTIETH contains legal conclusions as to Plaintiff's position, and, the same are denied as per Pa.R.C.P 1029(e).

TWENTY-FIRST: Paragraph TWENTY-FIRST, to the extent it alleges negligence by Dr. Tagala, is a statement of Plaintiff's legal position and a response is not necessary. To the extent a response is necessary, the same are denied as per Pa.R.C.P 1029(e). As to the remainder of paragraph TWENTY-FIRST, after reasonable investigation, Dr. Tagala is without information or knowledge sufficient to form a belief as to the truth of those averments, and they are denied.

WHEREFORE, it is requested that the Complaint be dismissed.

NEW MATTER

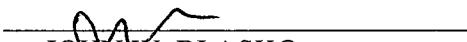
TWENTY-SECOND: The Plaintiff's complaint fails to state a cause of action against Dr. Tagala.

TWENTY-THIRD: If it is judicially determined that Dr. Tagala was negligent, all of which is specifically denied, no such actions or inactions were causally related to any injuries and/or damages of which Plaintiff complains.

TWENTY-FOURTH: Dr. Tagala asserts and raises all affirmative defenses of the Medicare Availability and Reduction of Error Act of March 2002, 40 PS § 1301.101*et seq.* as amended.

WHEREFORE, it is requested that Plaintiff's complaint be dismissed with prejudice.

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

JOHN W. BLASKO
Attorneys for Defendant
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: 7/19, 2008

VERIFICATION

The undersigned verifies that as a Defendant, he is authorized to make this verification in the within action on his behalf and on behalf of Praxidio H. Tagala, M.D., P.C.; and that the Answer with New Matter to Plaintiff's Complaint is true and correct to the best of his knowledge, information and belief. I understand that false statements herein are subject to the penalties of 18 Pa. C.S.A. §4904, related to unsworn falsification to authority.



Praxidio H. Tagala, M.D., individually and
On behalf of Praxidio H. Tagala, M.D., P.C.

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

KIMBERLY A. ACEY a/k/a	§	
KIMBERLY A. PODLISKI	§	
	§	
Plaintiff	§	
	§	CIVIL ACTION -Medical Professional
v.	§	Liability Action
	§	
PRAXIDIO H. TAGALA, M.D.;	§	
PRAXIDIO H. TAGALA, M.D., P.C.;	§	Docket No: 2008-1121-CD
and CLEARFIELD HOSPITAL	§	
	§	
Defendants		

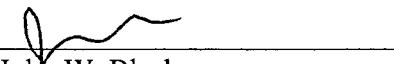
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendants Praxidio H. Tagala, M.D.'s and Praxidio H. Tagala, M.D., P.C.'s Answer and New Matter in the above-captioned matter, was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 19 day of August, 2008, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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

Kimberly A. Acey)
a/k/a Kimberly A. Podliski,)
1708 State Street)
Osceola Mills, PA 16666,)
Plaintiff)

)

)

vs.)

Praxidio H. Tagala, M. D.,)
Praxidio H. Tagala, M. D., P.C.)
615 Thompson Street)
Clearfield, PA 16630, and)
Clearfield Hospital)
809 Turnpike Avenue)
Clearfield, PA 16830,)
Defendants.)

)

Docket No. 2008 - 1121- CD

FILED No CC.

m 11:40 am

AUG 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

Type of Case: Civil Action

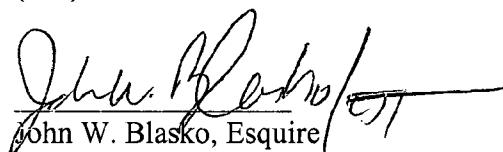
Medical Professional Liability
Action (check if applicable)

Type of Pleading:
Certificate of Service

Filed on Behalf of Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.

Counsel of Record for this Party:

John W. Blasko, Esquire
PA I.D. Number 6787
Attorneys for Praxidio H. Tagala, M. D.
811 University Drive
State College, PA 16802
(814) 238-4926


John W. Blasko, Esquire

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL §
§
Defendants

CERTIFICATE OF SERVICE

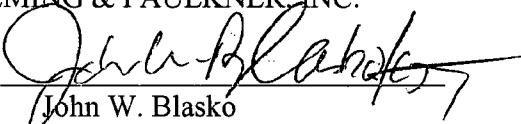
I hereby certify that a true and correct copy of Defendant Tagala's Notice of Intent to Serve a Subpoena to Produce Documents and Things Pursuant to Rule 4009.21, in the above-referenced matter, regarding a subpoena to Dr. Douglas Yingling, was mailed through Litigation Services, Inc, on the 19th day of August 2008 to:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By:



John W. Blasko

Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLISKI

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C.,
and CLEARFIELD HOSPITAL,

Defendants.

CIVIL DIVISION, MEDICAL
PROFESSIONAL LIABILITY ACTION

No.: 2008 - 1121 - CD

Pleading:
**REPLY TO NEW MATTER OF
DEFENDANTS PRAXIDIO H. TAGALA,
M.D. and PRAXIDIO H. TAGALA,
M.D., P.C.**

Filed On Behalf Of:
Plaintiff

Counsel Of Record For This Party:

Kevin R. Lomupo, Esquire
PA I.D. # 40996

GILARDI, COOPER & LOMUPO
Firm #157

The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

(412) 391-9770

krlomupo@lawgcl.com

JURY TRIAL DEMANDED

FILED
M 10:30 A.M. 6K
SEP 05 2008 NO CC

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLISKI

CIVIL DIVISION, MEDICAL
PROFESSIONAL LIABILITY ACTION

Plaintiff,

No.: 2008 - 1121 - CD

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C.,
and CLEARFIELD HOSPITAL,

Defendants.

Pleading:
**REPLY TO NEW MATTER OF
DEFENDANTS PRAXIDIO H. TAGALA,
M.D. and PRAXIDIO H. TAGALA,
M.D., P.C.**

Filed On Behalf Of:
Plaintiff

Counsel Of Record For This Party:

Kevin R. Lomupo, Esquire
PA I.D. # 40996

GILARDI, COOPER & LOMUPO
Firm #157

The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

(412) 391-9770

krlomupo@lawgcl.com

JURY TRIAL DEMANDED

FILED
M 12:20 p.m. CK
SEP 05 2008 NO CC
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	]	CIVIL DIVISION - MEDICAL PROFESSIONAL LIABILITY ACTION
Plaintiff,]	
vs.	]	No.: 2008-1121-CD
PRAXIDO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,]	
Defendants.	]	JURY TRIAL DEMANDED

**REPLY TO NEW MATTER OF DEFENDANTS PRAXIDO H. TAGALA, M.D. and
PRAXIDIO H. TAGALA, M.D., P.C.**

AND NOW comes the plaintiff, by and through her attorneys, Gilardi, Cooper & Lomupo, and Kevin R. Lomupo, Esquire and files the following Reply to New Matter.

1. Paragraphs 22, 23 and 24 of Defendant's New Matter states conclusions of law to which no responsive pleading is required.

Wherefore, Plaintiff demands judgment in her favor and against each of the defendants in an amount excess of Twenty-Five Thousand Dollars (\$25,000.00) exclusive of fees, costs, and interest.

Respectfully submitted,

GILARDI, COOPER & LOMUPO

By

Kevin R. Lomupo, Esquire
Counsel for Plaintiff

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA }
 }
COUNTY OF ALLEGHENY }
 }
 } **SS:**

BEFORE ME, the undersigned authority, a Notary Public, in and for said County and Commonwealth, personally appeared, Kimberly A. Podliski who being duly sworn according to law, deposes and says that the averments of fact contained in the foregoing Reply to New Matter are true and correct to the best of his knowledge, information and belief.

✓ Kimberly A. Podliski

Sworn to and subscribed before me this
3rd day of September, 2008.

Tara L. Battaglia
Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal

Tara L. Battaglia, Notary Public
City Of Pittsburgh, Allegheny County
My Commission Expires Dec. 30, 2010

Member, Pennsylvania Association of Notaries

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within *Reply to New Matter of Defendants Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C.* has been served on the following by first class mail, postage prepaid on this 3rd day of September, 2008.

TO: John W. Blasko, Esquire
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801-6699
Counsel for Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C.

Frank J. Hartye, Esquire
McIntyre, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648
Counsel for Clearfield Hospital


Kevin R. Lemupo, Esquire
Counsel for Plaintiff

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

FILED

SEP 24 2008

11:55 AM
William A. Shaw

Prothonotary/Clerk of Courts

Court of Common
Pleas

14ENT TO
LITIGATION
SOL.

Kimberly A. Acey a/k/a Kimberly A. Podliski

vs.

Praxidio H. Tagala, M.D., Praxidio H. Tagala,
M.D., P.C. & Clearfield Hospital

Case Number:
2008-1121-CD

CERTIFICATE PREREQUISITE TO THE SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Litigation Solutions, LLC ('LSLLC') on behalf of John Blasko, Esquire of McQuaide Blasko certifies that:

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served;
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate;
- (3) No objection to the subpoena has been received, and;
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 9/8/2008

Litigation Solutions, LLC on behalf of
John Blasko, Esquire of McQuaide Blasko
Attorney for the Defense

CC:

John Blasko, Esquire
McQuaide Blasko
811 University Drive
State College PA 16801



**PENNSYLVANIA COURT OF COMMON PLEAS
COUNTY OF CLEARFIELD**

Kimberly A. Acey a/k/a Kimberly A. Podliski vs. **Court of Common Pleas**
Praxidio H. Tagala, M.D., Praxidio H. Tagala, M.D., P.C. & Clearfield Hospital **2008-1121-CD**

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

Provider: **Douglas Yingling, MD** Record Type: **All available**

TO: Kevin Lomupo, Esquire
note: please see enclosed list of all other interested counsel

Litigation Solutions, LLC ('LSSLC') on behalf of John Blasko, Esquire intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If the twenty day notice period is waived or if no objection is made, then the subpoena may be served.

Date of Issue: 8/19/2008

Litigation Solutions, LLC on
behalf of:

CC: John Blasko, Esquire - Court of Common Pleas

John Blasko, Esquire
Defense

McQuade Blaske

Defense
John Blashford

If you have any questions regarding this matter, please contact:
Litigation Solutions, LLC (412.263.5656)
Brentwood Towne Centre
101 Towne Square Way, Suite 251
Pittsburgh, PA 15227

**COUNSEL LISTING FOR KIMBERLY A. ACEY A/K/A KIMBERLY A. PODLISKI VS.
PRAXIDIO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C. & CLEARFIELD HOSPITAL**

County of Clearfield Court of Common Pleas

Counsel	Firm	Counsel Type
Lomupo, Esquire, Kevin J.	Benedum Trees Building 223 Fourth Avenue, 10th Floor Pittsburgh PA 15222 Ph: 412-391-9770 f: 412-391-9780	Opposing Counsel
Hartye, Esquire, Frank	P. O. Box 533 Hollidaysburg PA 16648 J. Ph: 814-696-3581	Other f: 814-696-9399

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Kimberly A. Acey
Plaintiff(s)

Vs.

Praxidio H. Tagala MD
Praxidio H. M.D. , P.C.
Clearfield Hospital
Defendant(s)

*

*

No. 2008-01121-CD

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

TO: Douglas Yingling, MD
(Name of Person or Entity)

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

PLEASE SEE ATTACHED RIDER

101 Town Square Way, SUite 251 Pittsburgh, Pa 15227

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

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

NAME: John Blasko, Esquire
ADDRESS: 811 University Drive
State College, Pa 16801
TELEPHONE: 814-238-4926
SUPREME COURT ID # 6787
ATTORNEY FOR: Defense

BY THE COURT:

William A. Shaw

Prothonotary/Clerk, Civil Division

DATE: Friday, August 15, 2008
Seal of the Court

Deputy

Rider to Subpoena

Explanation of Required Documents and Things

TO: CUSTODIAN OF RECORDS FOR:

Douglas Yingling, MD
1212 Turnpike Avenue
Clearfield PA 16830
Attention: Records Department

Subject: Podliski (AKA Acey), Kimberly A.
SS#: 200-60-8744
Date of Birth: 10/18/1965

Requested Items:

Please remit: a complete copy of any and all documents in your possession from 10/18/1965 to present regarding the above-named patient, including but not limited to:

- Medical records (charts, test results, reports, correspondence, office notes)
- Billing records.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 104301
NO: 08-1121-CD
SERVICES 3
COMPLAINT AND CERTIFICATES OF MERIT

PLAINTIFF: KIMBERLY A. ACEY aka KIMBERLY A. PODLISKI

vs.

DEFENDANT: PRAZIDIO H. TAGALA, M.D.; PRAXIDIO H. TAGALA, M.D., P.C.; CLEARFIELD HOSPITAL

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	GILARDI	1823	30.00
SHERIFF HAWKINS	GILARDI	1823	32.00

FILED
012-553N
OCT 03 2008

5 William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

So Answers,

____ Day of _____ 2008



Chester A. Hawkins
Sheriff

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

: No. 2008 - 1121 - CD

: ISSUE:

: NOTICE OF SERVICE OF RESPONSE
: TO REQUEST FOR PRODUCTION OF
: DOCUMENTS DIRECTED TO
: DEFENDANT CLEARFIELD
: HOSPITAL

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

Defendants

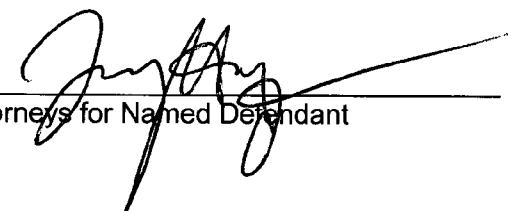
: Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

: 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 8TH DAY OF OCTOBER, 2008.



Attorneys for Named Defendant

5
FILED NO CC
OCT 14 2008
William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

: No. 2008 - 1121 - CD

Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

Defendants

: JURY TRIAL DEMANDED

**NOTICE OF SERVICE OF RESPONSES TO REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO DEFENDANT CLEARFIELD HOSPITAL**

TO: PROTHONOTARY

You are hereby notified that on the 8th day of October, 2008, defendant,
Clearfield Hospital, served **RESPONSE OF REQUESTS FOR PRODUCTION OF
DOCUMENTS DIRECTED TO DEFENDANT, CLEARFIELD HOSPITAL** on the Plaintiff
by mailing the originals of same via First Class U.S. Mail, postage prepaid, addressed to
the following:

Kevin R. Lomupo, Esquire
Gilardi, Cooper & Lomupo
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

McINTYRE, HARTYE & SCHMITT

By


Attnorneys for Defendant,
CLEARFIELD HOSPITAL

Frank J. Hartye, Esquire
PA I.D. No. 25568
P.O. Box 533
Hollidaysburg, PA 16648
(814) 696-3581
(814) 696-9399 - Fax

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

Kimberly A. Acey
a/k/a Kimberly A. Podliski,
1708 State Street
Osceola Mills, PA 16666,
Plaintiff

Docket No. 2008 - 1121- CD

vs.

Praxidio H. Tagala, M. D.,
Praxidio H. Tagala, M. D., P.C.
615 Thompson Street
Clearfield, PA 16630, and
Clearfield Hospital
809 Turnpike Avenue
Clearfield, PA 16830,
Defendants.

Type of Case: Civil Action

Medical Professional Liability
Action (check if applicable)

Type of Pleading:
Certificate of Service

Filed on Behalf of Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.

Counsel of Record for this Party:

John W. Blasko, Esquire
PA I.D. Number 6787
Attorneys for Praxidio H. Tagala, M. D.
811 University Drive
State College, PA 16802
(814) 238-4926


John W. Blasko, Esquire

FILED NO CC
12/5/01
JAN 06 2002
LM
William A. Shaw
Prothonotary/Clerk of Courts

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

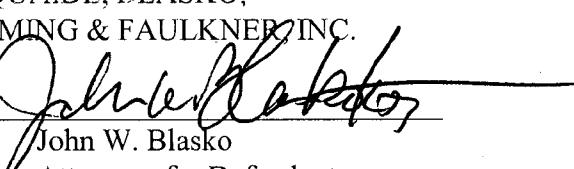
KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL §
§
Defendants §

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Notice of Intent to Serve a Subpoena to Produce Documents and Things Pursuant to Rule 4009.21, in the above-referenced matter, regarding a subpoena to Dr. Nechoes/Blair Medical Associates and the Meadows Psychiatric Center, was mailed through Litigation Services, Inc, on the 19th day of December 2008 to:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER INC.
By: 
John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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FILED

JAN 06 2009

William A. Shaw
Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

FILED

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William A. Shaw
Prothonotary/Clerk of Courts

Court of Common
Pleas

1 CENT TO
LITIGATION

(610)

Kimberly A. Acey a/k/a Kimberly A. Podliski

vs.

Praxidio H. Tagala, M.D., Praxidio H. Tagala,
M.D., P.C. & Clearfield Hospital

Case Number:
2008-1121-CD

CERTIFICATE PREREQUISITE TO THE SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

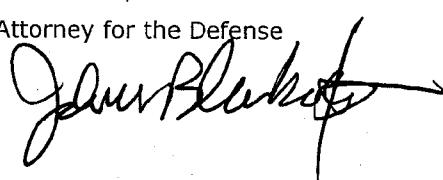
As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Litigation Solutions, LLC ('LSLLC') on behalf of John Blasko, Esquire of McQuaide Blasko certifies that:

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served;
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate;
- (3) No objection to the subpoena has been received, and;
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 1/8/2009

Litigation Solutions, LLC on behalf of
John Blasko, Esquire of McQuaide Blasko
Attorney for the Defense

CC:
John Blasko, Esquire
McQuaide Blasko
811 University Drive
State College PA 16801



COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Kimberly A. Acey a/k/a Kimberly A.

*

Podliski

Plaintiff(s)

Vs.

*

No. 2008-01121-CD

Praxidio H. Tagala MD

*

Praxidio H. Tagala, M.D., P.C.

Clearfield Hospital

Defendant(s)

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

TO: Meadows Psychiatric Center
(Name of Person or Entity)

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

PLEASE SEE ATTACHED RIDER

101 Town Square Way Suite 251 Pittsburgh, Pa 15227

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

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

NAME: John Blasko, Esquire
ADDRESS: 811 University Drive
State College, Pa 16801
TELEPHONE: 814-238-4926
SUPREME COURT ID # 6787
ATTORNEY FOR: Defense

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division

Deputy

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

DATE: Wednesday, December 17, 2008
Seal of the Court

Rider to Subpoena

Explanation of Required Documents and Things

TO: CUSTODIAN OF RECORDS FOR:

Meadows Psychiatric Center
132 The Meadows Drive RD 1, Box 259
Centre Hall PA 16828
Attention: Medical Records Correspondence

Subject: Podliski (AKA Acey), Kimberly A.
SS#: 200-60-8744
Date of Birth: 10/18/1965

Requested Items:

Please remit: a complete copy of any and all mental health/psychiatric records from 10/18/1965 to present, including records, charts, test results, reports, correspondence, office notes, and computerized records.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Kimberly A. Acey a/k/a Kimberly A.

*

Podliski

Plaintiff(s)

Vs.

*

No. 2008-01121-CD

Praxidio H. Tagala MD

*

Praxidio H. Tagala, M.D., P.C.

Clearfield Hospital

Defendant(s)

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

TO: Neches/Blair Medical Associates OB/GYN Division
(Name of Person or Entity)

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

PLEASE SEE ATTACHED RIDER

101 Town Square Way, Suite 251 Pittsburgh, Pa 15227

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

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

NAME: John Blasko, Esquire

ADDRESS: 811 University Drive
State College, Pa 16801

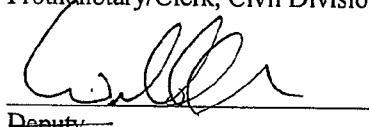
TELEPHONE: 814-238-4926

SUPREME COURT ID # 6787

ATTORNEY FOR: Defense

BY THE COURT:

William A. Shaw
Prothonotary/Clerk, Civil Division


Deputy

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

DATE: Wednesday, December 17, 2008
Seal of the Court

Rider to Subpoena

Explanation of Required Documents and Things

TO: CUSTODIAN OF RECORDS FOR:

Dr. Norman Neches/Blair Medical Associates OB/GYN Division
1414 Ninth Avenue
Altoona PA 16648
Attention: Medical Records Correspondence

Subject: Podliski (AKA Acey), Kimberly A.
SS#: 200-60-8744
Date of Birth: 10/18/1965

Requested Items:

Please remit: a complete copy of any and all medical records from 10/18/1965 to present for treatment rendered by Dr. Norman Neches AND/OR Blair Medical Associates OB/GYN Division, including records, charts, test results, reports, correspondence, office notes, and computerized records.

PENNSYLVANIA COURT OF COMMON PLEAS

COUNTY OF CLEARFIELD

Kimberly A. Acey a/k/a Kimberly A. Podliski
vs.

Court of Common Pleas

Praxidio H. Tagala, M.D., Praxidio H. Tagala, M.D., P.C. & Clearfield
Hospital

2008-1121-CD

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

Provider:	Record Type:
Norman Neches/Blair Medical Associates OB/GYN Division Meadows Psychiatric Center	Medical Mental Health

TO: Kevin Lomupo, Esquire

note: please see enclosed list of all other interested counsel

Litigation Solutions, LLC ('LSLLC') on behalf of John Blasko, Esquire intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If the twenty day notice period is waived or if no objection is made, then the subpoena may be served.

Date of Issue: 12/19/2008

Litigation Solutions, LLC on
behalf of:

CC: John Blasko, Esquire - Court of Common Pleas

John Blasko, Esquire
Defense

McQuade Blasko

John Blasko

If you have any questions regarding this matter, please contact:
Litigation Solutions, LLC (412.263.5656)
Brentwood Towne Centre
101 Towne Square Way, Suite 251
Pittsburgh, PA 15227

**COUNSEL LISTING FOR KIMBERLY A. ACEY A/K/A KIMBERLY A. PODLISKI VS.
PRAXIDIO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C. & CLEARFIELD HOSPITAL**

County of Clearfield Court of Common Pleas

Counsel	Firm	Counsel Type
Lomupo, Esquire, Kevin J.	Benedum Trees Building 223 Fourth Avenue, 10th Floor Pittsburgh PA 15222 Ph: 412-391-9770	Opposing Counsel
Hartye, Esquire, Frank	P. O. Box 533 Hollidaysburg PA 16648 Ph: 814-696-3581	Other
	F: 412-391-9780 F: 814-696-9399	

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

FILED

S MAR 04 2009
2009-1121-CD
William A. Shaw
Prothonotary/Clerk of Courts
No 4/60

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.;
PRAXIDIO H. TAGALA, M.D., P.C.;
and CLEARFIELD HOSPITAL,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

Type of Pleading ~
REQUEST TO PLAINTIFF FOR
PRODUCTION OF EXPERT REPORTS

Filed on Behalf of ~
DEFENDANT RODOLFO S. POLINTAN,
M.D.

Filed By ~
JOHN W. BLASKO, ESQ.
Attorney I.D. # 6787
MCQUAIDE BLASKO LAW OFFICES
811 University Drive
State College, PA 16801-6699
(814) 238-4926

JURY TRIAL DEMANDED

Dated: March 3, 2009

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI, §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL, §
§
Defendants §

DEFENDANT PRAXIDIO H. TAGALA, M.D.'S
REQUEST TO PLAINTIFF FOR PRODUCTION OF EXPERT REPORTS

TO: KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI, by and through her attorney of record, Kevin R. Lomupo, Esquire
FROM: PRAXIDIO H. TAGALA, M.D.

Pursuant to Pennsylvania Rule of Civil Procedure 1042.28(b), you are requested within one hundred eighty (180) days of service of this request to furnish to me, the defendant named above, expert reports summarizing the expert testimony that you will offer to support the claims of professional negligence that you have made against me. You are required to serve copies of all expert reports on all other parties.


JOHN W. BLASKO, ESQ.
Attorney for Praxidio H. Tagala, M.D.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: March 3rd, 2009

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI, §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL, §
§
Defendants. §

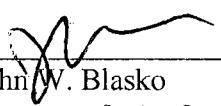
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Request to Plaintiff for Production of Expert Reports, in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 3rd day of March, 2008, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 
John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

MAR 04 2009

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

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL §
§
§
Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Response to Plaintiff's Request for Production, in the above-captioned matter, was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 6th day of March, 2009, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____


John W. Blasko

Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAR 09 2009

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §

Plaintiff §

v. §

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD §
HOSPITAL §

Defendants §

FILED

MAY 04 2009

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William A. Shaw

Prothonotary/Clerk of Courts

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CIVIL ACTION -Medical Professional Liability

Action

Docket No: 2008-1121-CD

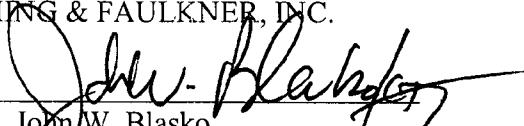
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Notice of Deposition of Donald Podliski, in the above-captioned matter, was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 15 day of May, 2009, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

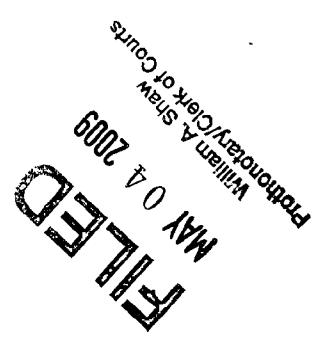
Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

John W. Blasko

Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624



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

FILED

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD § Docket No: 2008-1121-CD
HOSPITAL §
§
Defendants

MAY 04 2009

MAY 12 2009

William A. Shaw
Prothonotary/Clerk of Court

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Notice of Deposition of Plaintiff, in the above-captioned matter, was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 1st day of May, 2009, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: John W. Blasko

John W. Blasko

Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

RECOMMENDATION OF THE ATTALIA
COMMITTEE

RECOMMENDATION

RECOMMENDATION OF THE ATTALIA
COMMITTEE

RECOMMENDATION OF THE ATTALIA
COMMITTEE

FILED

RECOMMENDATION OF THE ATTALIA
COMMITTEE

RECOMMENDATION OF THE ATTALIA
COMMITTEE

RECOMMENDATION OF THE ATTALIA
COMMITTEE

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

5 **FILED**

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §

Plaintiff §

v. §

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO §
H. TAGALA, M.D., P.C.; and CLEARFIELD §
HOSPITAL §

Defendants §

CIVIL ACTION -Medical Professional Liability

Action

Docket No: 2008-1121-CD

MAY 07 2009
m/12/30/09
William A. Shaw
Prothonotary/Clerk of Courts

no 4/6

CERTIFICATE OF SERVICE

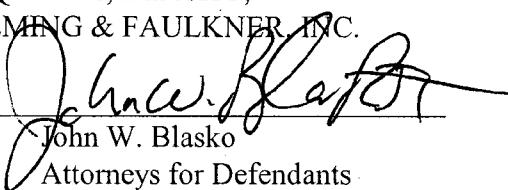
I hereby certify that a true and correct copy of Defendant Tagala's Notice of Intent to Serve a Subpoena to Produce Documents and Things Pursuant to Rule 4009.21, in the above-referenced matter, regarding subpoenas to Mary Askey and Fullington Auto Busy Company, was mailed through Litigation Services, Inc, on the 1st day of May2009 to:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By:


John W. Blasko

Attorneys for Defendants

Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

May 07 2009

William A. Shaw

Prothonotary/Clerk of Courts

William A. Shaw

Prothonotary/Clerk of Courts

5 FILED

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Kimberly A. Acey a/k/a Kimberly A. Podliski

vs.

Praxidio H. Tagala, M.D., Praxidio H. Tagala,
M.D., P.C. & Clearfield Hospital

JUL 01 2009
m 12-5576 (610)
William A. Shaw
Prothonotary/Clerk of Courts

Court of Common Pleas *(Clerk to*

Case Number:
2008-1121-CD

Litigation

CERTIFICATE PREREQUISITE TO THE SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

As a prerequisite to service of a subpoena for documents and things pursuant to Rule 4009.22, Litigation Solutions, LLC ('LSLLC') on behalf of John Blasko, Esquire of McQuaide Blasko certifies that:

- (1) A notice of intent to serve the subpoena with a copy of the subpoena attached thereto was mailed or delivered to each party at least twenty days prior to the date on which the subpoena is sought to be served;
- (2) A copy of the notice of intent, including the proposed subpoena, is attached to this certificate;
- (3) No objection to the subpoena has been received, and;
- (4) The subpoena which will be served is identical to the subpoena which is attached to the notice of intent to serve the subpoena.

Date: 5/21/2009

John Blasko
Litigation Solutions, LLC on behalf of
John Blasko, Esquire of McQuaide Blasko
Attorney for the Defense

CC:

John Blasko, Esquire
McQuaide Blasko
811 University Drive
State College PA 16801

PENNSYLVANIA COURT OF COMMON PLEAS
COUNTY OF CLEARFIELD

Kimberly A. Acey a/k/a Kimberly A. Podliski
vs.
Praxidio H. Tagala, M.D., Praxidio H. Tagala, M.D., P.C. & Clearfield
Hospital

Court of Common Pleas
2008-1121-CD

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

Provider:	Record Type:
Mary Askey Fullington Auto Bus Company	Miscellaneous Employment

TO: Kevin Lomupo, Esquire

note: please see enclosed list of all other interested counsel

Litigation Solutions, LLC ('LSLLC') on behalf of John Blasko, Esquire intends to serve a subpoena identical to the one that is attached to this notice. You have twenty (20) days from the date listed below in which to file of record and serve upon the undersigned an objection to the subpoena. If the twenty day notice period is waived or if no objection is made, then the subpoena may be served.

Date of Issue: 5/1/2009

Litigation Solutions, LLC on
behalf of:

CC: John Blasko, Esquire - Court of Common Pleas

McQuade Blasko

*John Blasko, Esquire
Defense*

If you have any questions regarding this matter, please contact:
Litigation Solutions, LLC (412.263.5656)
Brentwood Towne Centre
101 Towne Square Way, Suite 251
Pittsburgh, PA 15227

**COUNSEL LISTING FOR KIMBERLY A. ACEY A/K/A KIMBERLY A. PODLISKI VS.
PRAXIDIO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C. & CLEARFIELD HOSPITAL**

County of Clearfield Court of Common Pleas

Counsel	Firm	Counsel Type
Lomupo, Esquire, Kevin Dn: 412-391-9770 Hartye, Esquire, Frank J.	Benedum Trees Building 223 Fourth Avenue, 10th Floor Pittsburgh PA 15222 P. O. Box 533 Hollidaysburg PA 16648 Ph: 814-696-3581	Opposing Counsel
	f: 412-391-9780 f: 814-696-9399	Other

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Kimberly A. Acey

*

Plaintiff(s)

*

Vs.

No. 2008-01121-CD

Praxidio H. Tagala MD

*

Praxidio H. Tagala, M.D., P.C.

Clearfield Hospital

Defendant(s)

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

TO: Mary Askey

(Name of Person or Entity)

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

PLEASE SEE ATTACHED RIDER

101 Town Square Way Suite 251 Pittsburgh Pa 15227

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

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

NAME: John Blasko, Esquire

ADDRESS: 811 University Drive

State College, Pa 16801

TELEPHONE: 814-238-4926

SUPREME COURT ID # 6787

ATTORNEY FOR: Defense

BY THE COURT:


William A. Shaw, Jr.

Prothonotary/Clerk, Civil Division

DATE: Thursday, April 30, 2009

Seal of the Court

Deputy

Rider to Subpoena

Explanation of Required Documents and Things

TO: CUSTODIAN OF RECORDS FOR:

Mary Askey
220 Walnut Street
Philipsburg PA 16866
Attention: Records Department

Subject: Podliski (AKA Acey/Quick), Kimberly A.
SS#: 8744
Date of Birth: 10/18/1965

Requested Items:

Please remit a complete copy of any and all documents in your custody related to tax preparation, including copies of tax forms and all attachments, W2s, schedules and any and all other forms/documents.

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Kimberly A. Acey

*

Plaintiff(s)

*

Vs.

No. 2008-01121-CD

Praxidio H. Tagala MD

*

Praxidio H. Tagala, M.D., P.C.

Clearfield Hospital

Defendant(s)

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

TO: Fullington Auto Bus Company

(Name of Person or Entity)

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

PLEASE SEE ATTACHED RIDER

101 Town Square Way Suite 251 Pittsburgh Pa 15227

(Address)

You may deliver or mail legible copies of the documents or produce things requested by this subpoena, together with the certificate of compliance, to the party making this request at the address listed above. You have the right to seek in advance the reasonable cost of preparing the copies or producing the things sought.

If you fail to produce the documents or things required by this subpoena within twenty (20) days after its service, the party serving this subpoena may seek a court order compelling you to comply with it.

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

NAME: John Blasko, Esquire

ADDRESS: 811 University Drive

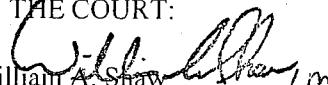
State College, Pa 16801

TELEPHONE: 814-238-4926

SUPREME COURT ID # 6787

ATTORNEY FOR: Defense

BY THE COURT:


William A. Shaw
Prothonotary/Clerk, Civil Division

DATE: Thursday, April 30, 2009

Seal of the Court

Deputy

Rider to Subpoena

Explanation of Required Documents and Things

TO: CUSTODIAN OF RECORDS FOR:

Fullington Auto Bus Company
PO Box 211
Clearfield PA 16830
Attention: Human Resources Department

Subject: Podliski (AKA Acey/Quick), Kimberly A.
SS#: 8744
Date of Birth: 10/18/1965

Requested Items:

Complete copy of employment files from 10/18/1965 to present: Application ; Payroll ; Attendance ; Performance ; Reviews ; Disciplinary ; Worker's Comp ; Medical ; Excuses ; Physicals ; Termination, computerized records, etc.

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

VS.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

Defendants

No. 2008 - 1121 - CD

ISSUE:

NOTICE OF SERVICE OF ANSWERS
TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUEST
FOR PRODUCTION DIRECTED TO
CLEARFIELD HOSPITAL

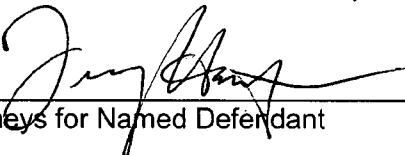
Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

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 16TH DAY OF SEPTEMBER, 2009



Attorneys for Named Defendant

FILED
M 10 33871
SEP 17 2009
S
B
William A. Shaw
Prothonotary/Clerk of Courts
NO CC

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	:	No. 2008 - 1121 - CD
Plaintiff	:	
vs.	:	
PRAXIDIO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,	:	
Defendants	:	JURY TRIAL DEMANDED

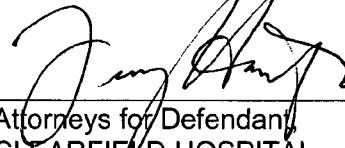
**NOTICE OF SERVICE OF ANSWERS TO PLAINTIFF'S FIRST SET
OF INTERROGATORIES AND REQUEST FOR PRODUCTION**

TO: PROTHONOTARY

You are hereby notified that on the 16TH day of **September, 2009**, Defendant, Clearfield Hospital, served Answers to Plaintiff's First Set of Interrogatories and Request for Production on the Plaintiff by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

Kevin R. Lomupo, Esquire
Gilardi, Cooper & Lomupo
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

McINTYRE, HARTYE & SCHMITT

By 

Attorneys for Defendant
CLEARFIELD HOSPITAL

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

: No. 2008 – 1121 – CD

: ISSUE:
MOTION REQUESTING SCHEDULING
ORDER

Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

: Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

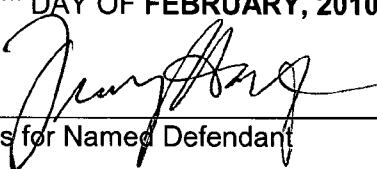
: Counsel of Record:
Frank J. Hartye, Esquire
PA I.D. #25568

: 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 12TH DAY OF FEBRUARY, 2010.



Attorneys for Named Defendant

FILED No. 11
m/11/17 am
FEB 16 2010 (60)

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	:	No. 2008 – 1121 – CD
Plaintiff	:	
vs.	:	
PRAXIDIO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,	:	
Defendants	:	JURY TRIAL DEMANDED

MOTION REQUESTING SCHEDULING ORDER

AND NOW, comes the Defendant, CLEARFIELD HOSPITAL, by and through its attorneys, McINTYRE, HARTYE, SCHMITT & SOSNOWSKI, and files the following Motion Requesting Scheduling Order:

1. Plaintiff initiated this matter by filing a Complaint and Certificates of Merit on June 20, 2008.
2. Pleadings are concluded. The parties have engaged in discovery including taking the depositions of the plaintiff and Dr. Tagala as well as the exchange of paper discovery.
3. This is a medical professional liability action and has been pending for more than one year.
4. Pursuant to Pa. R.C.P. 1042.41 defendant is requesting the Court to issue a Scheduling Order.
5. Defendant suggests that the Court enter an Order indicating that:
 - (a) all discovery be completed by April 30, 2010;
 - (b) plaintiff's expert reports due by June 30, 2010;
 - (c) defense experts due by August 31, 2010; and

(d) trial to be scheduled for February 2011.

WHEREFORE, Defendant Clearfield Hospital requests this Honorable Court to enter a Scheduling Order setting forth the plan for case management as outlined above.

Respectfully submitted,

McINTYRE, HARTYE, SCHMITT &
SOSNOWSKI

By 

Atorneys for Defendant,
CLEARFIELD HOSPITAL

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

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

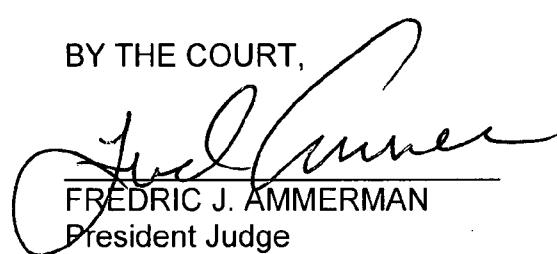
KIMBERLY A. ACEY a/k/a * No. 08-1121-CD
KIMBERLY A. PODLISKI, *
Plaintiff *
vs *
PRAXIDIO H. TAGALA, M.D., *
PARXIDIO H. TAGALA, M.D., P.C. and *
CLEARFIELD HOSPITAL *

O R D E R

NOW, this 19th day of February, 2010, upon consideration of Defendant's Motion for Scheduling Order, it is hereby ORDERED, DIRECTED and DECREED as follows:

- A. The parties shall complete all discovery by no later than June 30, 2010;
- B. Plaintiff shall provide Defendants with Plaintiff's expert report(s) by August 30, 2010. Defense expert report(s) shall be provided to Plaintiff by October 30, 2010.
- C. Depositions of any experts shall be completed by December 31, 2010.
- D. The Court expects that jury selection will occur at the beginning of January 2011. The date of jury selection has not yet been set.
- E. Jury trial will be scheduled in February or March 2011.
- F. Pretrial conference, in Chambers, is hereby scheduled for the 22nd day of November 2010 at 1:30 p.m. in Chambers.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED 500
03/25/11 Atty Hartye
FEB 19 2010
S

William A. Shaw
Prothonotary/Clerk of Courts

FILED

FEB 19 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/19/10

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:

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

: No. 2008 - 1121 - CD

: ISSUE:
CERTIFICATE OF SERVICE

Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

: Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

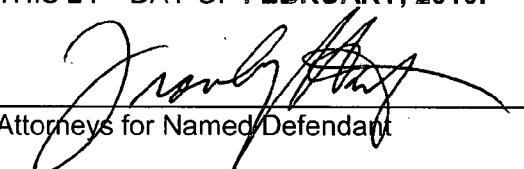
: Counsel of Record:
Frank J. Hartye, Esquire
PA I.D. #25568

: McINTYRE, HARTYE, SCHMITT
& SOSNOWSKI
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 24TH DAY OF FEBRUARY, 2010.



Attorneys for Named Defendant

FILED
M 11:11 a.m. 6/6
FEB 26 2010 NO CC

William A. Shaw
Prothonotary/Clerk of Courts

(60)

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,
Plaintiff
vs.
PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,
Defendants

: No. 2008 - 1121 - CD
: JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Frank J. Hartye, Esquire, hereby certify that I have served a true and correct copy of the attached Order of Judge Ammerman dated February 19, 2010, on the following persons by placing the same in the U.S. Mail, postage prepaid, on the 24th day of February, 2010:

Kevin R. Lomupo, Esquire
Gilardi, Cooper & Lomupo
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

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

McINTYRE, HARTYE, SCHMITT &
SOSNOWSKI

Attorneys for Defendant,
CLEARFIELD HOSPITAL

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

KIMBERLY A. ACEY a/k/a * No. 08-1121-CD
KIMBERLY A. PODLISKI, *
Plaintiff *
vs *
PRAXIDIO H. TAGALA, M.D., *
PARXIDIO H. TAGALA, M.D., P.C. and *
CLEARFIELD HOSPITAL *

ORDER

NOW, this 19th day of February, 2010, upon consideration of Defendant's Motion for Scheduling Order, it is hereby ORDERED, DIRECTED and DECREED as follows:

- A. The parties shall complete all discovery by no later than June 30, 2010;
- B. Plaintiff shall provide Defendants with Plaintiff's expert report(s) by August 30, 2010. Defense expert report(s) shall be provided to Plaintiff by October 30, 2010.
- C. Depositions of any experts shall be completed by December 31, 2010.
- D. The Court expects that jury selection will occur at the beginning of January 2011. The date of jury selection has not yet been set.
- E. Jury trial will be scheduled in February or March 2011.
- F. Pretrial conference, in Chambers, is hereby scheduled for the 22nd day of November 2010 at 1:30 p.m. in Chambers.

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

FEB 19 2010

Attest.

William J. Ammerman
Prothonotary/
Clerk of Courts

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

JUN 11 2010

6/11/10
William A. Shaw
Prothonotary/Clerk of Courts
No. 46

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.;
PRAXIDIO H. TAGALA, M.D., P.C.;
and CLEARFIELD HOSPITAL,

Defendants

: CIVIL ACTION -Medical Professional
: Liability Action

:
: Docket No: 2008-1121-CD

:
: Type of Pleading ~
: Certificate of Service

:
: Re: Request of Plaintiff to Supplement Prior
: Responses to Interrogatories and
: Requests for Production

:
: Filed on Behalf of ~
: DEFENDANT, PRAXIDIO H. TAGALA,
: M.D.

:
: Filed By ~
: JCHN W. BLASKO, ESQ.
: Attorney I.D. # 6787
: MCQUAIDE BLASKO LAW OFFICES
: 811 University Drive
: State College, PA 16801-6699
: (814) 238-4926

Dated: June 10, 2010

:
: JURY TRIAL DEMANDED

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

KIMBERLY A. ACEY a/k/a KIMBERLY A.
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and CLEARFIELD
HOSPITAL,

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Praxidio H. Tagala, M.D.'s Request of Plaintiff to Supplement Prior Responses to Interrogatories and Requests for Production in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 10th day of June, 2010 to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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

FILED

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

Defendants

No. 2008 - 1121 - CD

ISSUE:
NOTICE OF SERVICE OF ANSWERS
TO EXPERT INTERROGATORIES
AND RESPONSES TO REQUEST FOR
PRODUCTION OF DOCUMENTS

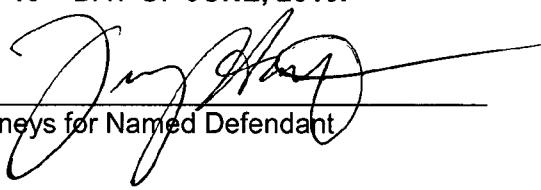
Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

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

McINTYRE, HARTYE, SCHMITT
& SOSNOWSKI
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 JUNE, 2010.



Attorneys for Named Defendant

JUN 11 2010
M 12:35 PM
William A. Shaw
Prothonotary/Clerk of Courts
No 61

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	:	No. 2008 - 1121 - CD
Plaintiff	:	
vs.	:	
PRAXIDIO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,	:	
Defendants	:	JURY TRIAL DEMANDED

**NOTICE OF SERVICE OF ANSWERS TO PLAINTIFF'S EXPERT
INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

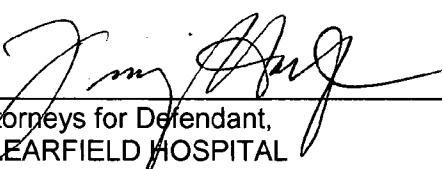
TO: PROTHONOTARY

You are hereby notified that on the **10th** day of **June, 2010**, Defendant, Clearfield Hospital, served Answers to Plaintiff's Expert Interrogatories and Request for Production of Documents on the Plaintiff by mailing the original of same via First Class U.S. Mail, postage prepaid, addressed to the following:

Kevin R. Lomupo, Esquire
Gilardi, Oliver & Lomupo
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

**McINTYRE, HARTYE, SCHMITT &
SOSNOWSKI**

By


Attorneys for Defendant,
CLEARFIELD HOSPITAL

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 - LAW

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.;
PRAXIDIO H. TAGALA, M.D., P.C.;
and CLEARFIELD HOSPITAL,

Defendants

: CIVIL ACTION -Medical Professional
: Liability Action

:
: Docket No: 2008-1121-CD

:
: Type of Pleading ~
: Certificate of Service

:
: Re: Answers to Plaintiff's Expert
: Interrogatories

:
: Filed on Behalf of ~
: DEFENDANT, PRAXIDIO H. TAGALA,
: M.D.

:
: Filed By ~
: JOHN W. BLASKO, ESQ.
: Attorney I.D. # 6787
: MCQUAIDE BLASKO LAW OFFICES
: 811 University Drive
: State College, PA 16801-6699
: (814) 238-4926

:
: JURY TRIAL DEMANDED

Dated: June 14, 2010

FILED
M 10/15/2011 NO CC
JUN 15 2011
S
William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A.
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and CLEARFIELD
HOSPITAL,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Praxidio H. Tagala, M.D.'s Responses to Plaintiff's Expert Interrogatories in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 14 day of June, 2010 to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: John W. Blasko

John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

JUN 15 2010

William A. Show
Prothonotary/Clerk of Courts

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COMM-A-ABT-101

6/08/10 10:00 AM

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.;
PRAXIDIO H. TAGALA, M.D., P.C.;
and CLEARFIELD HOSPITAL,

Defendants

: CIVIL ACTION -Medical Professional
: Liability Action

: Docket No: 2008-1121-CD

: Type of Pleading ~
Certificate of Service

: Re: Responses to Plaintiff's Request for
Production

: Filed on Behalf of ~
DEFENDANT, PRAXIDIO H. TAGALA,
M.D.

: Filed By ~
JOHN W. BLASKO, ESQ.
Attorney I.D. # 6787
MCQUAIDE BLASKO LAW OFFICES
811 University Drive
State College, PA 16801-6699
(814) 238-4926

: JURY TRIAL DEMANDED

Dated: June 14, 2010

FILED *10:50 AM* *NO CC*
S JUN 15 2010
William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A.
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and CLEARFIELD
HOSPITAL,

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Praxidio H. Tagala, M.D.'s Responses to Plaintiff's Request for Production in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 14 day of June, 2010 to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: John W. Blasko

John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

CA
FILED

AUG 09 2010

111406
S William A. Shaw
Prothonotary/Clerk of Courts
No 96
66

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLISKI

CIVIL DIVISION, MEDICAL
PROFESSIONAL LIABILITY ACTION

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C.,
and CLEARFIELD HOSPITAL,

No.: 2008 - 1121 - CD

Defendants.

Pleading:
MOTION FOR SANCTIONS

Filed On Behalf Of:
Plaintiff

Counsel Of Record For This Party:

Kevin R. Lomupo, Esquire
PA I.D. # 40996

GILARDI, OLIVER & LOMUPO
Firm #157

The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

(412) 391-9770

krlomupo@lawgol.com

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY	]	CIVIL DIVISION - MEDICAL
a/k/a KIMBERLY A. PODLISKI,	]	PROFESSIONAL LIABILITY
	]	ACTION
Plaintiff,]	
]	
vs.	]	No.: 2008-1121-CD
]	
PRAXIDO H. TAGALA, M.D.,]	
PRAXIDIO H. TAGALA, M.D., P.C., and]	
CLEARFIELD HOSPITAL,]	
Defendants.	]	JURY TRIAL DEMANDED

MOTION FOR SANCTIONS

AND NOW comes the Plaintiff, Kim Podliski, by and through her attorneys, Gilardi, Oliver & Lomupo and Kevin R. Lomupo, Esquire, and as her Motion for Sanctions avers as follows:

1. This is a medical malpractice action instituted by the Plaintiff against Dr. Tagala alleging, in part, negligence in perforating her colon during a laparoscopic lysis of pelvic adhesions.
2. After the perforation was discovered, a repair surgery was conducted by Dr. Yingling, who is not a party to this lawsuit, but is merely a subsequent treating physician.
3. The Plaintiff scheduled a discovery deposition of Dr. Yingling for July 8, 2010 at his office.
4. During the deposition of Dr. Yingling, it was discovered that the attorney for Dr. Tagala had ex parte contact with the deponent without authorization from the Plaintiff. (See Exhibit 1.)

5. Additionally, the attorney for Dr. Tagala provided the deponent with a copy of the Defendant's deposition which the deponent read prior to his own deposition, thereby tainting his testimony.

6. The Plaintiff is extremely prejudiced by this ex parte contact and by the deponent commenting on the Defendant's deposition.

WHEREFORE, the Plaintiff respectfully requests that this Honorable Court enter the attached Order.

Respectfully submitted,

GILARDI, OLIVER & LOMUPO

By:


Kevin R. Lomupo, Esquire
Counsel for Plaintiff



MCQUAIDE BLASKO

ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699
Additional offices in Hershey and Hollidaysburg

(814) 238-4926

FAX (814) 234-5620
www.mqblaw.com

June 17, 2010

Douglas B. Yingling, M.D., F.A.C.S.
Chief of Surgery, Clearfield Area Hospital
1212 Turnpike Ave
Clearfield, PA 16830

RE: *Kimberly A. Acey a/k/a Kimberly a. Podliski v. Praxidio H. Tagala, M.D.; Praxidio H. Tagala, M.D., P.C.; and Clearfield Hospital*

Dear Dr. Yingling:

I received notice that your deposition is scheduled for July 8, 2010 in the lawsuit filed by Kimberly A. Acey a/k/a Kimberly A. Podliski against Dr. Tagala and Clearfield Hospital.

Mr. Lomupo, who represents Ms. Acey-Podliski, will conduct the deposition. I represent Dr. Tagala, and, Clearfield Hospital is represented by Mr. Frank Hartye of Hollidaysburg.

Your deposition will be on your care and treatment of Ms. Acey. Mr. Lomupo has already taken the deposition of Dr. Tagala. I am not certain if he is going to provide you with a copy of Dr. Tagala's deposition transcript, so in fairness to you, I thought you should have the transcript in the event you would like to know what the issues are and your involvement. Thus, I enclose a copy of Dr. Tagala's deposition transcript.

I am not permitted to discuss the case with you before the deposition, but I will be present on July 8, 2010, at which time I am permitted to ask questions. Mr. Hartye will also be present.



JWB/th
Enclosure

Very truly yours,

McQUAIDE, BLASKO

By:


JOHN W. BLASKO

MCQUAIDE BLASKO INC.

State College Office: John W. Blasko David M. Weixel Steven S. Hurvitz James M. Horne Wendell V. Courtney Darryl R. Slimak Mark Righter Daniel E. Bright
Janine C. Gismondi John A. Snyder April C. Simpson Allen P. Neely Katherine V. Oliver Katherine M. Allen Wayne L. Mowery, Jr. Chena L. Glenn-Han
Livinia N. Oluwolé Cristin R. Long Anthony A. Simon Dominick J. Muracco Thomas S. Schräck Aaron T. Brooks Philip K. Miles, III Ashley D. Cooper
Suzette V. Sims Julia Cronin Rater

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

Hollidaysburg Office: Thomas M. Reese J. Benjamin Yeager Sean M. Burke Michael P. Routh Amanda L. Seelye

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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	]	CIVIL DIVISION - MEDICAL PROFESSIONAL LIABILITY ACTION
Plaintiff,]	
vs.	]	No.: 2008-1121-CD
PRAXIDO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,]	
Defendants.	]	JURY TRIAL DEMANDED

ORDER OF COURT

AND NOW this _____ day of _____, 2010, it is
hereby ORDERED, ADJUDGED and DECREED that the Defendant is prohibited from
calling Dr. Yingling as a witness and/or having his experts comment on statements
made by Dr. Yingling in his deposition.

BY THE COURT:

J.

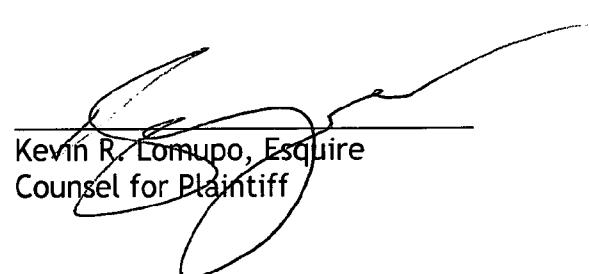
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within ***Motion for Sanctions*** has been served on the following by first class mail, postage prepaid on this 5th day of August, 2010.

TO: John W. Blasko, Esquire
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801-6699
Counsel for Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C.

Frank J. Hartye, Esquire
McIntyre, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648
Counsel for Clearfield Hospital

Kevin R. Lomupo, Esquire
Counsel for Plaintiff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY] CIVIL DIVISION - MEDICAL
a/k/a KIMBERLY A. PODLISKI,] PROFESSIONAL LIABILITY
Plaintiff,] ACTION
vs.] No.: 2008-1121-CD
PRAXIDO H. TAGALA, M.D.,]
PRAXIDIO H. TAGALA, M.D., P.C., and]
CLEARFIELD HOSPITAL,] JURY TRIAL DEMANDED
Defendants.]

SCHEDULING ORDER

AND NOW, this 16th day of AUGUST, 2010, upon consideration of the Motion for Sanctions filed by Attorney Kevin R. Lomupo in the above matter, it is the Order of the Court that argument/hearing has been scheduled for the 2nd day of September, 2010, at 10:30 A.M., in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:



Judge

FILED ^{ICC}
O/I: 3657 Atty
S AUG 17 2010
William A. Shaw
Prothonotary/Clerk of Court
Lomupo
(64)

FILED

AUG 17 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: **8/17/10**

You are responsible for serving all appropriate parties.

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

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED NO CC
M 11/5/10
SEP 02 2010
S
William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	CIVIL ACTION -Medical Professional Liability Action
Plaintiff	
v.	Docket No: 2008-1121-CD
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO H. TAGALA, M.D., P.C.; and CLEARFIELD HOSPITAL,	Type of Pleading ~ CERTIFICATE OF SERVICE (re: Brief in Opposition to Plaintiff's Motion for Sanctions)
Defendants	Filed on Behalf of ~ DEFENDANT, PRAXIDIO H. TAGALA, M.D.
	Filed By ~ JOHN W. BLASKO, ESQ. Attorney I.D. # 6787 MCQUAIDE BLASKO LAW OFFICES 811 University Drive State College, PA 16801-6699 (814) 238-4926
Dated: September 1, 2010	JURY TRIAL DEMANDED

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

KIMBERLY A. ACEY a/k/a KIMBERLY A.
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and CLEARFIELD
HOSPITAL,

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Praxidio H. Tagala, M.D.'s Brief in Opposition to Plaintiff's Motion for Sanctions in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 1st day of September, 2010 to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____


John W. Blasko

Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

CA

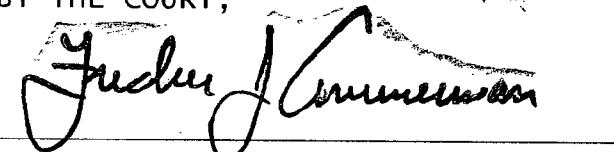
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

KIMBERLY A. ACEY a/k/a :
KIMBERLY A. PODLISKI :
-vs- : No. 08-1121-CD
PRAXIDO H. TAGALA, M.D., :
PRAXIDO H. TAGALA, M.D., :
P.C., and CLEARFIELD HOSPITAL:

O R D E R

AND NOW, this 2nd day of September, 2010,
following argument on the Plaintiff's Motion for Sanctions,
with the Court noting that brief has been received from
counsel for Dr. Tagala, it is the ORDER of this Court that
counsel for the Plaintiff have no more than fifteen (15) days
from this date in which to supply the Court with letter
brief.

BY THE COURT,



President Judge

FILED ICC Atlys:

09/12/2010 SEP 08 2010 Lonuppo
William A. Shaw Hasty
Prothonotary/Clerk of Courts Blasko

(6)

FILED

SEP 08 2010

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

DATE: 9/8/10

____ You are responsible for serving all appropriate parties.

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

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

____ Special Instructions:

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

KIMBERLY A. ACEY a/k/a

KIMBERLY A. PODLISKI

Plaintiff

vs.

NO. 2008-1121-CD

PRAXIDOI H. TAGALA, M.D.;

PRAXIDIO H. TAGALA, M.D., P.C.

and CLEARFIELD HOSPITAL

Defendants

FILED

SEP 17 2010

6/4/10
William A. Shaw
Prothonotary/Clerk of Courts

CPL

A. Brashe

K. Lohman

F. H. Ammerman

ORDER

AND NOW, this 17th day of September 2010, following argument on Plaintiff's Motion for Sanctions, it is the ORDER of this Court that Plaintiff's Motion is hereby DENIED.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
MILLION
AUG 26 2010

William A. Shaw
Prothonotary/Clerk of Courts
No Ce
(60)

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.;
PRAXIDIO H. TAGALA, M.D., P.C.;
and CLEARFIELD HOSPITAL,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

Type of Pleading ~
**RESPONSE OF DEFENDANT PRAXIDIO
H. TAGALA, MD TO PLAINTIFF'S
MOTION FOR SANCTIONS**

Filed on Behalf of ~
**DEFENDANT, PRAXIDIO H. TAGALA,
M.D.**

Filed By ~
JOHN W. BLASKO, ESQ.
Attorney I.D. # 6787
MCQUAIDE BLASKO LAW OFFICES
811 University Drive
State College, PA 16801-6699
(814) 238-4926

Dated: August 25, 2010

JURY TRIAL DEMANDED

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

KIMBERLY A. ACEY a/k/a KIMBERLY A.
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and
CLEARFIELD HOSPITAL,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

**RESPONSE OF DEFENDANT PRAXIDIO H. TAGALA, M.D. TO
PLAINTIFF'S MOTION FOR SANCTIONS**

1. Paragraph 1 of the Motion is denied as stated. Plaintiff instituted a medical malpractice action against not only Dr. Tagala and his corporation, but also against Clearfield Hospital. It is further denied that Dr. Tagala negligently perforated Plaintiff's colon during her laparoscopic procedure.
2. Paragraph 2 of the Motion is denied as stated, and, it is alleged as follows:
 - a. On June 29, 2006, Plaintiff was admitted to Clearfield Hospital by Dr. Tagala for laparoscopic surgery for pelvic endometriosis and/or adhesions. She was discharged on the same date.

b. On June 30, 2006, Plaintiff returned to Clearfield Hospital at approximately 12:00 p.m. complaining of pelvic pain, and, was seen and examined by Dr. Tagala.

c. Dr. Tagala continued to follow her, and, on July 1, 2006, Dr. Tagala saw and examined Plaintiff. He made an assessment that a surgical consult was in order.

d. At approximately 10:30 a.m. on July 1, 2006, Dr. Tagala called Dr. Yingling to do a surgical consult on Plaintiff. Dr. Yingling saw Plaintiff at approximately 11:45 am. He determined she had peritonitis and recommended an emergent laparotomy.

e. At approximately 2:24 p.m. on July 1, 2006, with the assistance of Dr. Tagala, Dr. Yingling performed an exploratory laparotomy and determined there was a perforation of the lower sigmoid colon. Dr. Yingling repaired the perforation and placed a colostomy.

f. Dr. Tagala and Dr. Yingling jointly followed the Plaintiff post-op throughout her hospitalization from July 1, 2006 through discharge on July 9, 2006.

g. On September 12, 2006, Dr. Yingling, assisted by Dr. Tagala, reversed the colostomy inserted on July 1, 2006.

3. Paragraph 3 of the Motion is admitted.

4. Paragraph 4 is denied to the extent it alleges "ex parte contact". It is averred as follows:

a. Pennsylvania Rule of Civil Procedure 4003.6 provides:

"Information may be obtained from the treating physician of a party only upon written consent of that party or through a method of discovery authorized by this chapter..."

b. At no time did counsel for Dr. Tagala obtain any **information** from Dr. Yingling concerning the Plaintiff or her treatment.

c. At no time did counsel for Dr. Tagala discuss with or interrogate Dr. Yingling for **information** regarding Plaintiff or her treatment.

d. During her hospitalization of July 1 through July 9, 2006, the Plaintiff was concurrently seen by Dr. Tagala and Dr. Yingling, and, the physicians discussed Plaintiff's treatment during that period of time.

e. At no time during the pendency of this action has Dr. Tagala's counsel had any conversations with Dr. Yingling regarding the Plaintiff or her care and treatment.

f. Dr. Tagala's counsel simply provided the transcript of Dr. Tagala's deposition by letter to Dr. Yingling in order to be fair to Dr. Yingling, who at his deposition testified under oath that he had never given a deposition before, and that he had not prepared for his deposition with the advice of an attorney.

g. Dr. Yingling testified that he had no contact with Dr. Tagala's attorney concerning any **information** related to the Plaintiff or her care and treatment.

h. Dr. Yingling testified that he did not correspond or talk with Dr. Tagala's attorney concerning any **information** on the Plaintiff.

i. Dr. Yingling testified that he never spoke with Dr. Tagala concerning this case.

5. Paragraph 5 is denied as being a bald statement and conclusion that Dr. Yingling's deposition testimony was tainted:

a. Dr. Yingling was duly sworn and testified at his deposition under oath as being true and correct.

- b. Dr. Yingling had never given a deposition in any other cases.
- c. Dr. Yingling testified that he read parts of Dr. Tagala's deposition, but did not read it cover to cover.
- d. Dr. Tagala had an equal right to depose Dr. Yingling, as the Plaintiff did, and, had an absolute right to present to Dr. Yingling any records and/or depositions previously taken.
- e. Neither the Plaintiff's counsel, nor any other counsel, confronted Dr. Yingling with any portion of Dr. Tagala's deposition.
- f. Dr. Tagala's counsel's letter to Dr. Yingling transmitting the deposition transcript of Dr. Tagala in no way violated the Pa.R.C.P. 4003.6, and, did not result in obtaining any **information** on the Plaintiff from Dr. Yingling.
- g. Plaintiff's counsel had full and adequate opportunity to question Dr. Yingling on any matter that he believed was influenced by Dr. Tagala's deposition testimony, but failed to do so.
- h. The Plaintiff's conclusion that Dr. Yingling's testimony was tainted is a serious allegation, which questions Dr. Yingling's integrity and truthfulness, but Plaintiff fails to allege any facts supporting the allegation.

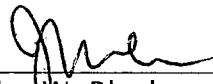
6. Paragraph 6 is a statement of Plaintiff's legal position, to which a response is not necessary:

- a. The only comment Dr. Yingling made about Dr. Tagala's deposition was that he read parts of it, but did not read the deposition cover to cover.
- b. Plaintiff's allegation of extreme prejudice is without any factual basis, since the contact by Dr. Tagala's counsel was simply by letter providing the deposition in fairness to Dr. Yingling, who had never given a deposition before, and, did not have the opportunity to discuss his testimony with his own attorney.

WHEREFORE, IT IS REQUESTED that the Plaintiff's Motion for Sanctions be dismissed with prejudice.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

John W. Blasko
Attorneys for Defendant
Praxidio H. Tagala, M.D.; and
Praxidio H. Tagala, M.D.,P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: 8/25/10

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

KIMBERLY A. ACEY a/k/a KIMBERLY A.
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and CLEARFIELD
HOSPITAL,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

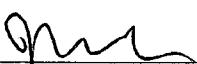
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Response of Defendant
Praxidio H. Tagala, M.D. to Plaintiff's Motion for Sanctions in the above-
captioned matter was mailed by regular mail, postage prepaid, at the Post
Office, State College, Pennsylvania, on this 25th day of August, 2010 to the
attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

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

KIMBERLY A. ACEY a/k/a KIMBERLY A.
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and
CLEARFIELD HOSPITAL,

Defendants

FILED NO
03/08/11
SEP 22 2010
WM
William A. Shaw
Prothonotary/Clerk of Courts

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

RECEIVED

SEP 17 2010

Court Administrator's
Office

The undersigned, JOHN W. BLASKO, having been duly sworn according to law, hereby states that the following is true and correct to the best of his knowledge, information and belief in support of facts set forth in Defendant's brief filed in this case:

1. In his brief filed in the above-captioned cause, on page 8, it was stated: "The Undersigned defense counsel was motivated to send the transcript to Dr. Yingling based upon his prior experiences in depositions in medical malpractice cases with Plaintiff's counsel. At those depositions, Plaintiff's counsel used selected portions of depositions of medical providers in his questioning of other doctors and healthcare providers, without giving them any advanced notice of same", which is unfair.

2. During the deposition of Mary Kruszewski, DO, in the case of *Swanson v. Kruszewski*, filed in this Court to #2007-362-CD, taken on March 5, 2009, Attorney Lomupo cross-examined Dr. Kruszewski on the prior deposition of another healthcare provider, as "highlighted" in the attached portion of the deposition transcript, Exhibit "A" attached.

3. During the deposition of Priscilla Stahlman on January 22, 2009, in the same case, Mr. Lomupo cross-examined Ms. Stahlman on the prior deposition testimony of another healthcare provider, as "highlighted" in the attached portions of the deposition transcript, Exhibit "B" attached.

4. During the deposition of Terry Sherry on April 15, 2010 in the same case, Mr. Lomupo examined Ms. Sherry on the prior deposition testimony of another healthcare provider, as "highlighted" in the attached portions of the deposition transcript, Exhibit "C" attached.

5. During the deposition of Lori Natoli, PA, on October 20, 2009, Mr. Lomupo examined Ms. Natoli on the prior deposition testimony of another healthcare provider, as "highlighted" in the attached portions of the deposition transcript, Exhibit "D" attached.


John W. Blasko

Sworn and Subscribed this
15th day of September 2010

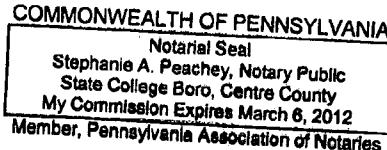


EXHIBIT A

EXHIBIT A

THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PA
CIVIL DIVISION

* * * * *

MELISSA A. SWANSON and *
JASON SWANSON, her *
husband, * No.
Plaintiffs * 2007-362-CD
vs. *

MARY KRUSZEWSKI, D.O., *
STEVEN W. GRAECA, D.O. *
and DRMC PRIMARY CARE *
ASSOCIATES, *

Defendants *

* * * * *

DEPOSITION OF

MARY KRUSZEWSKI, D.O.

March 5, 2009

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

Exhibit "A"

1 I N D E X
23 WITNESS: MARY KRUSZEWSKI, D.O.

4 EXAMINATION

5 By Attorney Lomupo

9 - 219

6 EXAMINATION

7 By Attorney Sopher

220 - 312

8 RE-EXAMINATION

9 By Attorney Lomupo

312 - 328

10 CERTIFICATE

330

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1 having cancer, breast cancer?

2 A. I don't recall.

3 Q. Although you understand that
4 that can happen?

5 A. Yes.

6 Q. We took Priscilla Stahlman's
7 deposition, and I think she indicated
8 that you had been involved in one
9 other medical malpractice lawsuit; is
10 that correct?

11 A. Yes.

12 Q. That's your only experience
13 with medical malpractice lawsuits as a
14 defendant, is one other case and
15 Melissa Swanson's?

16 A. No, there have been several
17 other ---.

18 ATTORNEY BLASKO:

19 There have been other
20 malpractice cases filed here in
21 Clearfield County, none of
22 which relates to the issue in
23 this case, and all of that
24 information is equally
25 available to Counsel by

1 A. Yeah, just what it says.

2 Q. I want to ask you about some
3 things that Dr. Graeca said in his
4 deposition. It was his belief that
5 the responsibility for the evaluation
6 and the treatment of Melissa Swanson's
7 right breast lump problem transferred
8 to you at the time of the mammogram;
9 do you agree with that?

10 A. No.

11 Q. You don't? Why not? I mean,
12 obviously you believe that he still
13 had some responsibility for diagnosis
14 and treatment, and I'd like to know
15 why.

16 A. He was her PCP, he was
17 receiving all of the reports. There
18 was never a formal consultation
19 request for me to follow.

20 Q. Did you believe then that back
21 in July of '04, if Dr. Graeca felt
22 Melissa needed a surgical opinion he
23 should get her a surgical opinion?

24 A. Yes.

25 Q. Would you agree with his

1 statement that to definitively make a
2 diagnosis of cancer you need tissue,
3 and that comes from a biopsy?

4 A. Yes.

5 Q. Dr. Graeca testified that on
6 July 6th there was a phone call made
7 to you from a woman named Lori Natoli
8 who is his PA. And that ---.

9 ATTORNEY SOPHER:

10 I'm going to object to
11 the form of this question,
12 Kevin, because that was
13 disputed in Lori's testimony.
14 And she's actually the one that
15 made the call.

16 ATTORNEY LOMUPO:

17 Well, I'm just
18 commenting on Dr. Graeca's
19 testimony and whether or not
20 Dr. Mary believes which one is
21 true.

22 BY ATTORNEY LOMUPO:

23 Q. Dr. Graeca testified that on
24 July 6th, 2004 his office made a phone
25 call to you wherein a woman named Lori

EXHIBIT B

EXHIBIT B

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

* * * * *

*

MELISSA A. SWANSON *
and JASON SWANSON, * Case No.
her husband, * 2007-362-CD
Plaintiffs *
vs. *
MARY KRUSZEWSKI, *
D.O., STEVEN W. *
GRAECA, D.O. and *
DRMC PRIMARY CARE *
ASSOCIATES, *
Defendants *
*

COPY

* * * * *

DEPOSITION OF

PRISCILLA J. STAHLMAN

JANUARY 22, 2009

Any reproduction of this transcript
is prohibited without authorization
by the certifying agency.

Exhibit "B"

1 I N D E X
23 WITNESS: PRISCILLA J. STAHLMAN

4 EXAMINATION

5 by Attorney Lomupo 136 - 136

6 DISCUSSION AMONG PARTIES 136 - 139

7 EXAMINATION

8 by Attorney Sopher 139 - 261

9 EXAMINATION

10 by Attorney McIntyre 261 - 286

11 RE-EXAMINATION

12 by Attorney Lomupo 287 - 309

13 RE-EXAMINATION

14 by Attorney Sopher 309 - 316

15 RE-EXAMINATION

16 by Attorney McIntyre 316 - 327

17 RE-EXAMINATION

18 by Attorney Lomupo 327 - 331

19 RE-EXAMINATION

20 by Attorney Sopher 331 - 332

21 EXAMINATION

22 by Attorney Blasko 334 - 340

23 DISCUSSION AMONG PARTIES 340 - 342

24 CERTIFICATE 343

25

1 A. I don't remember.

2 Q. You were asked about a
3 conversation that Melissa related in
4 her deposition, that ~~she~~ and you heard
5 that a couple times, that Melissa says
6 that it was your advice that ~~she~~ did
7 not need to see a surgeon?

8 A. Right.

9 Q. And you vehemently deny that?

10 A. Oh, yes, very definitely.

11 Q. Did you ever say to her anything
12 to the effect that, you know, one
13 mammogram in isolation is not as useful
14 as having a series of mammograms where
15 you can compare them?

16 A. No. No. I would not tell her
17 that.

18 Q. On the ultrasound of August 17th
19 of '04, the ordering diagnosis changes
20 from lump or mass in the breast, and
21 that was on previous ultrasounds, to
22 inflammatory disease of the breast. Do
23 you know what occasioned that change?

24 A. I did not change that code.

25 Q. Do you know who entered that

1 Q. Two last questions. Were there
2 ever situations in your office where a
3 patient refused to take the advice of
4 Doctor Mary?

5 A. Not that I know of. Not that
6 I'm aware of.

7 Q. So are you aware of any policy
8 or procedure in the office as to what
9 you were to do if a patient chose not
10 to take Doctor Mary's advice?

11 A. No, not that I know of.

12 Q. Did you ever say to Melissa, and
13 she testified to this in her
14 deposition, that --- did you ever
15 instruct her to use like a warm cabbage
16 leaf on her breast?

17 A. Yes, I did.

18 Q. And why did you do that?

19 A. Because it was an Amish --- an
20 old Amish thing that they said helps
21 with the swelling.

22 Q. Did you ask Doctor Mary about
23 that first, whether that was
24 appropriate advice to give to Melissa?

25 A. We used that --- I mean, Doctor

EXHIBIT C

EXHIBIT C

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

* * * * *

*

MELISSA A. SWANSON *

and JASON SWANSON, her *
husband, *

COPY

Plaintiffs * Case No.

vs. * 2007-362-CD

MARY KRUSZEWSKI, D.O., *

STEVEN W. GRAECA, *
D.O., and DRMC PRIMARY *
PRIMARY CARE *
ASSOCIATES, *

Defendants *

*

* * * * *

D.E P O S I T I O N O F }

T E R R Y S H E R R Y }

April 28, 2010)

Any reproduction of this transcript
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by the certifying agency.

1 I N D E X
23 WITNESS: TERRY SHERRY

4 EXAMINATION

5 By Attorney Lomupo 8 - 52

6 EXAMINATION

7 By Attorney Sopher 52 - 56

8 EXAMINATION

9 By Attorney Blasko 56 - 57

10 RE-EXAMINATION

11 By Attorney Lomupo 57 - 58

12 CERTIFICATE 59

13

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1 Q. Do you remember any conversation
2 that might have occurred with the
3 radiologist regarding Melissa's
4 mammogram of July 6th, 2004?

5 A. No.

6 Q. There's been some discussion in
7 other--depositions, that we've taken of
8 various people that there was a
9 discussion between Rose Campbell -- do
10 you know who she was, or she is?

11 A. Yes. I know who she is.

12 Q. A discussion between her and Dr.
13 Alajaji who read the mammogram, or who
14 interpreted the mammogram. And there
15 was a discussion between the two of
16 them about doing a core biopsy on
17 Melissa Swanson.

18 ATTORNEY MCINTYRE:

19 Why don't you, just for
20 foundation purposes ask her if
21 she has any recall any
22 discussions with Rose
23 Campbell --?

24 ATTORNEY LOMUPO:

25 Well, I was going to get

1 to that.

2 ATTORNEY MCINTYRE:

3 Okay, because you're
4 putting the cart before the
5 horse. You're talking about
6 what they talked about as
7 opposed to asking her if she has
8 any recall of a discussion with
9 Rose Campbell ---.

10 ATTORNEY LOMUPO:

11 ~~Yes. I want to give her~~
12 ~~an idea of what the conversation~~
13 ~~was about before I ask her, you~~
14 ~~know.~~

15 ATTORNEY MCINTYRE:

16 Okay. That's fine.

17 BY ATTORNEY LOMUPO:

18 Q. There's been testimony that
19 there was a discussion between Rose
20 Campbell and Dr. Alajaji about doing or
21 not doing a core biopsy on Melissa on
22 the day that this mammogram was done.
23 Do you know any ---?

24 ATTORNEY MCINTYRE:

25 Objection to the form.

EXHIBIT D

EXHIBIT D

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

MELISSA A. SWANSON and :
JASON SWANSON, her :
husband, : Civil Action - Medical
Plaintiffs, : Professional Liability
vs. : Action
: No. 2007-362-CD
MARY KRUSZEWSKI, D.O., : JURY TRIAL DEMANDED
STEVEN W. GRAECA, D.O., :
and DRMC PRIMARY CARE :
ASSOCIATES, :
Defendants. :

DEPOSITION OF: LORIE NATOLI, PA-C
TAKEN BY: DEFENDANT - MARY KRUSZEWSKI, D.O.
BEFORE: LISA L. RIVERA, RPR
NOTARY PUBLIC
DATE: OCTOBER 29, 2008; 1:37 P.M.
PLACE: DUBOIS REGIONAL MEDICAL CENTER
HOME HEALTH BUILDING
100 HOSPITAL AVENUE
DUBOIS, PA 15801

CCW

I N D E X

1 BY DEFENDANT - MARY KRUSZEWSKI, D.O.

2 EXAMINATION

3 LORIE NATOLI, PA-C

4 By MR. BLASKO

5 (By MR. LOMUPO;

By MS. SOPHER

4, 203, 209

125, 208

188, 209

E X H I B I T S

13 DEFENDANT'S EXHIBITS

14 MARKED

15 No. 1 - SUPERVISING PHYSICIAN REGISTRATION PACKET 7

16 No. 2 - 7/6 TELEPHONE LOG 43

17 No. 3 - 7/6 TELEPHONE LOG 44

18 No. 4 - 3/22/05 LETTER 117

1 things were sent to Dr. Schachter?

2 A. No, I don't because I do not have Dr.
3 Schachter's note.

4 Q. Did you understand from your conversation with
5 -- with Rose back in July of '04, did you have an
6 understanding of who was going to tell Melissa that there's
7 a recommendation that a core biopsy be done?

8 A. I don't know.

9 Q. Did you -- when you were talking with Rose
10 Campbell, did you discuss okay, I'll let her know, you let
11 her know or we think Dr. Mary is going to let her know or
12 maybe Dr. Schachter should let her know?

13 A. I don't know. That's reasonable to wonder that,
14 but I don't know.

15 Q. At some point Dr. Graeca told you to make sure
16 that Dr. Mary was following up with repeat ultrasound. I
17 think that was around September 28th?

18 MS. SOPHER: I object to the form of the
19 question in that I don't believe that was her former
20 testimony that he asked her to do that.

21 THE WITNESS: He did not.

22 BY MR. ELOMUPO:

23 Q. Page 166 of his deposition, he says he told you
24 to make sure Dr. Mary follows up with a repeat ultrasound.
25 Do you disagree with that statement?

5
FILED
M 13 5 PM
OCT 18 2010
NO CC

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.;
PRAXIDIO H. TAGALA, M.D., P.C.;
and CLEARFIELD HOSPITAL,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

Type of Pleading ~

Motion for Extension of Time to File
Expert Reports

Filed on Behalf of ~
DEFENDANTS, PRAXIDIO H. TAGALA,
MD and PRAXIDIO H. TAGALA, MD, PC

Filed By ~
JOHN W. BLASKO, ESQ.

Attorney I.D. # 6787
MCQUAIDE BLASKO LAW OFFICES
811 University Drive
State College, PA 16801-6699
(814) 238-4926

JURY TRIAL DEMANDED

Dated: October 15, 2010

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. :
PODLISKI, :
Plaintiff :
v. : CIVIL ACTION -Medical Professional
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO : Liability Action
H. TAGALA, M.D., P.C.; and :
CLEARFIELD HOSPITAL, : Docket No: 2008-1121-CD
Defendants :
:

MOTION OF DEFENDANTS PRAXIDIO H. TAGALA, M.D. AND PRAXIDIO H.
TAGALA, M.D., PC FOR EXTENSION OF TIME TO FILE EXPERT REPORTS

COMES NOW, Defendants Praxidio H. Tagala, MD and Praxidio H. Tagala,
MD, PC, by and through their attorneys, McQuaide Blasko, and file this Motion
representing the following:

1. This is a medical malpractice case.
2. Pursuant to a Motion for Scheduling, the Court entered an Order
dated February 19, 2010, requiring, *inter alia*, the following:

“B. Plaintiff shall provide Defendants with Plaintiff’s expert
report(s) by August 30, 2010. Defense expert reports
shall be provided to Plaintiff by October 30, 2010.”

A copy of the Order is attached hereto marked Exhibit “A”.

3. By letter to Plaintiff's counsel dated September 2, 2010, Defense counsel requested the production of Plaintiff's expert report(s). A copy of the letter is attached hereto marked Exhibit "B",

4. On September 8, 2010, Plaintiff's counsel was again contacted about the reports. In response, a letter from Plaintiff's counsel dated September 10, 2010, indicated he was agreeable to Defendants filing their expert reports sixty (60) days from when Plaintiff's reports were provided. A copy of the letter dated September 10, 2010 is attached hereto marked Exhibit "C".

5. On October 6, 2010, Plaintiff's counsel was contacted again regarding production of Plaintiff's expert reports. On October 12, 2010, Plaintiff's counsel responded that he expected to "have a report from him shortly." A copy of Plaintiff's letter dated October 12, 2010 is attached as Exhibit "D".

6. Pursuant to the Court's Order of February 19, 2010, Defendants' reports are due on October 30, 2010. Plaintiff's failure to file expert reports on August 30, 2010, seriously jeopardizes and prejudices Defendants' ability to obtain an expert review and report before October 30, 2010.

7. It is respectfully requested that the Court amend its Order of February 19, 2010, to provide that Defendants' expert reports shall be provided to Plaintiff sixty (60) days after the date of receipt of Plaintiff's expert reports.

8. Plaintiff's counsel is agreeable to a 60-day extension, as per his letter dated September 10, 2010 (Exhibit "C").

9. Counsel for the Defendant Clearfield Hospital concurs and agrees with this Motion.

WHEREFORE, IT IS REQUESTED that the Court enter an amended Order that Defendants' expert reports shall be provided to Plaintiff sixty (60) days after the date of receipt of Plaintiff's expert reports, and, that the Court grant such other relief as may be necessary.

Respectfully submitted,

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: 

John W. Blasko
Attorneys for Defendant
Praxidio H. Tagala, M.D.; and
Praxidio H. Tagala, M.D.,P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

Dated: 10/15/10

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,
Plaintiff

* No. 08-1121-CD

vs

PRAXIDIO H. TAGALA, M.D.,
PARXIDIO H. TAGALA, M.D., P.C. and
CLEARFIELD HOSPITAL

*
*
*
*

ORDER

NOW, this 19th day of February, 2010, upon consideration of Defendant's Motion for Scheduling Order, it is hereby ORDERED, DIRECTED and DECREED as follows:

- A. The parties shall complete all discovery by no later than June 30, 2010;
- B. Plaintiff shall provide Defendants with Plaintiff's expert report(s) by August 30, 2010. Defense expert report(s) shall be provided to Plaintiff by October 30, 2010.
- C. Depositions of any experts shall be completed by December 31, 2010.
- D. The Court expects that jury selection will occur at the beginning of January 2011. The date of jury selection has not yet been set.
- E. Jury trial will be scheduled in February or March 2011.
- F. Pretrial conference, in Chambers, is hereby scheduled for the 22nd day of November 2010 at 1:30 p.m. in Chambers.

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

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

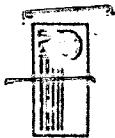
FEB 19 2010

Attest:



William L. Ammerman
Prothonotary/
Clerk of Courts

Exhibit "A"



MCQUAIDE BLASKO

ATTORNEYS AT LAW

811 University Drive, State College, Pennsylvania 16801-6699
Additional offices in Hershey and Hollidaysburg

(814) 238-4926

FAX (814) 234-5620
www.mqblaw.com

FAXED

September 2, 2010

Kevin R. Lomupo, Esq.
GILARDI, COOPER & LOMUPO
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Via Facsimile - 412-391-9780

RE: *Kimberly A. Acey a/k/a Kimberly a. Podliski v. Praxidio H. Tagala, M.D.; Praxidio H. Tagala, M.D., P.C.; and Clearfield Hospital*
Docket No. 2008-1121-CD

Dear Mr. Lomupo:

Pursuant to the Court's Order of February 19, 2010, you were to produce your expert reports by August 30, 2010. We have not received your report, and, request you comply with the Court's Order so that we can forego filing a motion.

Very truly yours,

McQUAIDE, BLASKO

By:


John W. Blasko, Esq.

JWB/th

cc: Frank Hartye, Esq. (Via Fax: 696-9399)

FAXED

MCQUAIDE BLASKO, INC.

State College Office: John W. Blasko David M. Weixel Steven S. Hurvitz James M. Horne Wendell V. Courtney Darryl R. Slimak Daniel E. Bright Janine C. Gismondi
John A. Snyder April C. Simpson Allen P. Neely Katherine V. Oliver Katherine M. Allen Wayne L. Mowery, Jr. Chena L. Glenn-Hart
Livinia N. Oluwolé Cristin R. Long Anthony A. Simon Thomas S. Schrack Aaron T. Brooks Philip K. Miles, III Ashley D. Cooper
Suzette V. Sims Julia Cronin Rater

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

Hollidaysburg Office: Thomas M. Reese J. Benjamin Yeager Sean M. Burke Michael P. Routh Amanda L. Seelye

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

Exhibit "B"



ATTORNEYS AT LAW

September 10, 2010

John W. Blasko, Esquire
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801-6699

Re: Kimberly A. Acey a/k/a Kimberly A. Podliski vs. Praxidio H. Tagala, M.D.;
Praxidio H. Tagala, M.D., P.C.; and Clearfield Hospital

Dear Mr. Blasko:

Thank you for your letter dated September 8, 2010. I am agreeable to your request to begin the sixty (60) day response period for rebuttal reports from receipt of my expert report. Obviously you know that we just took the deposition of Dr. Yingling and that there is a dispute as to whether certain portions of it will be usable in the trial. Once that question is resolved, I of course will provide my expert with that information so that he can produce his final report. It is much more cost effective to have an expert issue one (1) final report as opposed to asking that person to produce multiple addendums.

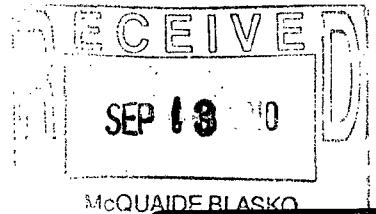
Very truly yours,

GILARDI, OLIVER & LOMUPO

A handwritten signature in black ink, appearing to read "Kevin R. Lomupo".

Kevin R. Lomupo

KRL/pan
cc: Frank J. Hartye, Esquire



THE BENEDEUM TREES BUILDING • 10TH FLOOR • 223 FOURTH AVENUE • PITTSBURGH
TOLL FREE 888-425-6006 • LOCAL 412-391-9770 • FAX 412-391-9780 • www.

Exhibit "C"



ATTORNEYS AT LAW

October 12, 2010

By Facsimile

John W. Blasko, Esquire
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801-6699

Re: Kimberly A. Acey a/k/a Kimberly A. Podliski vs. Praxidio H. Tagala, M.D.;
Praxidio H. Tagala, M.D., P.C.; and Clearfield Hospital

Dear Mr. Blasko:

Thank you for your letter dated October 6, 2010. I have provided Dr. Yingling's deposition transcript to my expert and I expect to have a report from him shortly. I will of course immediately provide it to you upon receipt.

Very truly yours,

GILARDI, OLIVER & LOMUPO

A handwritten signature in black ink, appearing to read 'Kevin R. Lomupo', is written over a stylized, horizontal, wavy line that serves as a flourish or underline.

KRL/pan
cc: Frank J. Hartye, Esquire

THE BENEDUM TREES BUILDING 10TH FLOOR 223 FOURTH AVENUE PITTSBURGH, PA 15222
TOLL FREE 888-425-6006 LOCAL 412-391-9770 FAX 412-391-9780 www.lawyer.com

Exhibit "D"

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. :
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and
CLEARFIELD HOSPITAL,

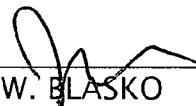
Defendants

: CIVIL ACTION -Medical Professional
Liability Action

: Docket No: 2008-1121-CD

CERTIFICATE OF CONCURRENCE

The undersigned certifies that Plaintiff's counsel agrees to a 60-day extension, and, counsel for Defendant Clearfield Hospital concurs with Defendants' Motion for Extension of Time to File Expert Reports, and the deadlines set forth therein.


JOHN W. BLASKO

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

KIMBERLY A. ACEY a/k/a KIMBERLY A.
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and
CLEARFIELD HOSPITAL,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendants' Motion for Extension of Time to File Expert Reports in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 15th day of October, 2010 to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By: _____


John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

5
FILED
M 10 53 AM OCT 22 2010
NO CC

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a : CIVIL ACTION -Medical Professional
KIMBERLY A. PODLISKI, : Liability Action
Plaintiff :
v. : Docket No: 2008-1121-CD
PRAXIDIO H. TAGALA, M.D.; :
PRAXIDIO H. TAGALA, M.D., P.C.; : Type of Pleading ~
and CLEARFIELD HOSPITAL, : CERTIFICATE OF SERVICE
Defendants : (RE: COURT'S 10/19/10 ORDER)
: Filed on Behalf of ~
: DEFENDANTS, PRAXIDIO H. TAGALA,
: MD and PRAXIDIO H. TAGALA, MD, PC
: Filed By ~
: JOHN W. BLASKO, ESQ.
: Attorney I.D. # 6787
: MCQUAIDE BLASKO LAW OFFICES
: 811 University Drive
: State College, PA 16801-6699
: (814) 238-4926
Dated: October 21, 2010 : JURY TRIAL DEMANDED

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

KIMBERLY A. ACEY a/k/a KIMBERLY A.
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and CLEARFIELD
HOSPITAL,

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Court's Order dated
October 19, 2010 in the above-captioned matter was mailed by regular mail,
postage prepaid, at the Post Office, State College, Pennsylvania, on this 21st day
of October, 2010 to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

Frank J. Hartye, Esquire
P. O. Box 533
Hollidaysburg, PA 16648

McQUAIDE, BLASKO,

By: 

John W. Blasko
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 6787
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

OCT 22 2010

William A. Shriver
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A.
PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and
CLEARFIELD HOSPITAL,

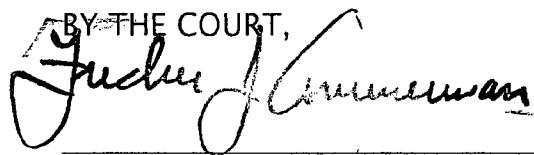
Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

ORDER

AND NOW, this 19th day of October, 2010, upon consideration of the foregoing Motion for Extension of Time to File Expert Reports, and with concurrence of counsel, it is hereby ORDERED that the Order of February 19, 2010, is amended to provide that Defendants' medical expert report(s) shall be provided to Plaintiff sixty (60) days from the date Plaintiff's expert reports are served on Defendants.

BY THE COURT,


J.

FILED
S 01/5/2011 2ce
Oct 20 2010 Amy Blasko
William A. Shaw
Prothonotary/Clerk of Courts
(GW)

FILED
OCT 20 2010

William A. Shaw
Prothonotary, Clerk of Courts

DATE: 10/20/10

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:

CA

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

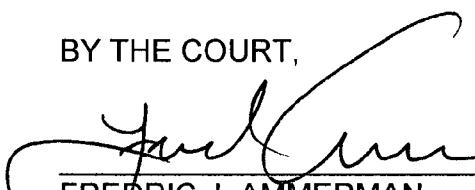
KIMBERLY A. ACEY a/k/a * No. 08-1121-CD
KIMBERLY A. PODLISKI, *
Plaintiff *
vs *
PRAXIDIO H. TAGALA, M.D., *
PARXIDIO H. TAGALA, M.D., P.C. and *
CLEARFIELD HOSPITAL *

ORDER

NOW, this 8th day of December, 2010, it is the ORDER of this Court that a pre-trial conference be and is hereby scheduled, in Chambers, for the **9th day of March, 2011 at 1:30 p.m.**

Thirty minutes has been reserved for this proceeding.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

FILED
01/03/2011
DEC 10 2010
BCH
william A. Shaw
Prothonotary/Clerk of Courts
ICCA Atty's:
Blasko
Hastye
Lomupo

卷之三

DEC 10 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 12/10/10

You can now nominate an appropriate party.

K The following 2011-12: planned services in the following year

卷之三

— *See also* *Attorney* (in *U.S. Constitution*) *Attorney*

Species, Léviaceans:

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

Defendants

No. 2008 - 1121 - CD

ISSUE:

STIPULATION TO DISCONTINUE
ACTION AS TO DEFENDANT, *William A. Shaw*
CLEARFIELD HOSPITAL, ONLY *Prothonotary/Clerk of Courts*
no c/c

FILED

JAN 07 2011

1/4/11:30 AM

Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

Counsel of Record:

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

McINTYRE, HARTYE, SCHMITT
& SOSNOWSKI
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 4th DAY OF JANUARY, 2011.



Attorneys for Named Defendant

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,
Plaintiff
vs.
PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,
Defendants

: No. 2008 - 1121 - CD
: JURY TRIAL DEMANDED

**STIPULATION TO DISCONTINUE ACTION AS TO
DEFENDANT, CLEARFIELD HOSPITAL, ONLY**

AND NOW, come the undersigned attorneys, by and on behalf of their respective parties and being duly authorized to do so, hereby stipulate and agree as follows:

1. All parties hereby consent and agree to the discontinuance of this matter against Defendant, Clearfield Hospital, pursuant to Pa. R.C.P. 229(b).
2. All parties agree that in all further proceedings and other documents filed in this Court, the caption shall be amended by the omission of any reference to Clearfield Hospital in accordance with the discontinuance of this action against it.

Kevin R. Lomupo, Esquire
Counsel for Plaintiff

John W. Blasko, Esquire
Counsel for Defendant, Dr. Tagala

Frank J. Hartje, Esquire
Counsel for Defendant, Clearfield Hospital

FILED
JAN 07 1977
PROSECUTOR
William A. Stein
Clerk of Courts

MHS&S

McIntyre, Hartye, Schmitt & Sosnowski
LAW OFFICES

January 4, 2011

Our Reference: CHT 071 MH
REPLY TO HOLLIDAYSBURG

Honorable Fredric J. Ammerman,
President Judge
Court of Common Pleas
of Clearfield County
Courthouse
230 E. Market Street
Clearfield, PA 16830

Re: Kimberly A. Acey a/k/a Kimberly A. Podliski vs.
Praxidio H. Tagala, M.D., Praxidio H. Tagala, M.D.
P.C. and Clearfield Hospital
No. 2008 – 1121 – CD (Clearfield Co.)

Your Honor:

As discussed at the last conference, enclosed herewith please find a Stipulation signed by all of the parties agreeing to discontinue this action as to Clearfield Hospital, only.

I would request your consideration in signing the Order approving the dismissal based upon the Stipulation of the parties.

Thank you for your courtesy and consideration in this matter.

Sincerely,


Frank J. Hartye

FJH/eh
Enclosures

cc: Kevin R. Lomupo, Esquire
John Blasko, Esquire
(both w/enclosure)

John L. McIntyre Frank J. Hartye Louis C. Schmitt, Jr. Michael A. Sosnowski | Laura O. Burke Julie C. Radford
P.O. Box 533, Hollidaysburg, PA 16648 | 814-696-3581 | Fax 814-696-9399
111 W. Pitt Street #4, Bedford, PA 15522 | 814-623-5292 | Fax 814-623-5293

www.mhslawoffice.com

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

Defendants

No. 2008 - 1121 - CD

FILED ^{vp}

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William A. Shaw

Prothonotary/Clerk of Courts

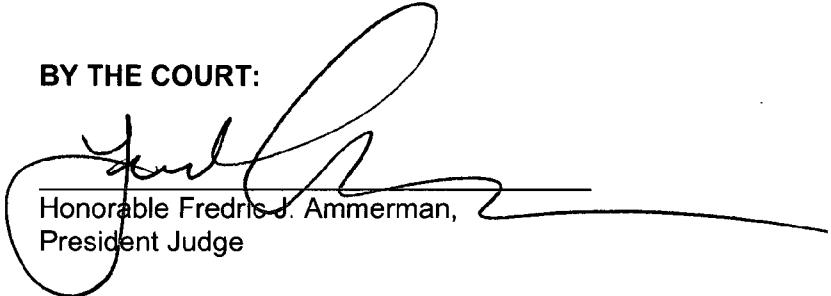
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JURY TRIAL DEMANDED

ORDER OF COURT

AND NOW, this 6 day of January, 2011, based
upon the Stipulation signed by all of the parties, it is hereby ORDERED, DIRECTED
AND DECREED that Clearfield Hospital is hereby dismissed from this action with
prejudice and the name of Clearfield Hospital shall be removed from the caption of the
case.

BY THE COURT:



Honorable Fredris J. Ammerman,
President Judge

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

No. 2008 - 1121 - CD

ISSUE:
PRAECIPE TO AMEND CAPTION

Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

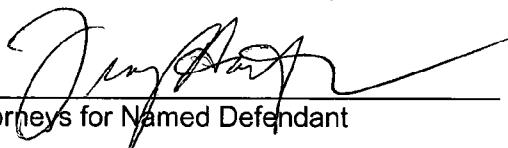
Counsel of Record:
Frank J. Hartye, Esquire
PA I.D. #25568

McINTYRE, HARTYE, SCHMITT
& SOSNOWSKI
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 12th DAY OF JANUARY, 2011.



Attorneys for Named Defendant

FILED NO
M 11:30 AM 13 JAN 2011 CC
S JAN 13 2011
60

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

: No. 2008 - 1121 - CD

Plaintiff

vs.

PRAXIDIO H. TAGALA, M.D.,
PRAXIDIO H. TAGALA, M.D., P.C., and
CLEARFIELD HOSPITAL,

Defendants

: JURY TRIAL DEMANDED

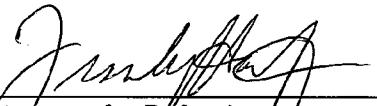
PRAECIPE TO AMEND CAPTION

TO: PROTHONOTARY

Pursuant to the Order of Court of the Honorable Fredric J. Ammerman, P.J.
dated January 6, 2011, Clearfield Hospital is requesting that their name be removed
from the caption of the case so that this case will proceed as Kimberly A. Acey a/k/a
Kimberly A. Podliski vs. Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C.

McINTYRE, HARTYE, SCHMITT &
SOSNOWSKI

By


Attnorneys for Defendant,
CLEARFIELD HOSPITAL

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

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLISKI

CIVIL DIVISION, MEDICAL
PROFESSIONAL LIABILITY ACTION

Plaintiff,

No.: 2008 - 1121 - CD

vs.

PRAXIDIO H. TAGALA, M.D., and
PRAXIDIO H. TAGALA, M.D., P.C.,

Pleading:
MOTION TO CONTINUE

Defendants.

Filed On Behalf Of:
Plaintiff

Counsel Of Record For This Party:

Kevin R. Lomupo, Esquire
PA I.D. # 40996

GILARDI, OLIVER & LOMUPO
Firm #157

The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

(412) 391-9770

krlomupo@lawgol.com

FILED NO CC
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S
William A. Shaw
Prothonotary/Clerk of Courts
610

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY	]	CIVIL DIVISION - MEDICAL
a/k/a KIMBERLY A. PODLISKI,	]	PROFESSIONAL LIABILITY
	]	ACTION
Plaintiff,]	
]	
vs.	]	No.: 2008-1121-CD
]	
PRAXIDO H. TAGALA, M.D., and]	
PRAXIDIO H. TAGALA, M.D., P.C.,	]	JURY TRIAL DEMANDED
Defendants.]	

MOTION TO CONTINUE

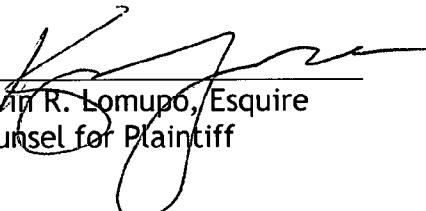
AND NOW comes the plaintiff through her attorneys, Kevin R. Lomupo, Esquire and Gilardi, Oliver & Lomupo, and request a continuance of the above-captioned matter based upon the following:

1. This case is presently listed for a Pre-Trial Conference before the Honorable Fredric J. Ammerman on Wednesday, March 9, 2011 at 1:30 p.m.
2. Plaintiff's attorney has a previously planned vacation out of state from March 8 - 11, 2011.
3. All counsel of record consents to this continuance.
4. Plaintiff's attorney request that the Pre-Trial Conference be rescheduled to Thursday, March 17, 2011 at 2:00 p.m.
5. All counsel of record consents to this time change.

WHEREFORE, the plaintiff requests this Honorable Court continue the Pre-Trial Conference on the above-captioned case to Thursday, March 17, 2011 at 1:30 p.m.

Respectfully submitted,

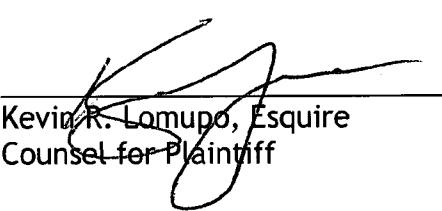
GILARDI, OLIVER & LOMUPO

By: 
Kevin R. Lomupo, Esquire
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within *Motion to Continue* has been served on the following by first class mail, postage prepaid on this 1st day of March, 2011.

TO: John W. Blasko, Esquire
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801-6699
Counsel for Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C.



Kevin R. Lomupo, Esquire
Counsel for Plaintiff

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	]	CIVIL DIVISION - MEDICAL PROFESSIONAL LIABILITY ACTION
Plaintiff,]	
vs.	]	No.: 2008-1121-CD
PRAXIDO H. TAGALA, M.D., and PRAXIDIO H. TAGALA, M.D., P.C.,]	
Defendants.	]	JURY TRIAL DEMANDED

ORDER OF COURT

AND NOW to wit this _____ day of _____, 2011, upon consideration
of the foregoing Motion, it is hereby ORDERED, ADJUDGED AND DECREED that the Pre-
Trial Conference scheduled for Wednesday, March 9, 2011 at 1:30 p.m. is continued to
Thursday, March 17, 2011 at 2:00 p.m. before the Honorable Fredric J. Ammerman.

BY THE COURT:

J.

Biel -
Judge A already
signed the faded
Copy of this
motion.

Sharon

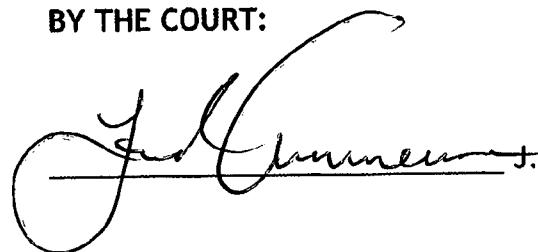
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY] CIVIL DIVISION - MEDICAL
a/k/a KIMBERLY A. PODLISKI,] PROFESSIONAL LIABILITY
] ACTION
Plaintiff,]
] No.: 2008-1121-CD
vs.]
] JURY TRIAL DEMANDED
PRAXIDO H. TAGALA, M.D., and]
PRAXIDIO H. TAGALA, M.D., P.C.,]
Defendants.]

ORDER OF COURT

AND NOW to wit this 2 day of March, 2011, upon consideration
of the foregoing Motion, it is hereby ORDERED, ADJUDGED AND DECREED that the Pre-
Trial Conference scheduled for Wednesday, March 9, 2011 at 1:30 p.m. is continued to
Thursday, March 17, 2011 at 2:00 p.m. before the Honorable Fredric J. Ammerman.

BY THE COURT:



5 FILED 4CC
01/14/2011 Atty Lomupo
MAR 04 2011
WAS
William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAR 04 2011

William A. Shroy
Prothonotary/Clerk of Courts

DATE: 3/4/11

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:

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLISKI

**CIVIL DIVISION, MEDICAL
PROFESSIONAL LIABILITY ACTION**

Plaintiff,

No.: 2008 - 1121 - CD

vs.

PRAXIDIO H. TAGALA, M.D., and
PRAXIDIO H. TAGALA, M.D., P.C.,

**Pleading:
MOTION TO CONTINUE**

Defendants.

Filed On Behalf Of:
Plaintiff

Counsel Of Record For This Party:

Kevin R. Lomupo, Esquire
PA I.D. # 40996

GILARDI, OLIVER & LOMUPO
Firm #157

The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

(412) 391-9770

krlomupo@lawgol.com

JURY TRIAL DEMANDED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLISKI,

Plaintiff,

vs.

PRAXIDO H. TAGALA, M.D., and
PRAXIDIO H. TAGALA, M.D., P.C.,

Defendants.

CIVIL DIVISION - MEDICAL
PROFESSIONAL LIABILITY
ACTION

No.: 2008-1121-CD

JURY TRIAL DEMANDED

MOTION TO CONTINUE

AND NOW comes the plaintiff through her attorneys, Kevin R. Lomupo, Esquire and Gilardi, Oliver & Lomupo, and request a continuance of the above-captioned matter based upon the following:

1. This case is presently listed for a Pre-Trial Conference before the Honorable Fredric J. Ammerman on Wednesday, March 9, 2011 at 1:30 p.m.
2. Plaintiff's attorney has a previously planned vacation out of state from March 8 - 11, 2011.
3. All counsel of record consents to this continuance.
4. Plaintiff's attorney request that the Pre-Trial Conference be rescheduled to Thursday, March 17, 2011 at 2:00 p.m.
5. All counsel of record consents to this time change.

WHEREFORE, the plaintiff requests this Honorable Court continue the Pre-Trial Conference on the above-captioned case to Thursday, March 17, 2011 at 1:30 p.m.

Respectfully submitted,

GILARDI, OLIVER & LOMUPO

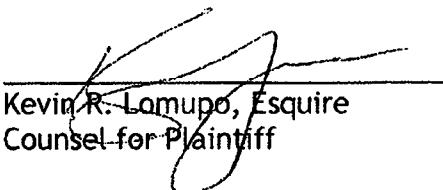
By: 

Kevin R. Lomupo, Esquire
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within *Motion to Continue* has been served on the following by first class mail, postage prepaid on this 1st day of March, 2011.

TO: John W. Blasko, Esquire
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801-6699
Counsel for Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C.



Kevin R. Lamupo, Esquire
Counsel for Plaintiff



Gilardi Oliver & Lomupo

ATTORNEYS AT LAW

THE BENEDUM TRETS BUILDING
10TH FLOOR
223 FOURTH AVENUE
PITTSBURGH, PA 15222

FAX COVER

DATE: March 1, 2011
TO: Doris/Judge Ammerman's Chambers
FAX NO.: (814) 765-7649
FROM: Kevin R. Lomupo, Esquire
RE: Acey vs. Tagala

Pages Including Cover Sheet: 6

The original is being sent to the Prothonotary for filing.

*****CONFIDENTIALITY NOTE*****

The documents accompanying this telecopy transmission are from the law firm of Gilardi, Oliver & Lomupo, P.A., and may contain information which is confidential and /or legally privileged.

The information is intended only for the use of the individual or organization named on this transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, or distribution of this information, or the taking of any action based upon the contents of this information, is strictly prohibited. If you have received this communication in error, the documents should be returned to Gilardi, Oliver & Lomupo, P.A. immediately. Please contact us toll free at 1-888-425-6006, to arrange for return of the documents at no cost to you.

Thank you.

FILED

5 09/3761
MAR 22 2011

ICC Atty's:

Lomupo
Blasko

CA

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. POLISKI,
Plaintiff

* NO. 08-1121-CD

vs

PRAXIDO H. TAGALA, M.D. and PRAXIDO H. TAGALA, P.C.
Defendants

*
*
*
*
*

ORDER

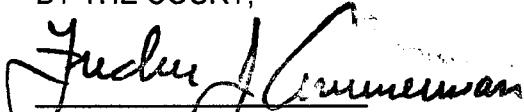
NOW, this 17th day of March, 2011, following pre-trial conference with counsel for the parties as set forth above, it is the ORDER of this Court as follows:

1. Jury Selection will be held on **October 27, 2011** commencing at 9:00 a.m. in Courtroom No. 1 of the Clearfield County Courthouse, Clearfield, Pennsylvania.
2. Jury Trial is hereby scheduled for **November 14, 15, 16, 17 and 18, 2011**, commencing at 9:00 a.m. each day in Courtroom No. 1 of the Clearfield County Courthouse, with Senior Judge Charles C. Brown, Jr., Specially Presiding.
3. 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).
4. 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 one hundred twenty (120) days from this date. Failure to comply will result in the witness not being available for use at trial.
5. Any party making objections relative the testimony to be provided by any witness in the form of a deposition at the time of trial shall submit said objections to the Court, in writing, no later than forty-five (45) days prior to the commencement of trial. All objections shall reference specific page and line numbers within the deposition(s) in question along with that party's brief relative same. The opposing party shall file an

Answer thereto and submit its brief in opposition to said objections no later than thirty (30) days prior to the commencement of trial.

6. Any party filing any Motion or Petition regarding limitation or exclusion of evidence or testimony to be presented at time of trial, including but not limited to Motions in Limine, shall file the same no more than forty-five (45) days prior to the trial date. The party's Petition or Motion shall be accompanied by an appropriate brief. The responding party thereto shall file its Answer and submit appropriate response brief no later than thirty (30) days prior to trial.

BY THE COURT,



FREDERICK J. AMMERMAN
President Judge

FILED

MAR 22 2011

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

DATE: 3/23/11

 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 - LAW

KIMBERLY A. ACEY a/k/a KIMBERLY A. §
PODLISKI §
§
Plaintiff §
§ CIVIL ACTION -Medical Professional Liability
v. § Action
§
PRAXIDIO H. TAGALA, M.D. and §
PRAXIDIO H. TAGALA, M.D., P.C. § Docket No: 2008-1121-CD
§
Defendants §

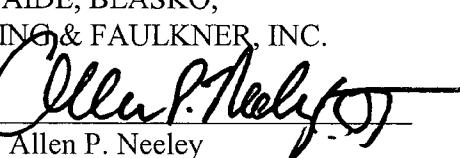
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Notice of Oral Deposition of Dr. James Edwards was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 17th day of October, 2011, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

McQUAIDE, BLASKO,
FLEMING & FAULKNER, INC.

By:


Allen P. Neeley

Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 65302
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED
M 10:48 AM
OCT 18 2011
S
William A. Shaw
Prothonotary/Clerk of Courts


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

KIMBERLY A. ACEY a/k/a KIMBERLY A. :
PODLISKI :
Plaintiff :
v. : CIVIL ACTION -Medical Professional Liability
Action :
PRAXIDIO H. TAGALA, M.D. and :
PRAXIDIO H. TAGALA, M.D., P.C. : Docket No: 2008-1121-CD
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Notice of Oral Deposition of Betty Quick was faxed and mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 21st day of October, 2011, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222
(fax) 412-391-9780

McQUAIDE, BLASKO,

By:



Allen P. Neely

Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 65302
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

S **FILED** NO CC
11/27/2011
OCT 24 2011
William A. Shae
Prothonotary/Clerk of Courts

ANNUAL REPORT OF THE COMMISSIONER OF THE BUREAU OF LAND MANAGEMENT
FOR THE FISCAL YEAR

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OCT 24 2011

William A. Shaw
Prothonotary/Clerk of Courts

M202-5-盒(183)2005

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

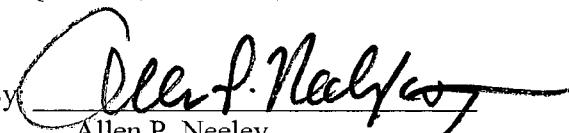
KIMBERLY A. ACEY a/k/a KIMBERLY A. :
PODLISKI :
Plaintiff :
v. : CIVIL ACTION -Medical Professional Liability
Action :
PRAXIDIO H. TAGALA, M.D. and :
PRAXIDIO H. TAGALA, M.D., P.C. : Docket No: 2008-1121-CD
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant Tagala's Notice of Oral Deposition of Heather Hubler was faxed and mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 21st day of October, 2011, to the attorney(s) of record:

Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222
(fax) 412-391-9780

McQUAIDE, BLASKO,

By 
Allen P. Neeley

Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 65302
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED
OCT 24 2011
S
William A. Shaw
Prothonotary/Clerk of Courts

FILED

OCT 24 2011

William A. Shaw
Prothonotary/Clerk of Courts

8/24/11
copy
to the defendant
with service
from Sheriff
W.P. - 8/24/11

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLISKI

CIVIL DIVISION, MEDICAL
PROFESSIONAL LIABILITY ACTION

Plaintiff,

No.: 2008 - 1121 - CD

vs.

PRAXIDIO H. TAGALA, M.D., and
PRAXIDIO H. TAGALA, M.D., P.C.,

Defendants.

Pleading:
**MOTION IN LIMINE TO PRECLUDE
TESTIMONY OF DOUGLAS YINGLING,
M.D.**

Filed On Behalf Of:
Plaintiff

Counsel Of Record For This Party:

Kevin R. Lomupo, Esquire
PA I.D. # 40996

GILARDI, OLIVER & LOMUPO
Firm #157

The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

(412) 391-9770

krломupo@lawgol.com

JURY TRIAL DEMANDED

FILED NOV 11 2011
S OCT 27 2011
6C
William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	]	CIVIL DIVISION - MEDICAL PROFESSIONAL LIABILITY ACTION
Plaintiff,]	
vs.	]	No.: 2008-1121-CD
PRAXIDO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,]	
Defendants.	]	JURY TRIAL DEMANDED

MOTION IN LIMINE TO PRECLUDE TESTIMONY OF DOUGLAS YINGLING, M.D.

AND NOW comes the Plaintiff, Kimberly Podliski, by and through her attorneys, Gilardi, Oliver & Lomupo and Kevin R. Lomupo, Esquire, and as her First Motion in Limine avers as follows:

1. On July 8, 2010, the plaintiff took the deposition of Dr. Douglas B. Yingling, M.D. as a fact witness in the above captioned matter.
2. On direct examination, the plaintiff did not ask any expert opinion questions of the doctor.
3. On cross-examination, defense counsel attempted and did, elicit expert opinions from the witness on the risks of the procedure, even though the witness does not do laparoscopic OB/Gyn procedures. (See deposition pages 108 to 118.)
4. Plaintiff objected to this testimony (page 109). However, the witness went on to give his opinion. On re-direct, the witness's opinions were explored in more detail. Plaintiff was constrained to explore these opinions since obviously there could be no immediate ruling by a Judge as to whether the witness could or should answer the offending questions.

5. The witness thereafter went on to offer certain opinions. It should be noted that both counsel for plaintiff and defendant have objected to the material contained on pages 108 to 188 of the deposition.

6. It is clear from the transcript that all of the opinions offered by Dr. Yingling do not meet the required threshold of reasonable medical certainty in addition to the other objections made by counsel in the deposition.

7. Dr. Yingling testified:

a) he does not do this type of surgery at issue in this case in his practice (deposition p. 111).

b) ". . . I suspect that there was a --- at least on interpretation that there was a buffer zone between that adherent ovary and the tube and the colon with this fatty tissue. . . . Unfortunately, tissue is an electrical conduit, so that buffer may not have been as much as what was expected, and the electrical current and energy is transmitted, and if it was closer than what was anticipated, even though you may not visualize the colon, that energy was transmitted and resulted in eventually tissue injury.

So you know, was these a cause and effect? Yes. But was it something directly visualized? Probably not." (Emphasis supplied)

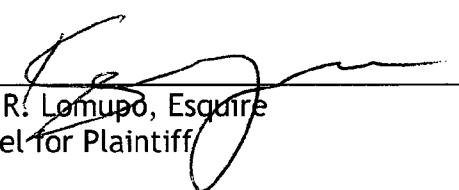
8. Dr. Yingling's opinions do not meet the appropriate required standard of certainty. Additionally, Dr. Yingling was called as a fact witness and thereafter, offered opinion testimony over the objections of counsel for both parties.

WHEREFORE, the plaintiff respectfully requests that the testimony of Dr. Yingling on pages 108 to 118 of his deposition be stricken.

Respectfully submitted,

GILARDI, OLIVER & LOMUPO

By:



Kevin R. Lomupo, Esquire
Counsel for Plaintiff

1 anyway ---.

2 BY ATTORNEY LOMUPO:

3 Q. But when you got in there you
4 found that there was electrocautery at
5 the perforation site?

6 A. I expected that --- what was the
7 cause.

8 Q. So you put the history together
9 with the findings and you say okay,
10 something was going on in and around
11 the bowel, she's got signs that could
12 be consistent with a bowel perforation.
13 I know that that's a surgical
14 emergency, go to the OR, that's your
15 logical progression of thought?

16 A. Exactly my thoughts and what I
17 did.

18 ATTORNEY LOMUPO:

19 Okay. No other
20 questions.

21 RECROSS EXAMINATION

22 BY ATTORNEY BLASKO:

23 Q. You had mentioned, Doctor, in
24 regards to whether there was cautery or
25 what have you on the laparoscopic

1 procedure and you say you performed
2 laparoscopic procedure, not OB/GYN?

3 A. That's correct.

4 Q. And one of the risks of the
5 procedure is an injury to adjacent
6 organs?

7 ATTORNEY LOMUPO:

8 I object. Objection.

9 It's calling for expert opinion
10 and is regarding the technique
11 and the procedures done by an
12 OB/GYN.

13 BY ATTORNEY BLASKO:

14 Q. Is a risk of a laparoscopic
15 procedure an injury to adjacent organs?

16 A. I am not the judge, but I hear
17 you. Let me answer my questions. I do
18 laparoscopic surgery. I do diagnostic
19 laparoscopic surgery. I do liver
20 biopsy surgery. I do laparoscopic
21 gallbladder surgery. Regardless of the
22 type of procedure or what you're doing
23 laparoscopically, the procedure itself
24 runs risk of perforation from whether
25 it's cautery, needle, Tokar (phonetic)

1 injections or whatever the mechanism.
2 And as an aside, whether you want to
3 throw this in your testimony or not,
4 you just look at the John Murtha
5 circumstances. That was probably an
6 electrocautery injury, from what I
7 understand, the --- from the lay press
8 from having a laparoscopic gallbladder.
9 Unfortunately, they didn't recognize it
10 or treat it appropriately and had an
11 untoward result. But that was, again,
12 a complication of the laparoscopic
13 procedure. But those problems are not
14 unique necessarily to laparoscopic
15 procedures. Injuries can occur when
16 you have an open procedure, which is
17 any surgery carries risk.

ATTORNEY BLASKO:

Thank you very much,

Doctor.

ATTORNEY LOMUPO:

I well --- unfortunately,

I have one more question, Doc.

24 | REDIRECT EXAMINATION

BY ATTORNEY LOMUPO:

1 Q. A perforation, although it may
2 --- you've never done the type of
3 surgery that Dr. Tagala did on Kim;
4 correct?

5 A. I have not done it as an
6 independent general surgeon in
7 practice, although my formal training
8 incorporated formal gynecologic
9 training at my training center. So
10 have I done that type of surgery? Yes.

11 Q. Okay.

12 A. But do I do it in my practice
13 now? No.

14 Q. And there are ways of
15 eliminating or reducing risk, correct,
16 in any laparoscopic procedure?

17 A. That's the purpose of training.

18 Q. And perforations can be caused
19 by electrocautery devices by
20 negligence; correct?

21 ATTORNEY BLASKO:

22 I object to that. That's
23 a legal conclusion.

24 A. I'm not the judge.

25 ATTORNEY BLASKO:

3 BY ATTORNEY LOMUPO:

4 Q. Well, it can be caused by a
5 bowel perforation during the
6 laparoscopic procedure, can be caused
7 by operator error; correct?

8 ATTORNEY BLASKO:

12 ATTORNEY LOMUPO:

16 ATTORNEY BLASKO:

19 ATTORNEY LOMUPO:

20 Well, you elicited it, so
21 now I'm going to explore it.

22 ATTORNEY BLASKO:

23 I didn't elicit it.

24 ATTORNEY LOMUPO:

25 You sure did, but the

1 transcript will speak for
2 itself.

3 BY ATTORNEY LOMUPO:

4 Q. Can it be caused by operator
5 error?

6 A. Absolutely. Can I give you a
7 scenario of my --- do you want my
8 expert opinion of the scenario?

9 Q. Sure.

10 A. I read in --- you do or you
11 don't, I don't care. If you want the
12 truth, that's what I'm sworn to do. So
13 you can handle it or ---. You can't
14 handle the truth. Where have I heard
15 that?

16 I read in detail Dr. Tagala's
17 note, and I looked at his pictures. No
18 surgeon, and I have --- you didn't ask
19 how long have I known Dr. Tagala, 26,
20 27 years or whatever that is. No
21 surgeon would intentionally cauterize a
22 visualized bowel. Seeing what I saw at
23 the time of surgery, reading his notes,
24 seeing his picture, I suspect that
25 there was a --- at least an

interpretation that there was a buffer zone between that adherent ovary and the tube and the colon with this fatty tissue. Whether you want to call it an omentum or an epiploica.

Unfortunately, tissue is an electrical conduit, so that buffer may not have been as much as what was expected, and the electrical current and energy is transmitted. And if it was closer than what was anticipated, even though you may not visualize the colon, that energy was transmitted and resulted in eventually tissue injury.

So you know, was there a cause and effect? Yes. But was it something directly visualized? Probably not. Not in my findings. As I said, there was this fatty tissue, and I said you could look at the model just to get your own --- have a better understanding of what I'm talking about. But that would be my interpretation. When did that occur, the thermal injury like a burn, you got

1 a blister, like a second degree burn.
2 That blister may not break for 48
3 hours. I think in this case there may
4 have been injury, did not leak. I'm
5 interpreting the record five hours
6 before she came to the ER. The patient
7 was very explicit, they are often very
8 explicit. The patients are very
9 accurate in that regard. At 2:00 in
10 the morning I was awakened. I would
11 read that as when it probably did leak.
12 And then as I gave a lengthy
13 explanation of the things that
14 transpire, time takes --- it takes time
15 to develop these clinical findings that
16 we find. And then by the time I was
17 seeing the patient, things were quite
18 obvious.

19 Q. I don't understand what you mean
20 by ---. Following up on what you just
21 said, I'm assuming with the laparoscope
22 the area that the electrocautery
23 touches is under the visualization of
24 the operator; correct?

25 A. That's correct.

1 Q. So the electrocautery touches
2 the omentum or the epiploica; correct?

3 A. (Indicates yes).

4 Q. It could also have touched the
5 bowel itself; correct?

6 A. It could be --- thermal energy
7 could have been transmitted from that
8 point to the bowel. That's correct.

9 Q. It could have been transmitted
10 through the omentum or the epiploica to
11 the bowel. That's one scenario;
12 correct?

13 A. That is correct.

14 Q. Another scenario is it could
15 have been a direct touch between the
16 electrocautery device and the bowel?

17 A. That is a potential.

18 Q. All right. You can't rule that
19 out?

20 A. No, I wasn't there.

21 Q. So either one of those could
22 happen; correct?

23 A. That's possible.

24 Q. Touching the bowel with the
25 electrocautery device is operator

1 error, correct, in this type of a
2 surgery because it's not intended to
3 touch --- he wasn't working to do
4 anything with the bowel; correct?

5 A. Again, yes, it could be an
6 operator error and --- which would be
7 unlikely in normal anatomy. And the
8 likelihood of a problem like that
9 increases with pathology. And so if
10 you want to address this particular
11 case, as I said, her pathology was a
12 tube and ovary adhesions, and they were
13 adhered on to the bowel. And so these
14 types of problems would be considered
15 increased in frequency, depending on
16 the degree of pathology that you were
17 there for in the first place.

18 Q. As I'm understanding the
19 procedure, you're trying to lyse the
20 adhesions close to the tube and the
21 ovary; correct? That's where you want
22 to make your disconnect?

23 ATTORNEY BLASKO:

24 I object to that because
25 he says he doesn't do OB/GYN.

BY ATTORNEY LOMUPO:

Q. Well, you don't want to cut the adhesion right at the bowel line, do you? You want to cut it at the area of the ovary and tube; correct?

A. I'll address this in a general term that when I do laparoscopic surgery I fully want to use an electrical --- any dissecting instrument, electrical, non-electrical, sharp or whatever on the object that I want to use it on.

Q. In this case it's tube and ovary?

A. In that case it would have been the tube and ovary.

Q. Not the bowel?

A. That is correct.

ATTORNEY LOMUPO:

All right. I'm going to mark that as Exhibit One. No other questions.

ATTORNEY BLASKO:

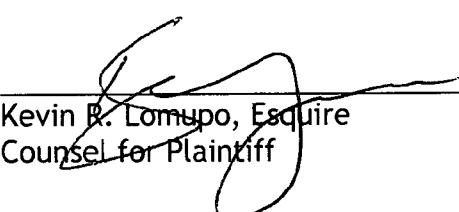
Are you going to advise him ---? The Doctor has a right

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within ***Motion in Limine to Preclude Testimony of Douglas Yingling, M.D.*** has been served on the following by first class mail, postage prepaid on this 26th day of October, 2011.

TO: Allen Neely, Esquire
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801-6699
Counsel for Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C.

Kevin R. Lomupo, Esquire
Counsel for Plaintiff



FILED NO
M 11/29/2011
NOV 03 2011
S

William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI, : CIVIL ACTION -Medical Professional Liability
Plaintiff : Action
v. :
PRAXIDIO H. TAGALA, M.D. and : Docket No: 2008-1121-CD
PRAXIDIO H. TAGALA, M.D., P.C. :
Defendants : Type of Pleading ~
: CERTIFICATE OF SERVICE
: RE: · Answer to Plaintiff's Motion in Limine to Preclude
: Testimony of Douglas Yingling, MD
: · Brief in Opposition to Plaintiff's Motion in Limine to
: Preclude Testimony of Douglas Yingling, MD
: Filed on Behalf of ~
: DEFENDANTS, PRAXIDIO H. TAGALA, MD and
: PRAXIDIO H. TAGALA, MD, PC
: Filed By ~
: ALLEN P. NEELY, ESQ.
: Attorney I.D. # 65302
: MCQUAIDE.BLASKO LAW OFFICES
: 811 University Drive
: State College, PA 16801-6699
: (814) 238-4926
Dated: November 1, 2011 : JURY TRIAL DEMANDED

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

KIMBERLY A. ACEY a/k/a KIMBERLY A. :
PODLISKI :
Plaintiff : CIVIL ACTION -Medical Professional Liability
Action :
v. :
PRAXIDIO H. TAGALA, M.D. and : Docket No: 2008-1121-CD
PRAXIDIO H. TAGALA, M.D., P.C. :
Defendants :
:

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendants' Answer to Plaintiff's Motion in Limine to Preclude Testimony of Douglas Yingling, MD and Brief In Opposition to same was sent via electronic transmission on this 1 day of November 2011, to the attorney(s) of record:

krlomupo@lawgcl.com
Kevin R. Lomupo, Esquire
The Benedum Trees Building
223 Fourth Avenue, 10th Floor
Pittsburgh, PA 15222

McQUAIDE, BLASKO,

By: Allen P. Neeley

Allen P. Neeley
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
Attorney I.D. # 65302
811 University Drive
State College, PA 16801
(814) 238-4926
Fax: (814) 238-9624

FILED

NOV 03 2011

William A. Sharv
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI,

Plaintiff

v.

PRAXIDIO H. TAGALA, M.D.;
PRAXIDIO H. TAGALA, M.D., P.C.

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

Type of Pleading ~
Defendants' Answer to Plaintiff's
Motion in Limine to Preclude
Testimony of Douglas Yingling, M.D.

Filed on Behalf of ~
DEFENDANTS, PRAXIDIO H. TAGALA,
MD and PRAXIDIO H. TAGALA, MD, PC

Filed By ~
Allen P. Neely, Esq.
Attorney I.D. # 65302
MCQUAIDE BLASKO LAW OFFICES
811 University Drive
State College, PA 16801-6699
(814) 238-4926

JURY TRIAL DEMANDED

Dated: November 1, 2011

FILED NO
M/T 2011
NOV 03 2011
GK
William A. Shaw
Prothonotary/Clerk of Courts

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

KIMBERLY A. ACEY a/k/a
KIMBERLY A. PODLISKI

Plaintiff

v.

CIVIL ACTION –Medical Professional
Liability Action

PRAXIDIO H. TAGALA, M.D.;
PRAXIDIO H. TAGALA, M.D., P.C.

Docket No: 2008-1121-CD

Defendants

**DEFENDANTS' ANSWER TO PLAINTIFF'S MOTION IN LIMINE
TO PRECLUDE TESTIMONY OF DOUGLAS YINCLING, M.D.**

AND NOW come the Defendants, Praxido H. Tagala, M.D., and Praxido H. Tagala, M.D., P.C., by and through their attorneys, McQuaide Blasko, Inc., and files the following Answer in opposition to Plaintiff's Motion in Limine to Preclude Testimony of Douglas Yingling, M.D.:

1. Admitted in part, denied in part. It is admitted that Plaintiff arranged for and took the deposition of Dr. Douglas B. Yingling, M.D. on July 8, 2010. It is denied that Dr. Yingling's deposition was limited to that of a "fact witness." The Notice of Deposition for Dr. Yingling states only that the deposition would be taken "...for the purpose of discovery and for use at trial...." (See Notice of Deposition, attached hereto as Exhibit "A."). Furthermore, the majority of those answers that Plaintiff now seeks to exclude were in fact given in response to questions asked by Plaintiff's Counsel.
2. The averments of Paragraph 2 are responded to as follows. To the extent that "expert opinion" as used in this context is intended to mean opinions specifically

regarding the standard of care, same is admitted with respect to the direct examination by Plaintiff's Counsel. However, Dr. Yingling is certainly an "expert" in terms of his knowledge as a physician and surgeon, and Plaintiff's Counsel did ask him opinions regarding the cause of the Plaintiff's bowel perforation. Furthermore, on re-direct, Plaintiff's Counsel specifically asked for an expert opinion from Dr. Yingling: (See Transcript of Deposition of Dr. Yingling, at p. 113, attached hereto as Exhibit "B," quote recited below herein).

3. The averments of Paragraph 3 are responded to as follows. It is denied that Defense Counsel ever asked any questions regarding standard of care. It is denied that Dr. Yingling's opinion's were acquired in anticipation of litigation. To the contrary, Defense Counsel asked questions that are squarely within the scope of knowledge of a treating physician. It is admitted that Dr. Yingling does not do laparoscopic procedures for obstetrics or gynecologic purposes as a regular part of his because he is not an ob-gyn. However, Dr. Yingling testified that he has in fact done the type of surgery that Dr. Tagala performed in this case and that he regularly does laparoscopic procedures and uses an electrocautery device, the implement at issue in this case. (See Exhibit "B" at pp. 46, 111).

4. It is admitted that Plaintiff's Counsel objected to a question from Defense Counsel, at page 109. The specific question that was objected to (set forth below) was whether bowel injury is a risk of a laparoscopic procedure. This point is not in dispute, and in fact, Plaintiff's expert states in his report that "bowel injuries are known and accepted complications of laparoscopic surgery." (See report of Dr. Duboe, dated October 28, 2010, at page 4, start of first full paragraph, attached hereto as Exhibit

"C."). It is denied that Plaintiff's Counsel's questions were rendered necessary only in response to subjects raised by Defense Counsel; rather, Plaintiff's Counsel widely explored Dr. Yingling's opinions regarding the cause of the bowel injury in an attempt to elicit testimony favorable to his case. He cannot now try to "un-ring the bell." Further, in order to properly evaluate the propriety of the question at issue, and the content of the passage that Plaintiff now seeks to exclude, it must be read in context. The relevant passage is as follows:

BY ATTORNEY LOMUPO:

Q. But when you got in there you found that there was electrocautery at the perforation site?

A. I expected that – what was the cause.

Q. So you put the history together with the findings and you say okay, something was going on in and around the bowel, she's got signs that could be consistent with a bowel perforation. I know that's a surgical emergency, go to the OR, that's your logical progression of thought?

A. Exactly my thoughts and what I did.

BY ATTORNEY LOMUPO:

Q. Okay. No other questions.

RECROSS EXAMINATION BY ATTORNEY BLASKO:

Q. You had mentioned, Doctor, in regards to whether there was cautery or what have you on the laparoscopic procedure and you say you performed laparoscopic procedure, not OB/GYN?

A. That's Correct.

Q. And one of the risks of the procedure is an injury to adjacent organs?

ATTORNEY LOMUPO: I object. Objection. It's calling for expert opinion and is regarding the technique and the procedures done by an OB/GYN.

Q. Is a risk of laparoscopic procedure an injury to adjacent organs?

A. I am not the judge, but I hear you. Let me answer your question. I do laparoscopic surgery. I do diagnostic laparoscopic surgery. I do liver biopsy surgery. I do laparoscopic gallbladder surgery. Regardless of the type of procedure or what you're doing laparoscopically, the procedure itself runs risk of perforation from whether it's cautery, needle, Tokar (sic – trocar) injections or whatever the mechanism....

ATTORNEY BLASKO: Thank you very much, Doctor.

*

*

*

REDIRECT EXAMINATION BY ATTORNEY LOMUPO:

Q. A perforation, although it may – you've never done the type of surgery that Dr. Tagala did on Kim; correct?

A. I have done it as an independent general surgeon in practice, although my formal training incorporated formal gynecologic training at my training center. So have I done that type of surgery? Yes.

Q. Okay.

A. But do I do it in my practice now? No.

Q. And there are ways of eliminating or reducing risk, correct, in any laparoscopic procedure?

A. That's the purpose of training.

Q. And perforations can be caused by electrocautery devices by negligence; correct?

[Exchange of counsel re objection]

Q. Can it be caused by operator error?

A. Absolutely. Can I give you a scenario of my – do you want my expert opinion of the scenario?

Q. Sure.

A. I read in – you do or you don't, I don't care. If you want the truth, that's what I'm sworn to do. So you can handle it or -- . You can't handle the truth. Where have I heard that?

I read in detail Dr. Tagala's note, and I looked at his pictures. No surgeon, and I have – you didn't ask how long have I known Dr. Tagala, 26, 27 years or whatever that is. No surgeon would intentionally cauterize a visualized bowel. Seeing what I saw at the time of surgery, reading his notes, seeing his picture, I suspect that there was a --- at least an interpretation that there was a buffer zone between that adherent overlay and the tube and the colon with this fatty tissue. Whether you want to call it an omentum or an epiploica. Unfortunately, tissue is an electrical conduit, so that buffer may not have been as much as what was expected, and the electrical current and energy is transmitted. And if it was closer than what was anticipated, and the electrical current and energy is transmitted. And if it was closer than what was anticipated, even though you may not visualize the colon, that energy was transmitted and resulted in eventually tissue injury.

So you know there was a cause and effect? Yes. But was it something directly visualized? Probably not. Not in my findings. As I said, there was this fatty tissue, and I said you could look at the model just to get your own --- have a better understanding of what I'm talking about. But that would be my interpretation. When did that occur, the thermal injury like a burn, you got a blister, like a second degree burn. That blister may not break for 48 hours. I think in this case there may have been injury, did not leak. I'm interpreting the record five hours before she came to the ER. The patient was very explicit, they are often very explicit. The patients are very accurate in that regard. At 2:00 in the morning I was awakened. I would read that as when it probably did leak. And then as I gave a lengthy explanation of the things that transpire, time takes --- it takes time to develop these clinical findings that we find. And then by the time I was seeing the patient, things were quite obvious.

- Q. I don't understand what you mean by ---. Following up on what you just said, I'm assuming with the laparoscope the area that the electrocautery touches is under the visualization of the operator; correct?
- A. That's correct.
- Q. So the electrocautery touches the omentum or the epiploica; correct?
- A. (Indicates yes).
- Q. It could also have touched the bowel itself; correct?
- A. It could be --- thermal energy could have been transmitted from that point to the bowel. That's correct.
- Q. It could have been transmitted through the omentum or the epiploica to

the bowel. That's one scenario; correct?

- A. That's correct.
- Q. Another scenario is it could have been a direct touch between the electrocautery device and the bowel?
- A. That's a potential.
- Q. All right. You can't rule that out?
- A. No, I wasn't there.
- Q. So either one of those could happen; correct?
- A. That's possible.
- Q. Touching the bowel with the electrocautery device is operator error, correct, in this type of a surgery because it's not intended to touch --- he wasn't working to do anything with the bowel; correct?
- A. Again, yes, it could be an operator error and --- which would be unlikely in normal anatomy. And the likelihood of a problem like that increases with pathology. And so if you want to address this particular case, as I said, her pathology was a tube and ovary adhesions, and they were adhered on the bowel. And so these types of problems would be considered increased in frequency, depending on the degree of pathology that you were there for in the first place.
- Q. As I'm understanding the procedure, you're trying to lyse the adhesions close to the tube and the ovary; correct? That's where you want to make your disconnect?

[Objection of Defense Counsel]

- Q. Well, you don't want to cut the adhesion right at the bowel line, do you? You want to cut it at the area of the ovary and tube; correct?
- A. I'll address this in a general term that when I do laparoscopic surgery I fully want to use an electrical --- any dissecting instrument, electrical, non-electrical, sharp or whatever on the object that I want to use it on.
- Q. In this case, it's tube and ovary.
- A. In that case it would have been the tube and ovary.

Q. Not the bowel.

A. That is correct.

(Exhibit "B," pp. 108-118).

5. Admitted. The opinions which were offered are recited above. Further, as is within the discretion of counsel following review of a deposition of a medical witness, Defense Counsel withdraws the objections that were raised to the portion of the transcript now at issue.

6. Denied. To the contrary, in context and taken in its entirety, Dr. Yingling's testimony does meet the required level of certitude required of a treating physician witness who was not retained for purposes of litigation and whose opinions were not formed in anticipation of litigation.

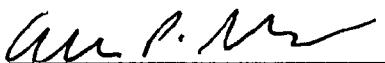
7. Denied as stated. With respect to 7 (a): Dr. Yingling testified that he has in fact done the type of surgery that Dr. Tagala performed in this case and that he regularly does laparoscopic procedures and uses an electrocautery device, the implement at issue in this case. (See Exhibit "B" at pp. 46, 111). With respect to 7 (b): It is admitted that the selected portion is accurately, if selectively, quoted; and further, Dr. Yingling's testimony, in context and in its entirety, is sufficiently definite (please see above passage in its entirety).

8. Denied, for the reasons set forth above.

WHEREFORE, Defendants respectfully request that the Plaintiff's Motion In Limine to Preclude Testimony of Douglas Yingling, M.D., be dismissed.

Respectfully Submitted,

McQUAIDE BLASKO

By: 
ALLEN P. NEELY
Attorneys for Defendants
811 University Drive
State College, PA 16801
(814) 238-4926

Dated: November 1, 2011

EXHIBIT - A

EXHIBIT - A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	]	CIVIL DIVISION - MEDICAL PROFESSIONAL LIABILITY ACTION
Plaintiff,]	
vs.	]	No.: 2008-1121-CD
PRAXIDO H. TAGALA, M.D., PRAXIDIO H. TAGALA, M.D., P.C., and CLEARFIELD HOSPITAL,]	
Defendants.	]	JURY TRIAL DEMANDED

NOTICE OF DEPOSITION OF DOUGLAS B. YINGLING, M.D.

TO: Frank J. Hartye, Esquire
McIntyre, Hartye & Schmitt
P.O. Box 533
Hollidaysburg, PA 16648

John W. Blasko, Esquire
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801-6699

TAKE NOTICE that the deposition of *Douglas B. Yingling, M.D.* will be taken for the purpose of discovery and for use at trial pursuant to the Rules of Civil Procedure before an officer duly authorized to administer oaths at the office of *Douglas B. Yingling, M.D., 1212 Turnpike Avenue, Clearfield, PA 16830* beginning at 11:00 a.m. on *Thursday, July 8, 2010*, at which time and place you are invited to appear and take such part as shall be fitting and proper.

The scope and purpose of the deposition is to inquire into the facts and causes and result of the matter in suit, including the whereabouts of witnesses.

Respectfully submitted,

GILARDI, OLIVER & LOMUPO

By

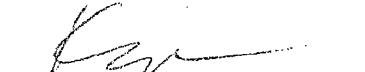

Kevin R. Lomupo, Esquire
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within *Notice of Deposition of Douglas B. Yingling, M.D.* has been served on the following by first class mail, postage prepaid on this 16th day of June, 2010.

TO: John W. Blasko, Esquire
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EXHIBIT - B

EXHIBIT - B



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Transcript of the Testimony of Douglas Bruce Yingling

Date: July 8, 2010

Case: Acey v. Tagala

Printed On: July 23, 2010

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

* * * * *

*

KIMBERLY A. ACEY, *
a/k/a KIMBERLY A. * Case No.
PODLISKI, * 2008-1121-CD
Plaintiff *
vs. *
PRAXIDIO H. TAGALA, *
M.D.; PRAXIDIO H. *
TAGALA, M.D., P.C.; *
and CLEARFIELD *
HOSPITAL, *
Defendants *
*

* * * * *

DEPOSITION OF
DOUGLAS BRUCE YINGLING, M.D.
July 8, 2010

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1
2 DEPOSITION
3 OF

4 DOUGLAS BRUCE YINGLING, M.D., taken on
5 behalf of the Plaintiff herein,
6 pursuant to the Rules of Civil
7 Procedure, taken before me, the
8 undersigned, Wendy Blair, a Court
9 Reporter and Notary Public in and for
10 the Commonwealth of Pennsylvania, at
11 the offices of Douglas B. Yingling,
12 M.D., 1212 Turnpike Avenue, Clearfield,
13 Pennsylvania, on Thursday, July 8th,
14 2010 beginning at 10:48 a.m.

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19 TAGALA, M.D.

1 EXHIBIT PAGE

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1 before?
 2 A. No.
 3 Q. You haven't? Okay. Ground
 4 rules are, please make sure you
 5 understand my question before you
 6 answer it. If you don't think you
 7 understand my question, ask me to try
 8 to explain it in a different way and
 9 I'll be happy to do that. Please don't
 10 guess at the answers to any of the
 11 questions that I ask you but do give me
 12 your best recollection.
 13 There's a court reporter here
 14 who's taking down everything that we
 15 say, so we have to, number one, try not
 16 to speak at the same time. And two,
 17 you have to give all of your responses
 18 to my questions in verbal form as
 19 opposed to just shaking your head or,
 20 you know, giving a hand gesture. I
 21 don't believe your deposition is going
 22 to take very long. But I want you to
 23 know, if you need the opportunity to
 24 take a break for whatever reason,
 25 please feel free to do that. Just let

1 PROCEEDINGS

2
 3 DOUGLAS BRUCE YINGLING, M.D., HAVING
 4 FIRST BEEN DULY SWORN, TESTIFIED AS
 5 FOLLOWS:

6
 7 DIRECT EXAMINATION
 8 BY ATTORNEY LOMUPO:

9 Q. Would you give us your full
 10 name, please?

11 A. Douglas Bruce Yingling,
 12 Y-I-N-G-L-I-N-G.

13 Q. Dr. Yingling, my name is Kevin
 14 Lomupo and I represent your patient,
 15 Kim Podliski or Kim Acey, in a lawsuit
 16 that she has filed against Dr. Tagala
 17 and the Clearfield Hospital. Your name
 18 has come up in the medical chart and,
 19 therefore, I wanted to take this
 20 opportunity to ask you some questions
 21 about what you saw and did and heard
 22 regarding Kim's care back in 2006.

23 In terms of ground rules for the
 24 deposition today --- and I'm assuming
 25 you've had your deposition taken

1 me know and we'll make that time
 2 available to you. Okay?
 3 A. Uh-huh (yes).
 4 Q. Before the deposition started I
 5 asked you for your CV and I don't think
 6 you have one apparently available or
 7 that's up-to-date. So can you give me
 8 the highlights of what would be on your
 9 CV?

10 A. Okay. Born and raised in
 11 Clearfield, went to Clearfield High
 12 School, graduated in 1970. Went to
 13 Gettysburg College, graduated in 1974
 14 with a Bachelor's in biology, magna cum
 15 laude, fie beta kappa. I went
 16 immediately to Jefferson Medical
 17 College in Philadelphia, graduated in
 18 '78 with an M.D. degree in alpha omega
 19 alpha. I spent the next five years at
 20 Dartmouth Medical Center in Hanover,
 21 New Hampshire, did my general surgery
 22 training there. Finished in 1983 and
 23 then immediately started private
 24 practice here in 1983 at Clearfield
 25 Hospital.

1 I am a diplomat of the National
 2 Board of Medical Examiners. Board
 3 Certified in '84, recertified in ---
 4 about nine years later. Recertified
 5 again nine years later. I am Board
 6 Certified until 2015.

7 Q. In general surgery?

8 A. In general surgery. I am a
 9 fellow of the American College of
 10 Surgeons.

11 Q. Okay.

12 A. And I've been basically in
 13 private practice here since '83.

14 Q. What is the name of the entity
 15 that employs you and employed you back
 16 in 2006?

17 A. I am self employed and my
 18 practice is Douglas B. Yingling, M.D.

19 Q. Okay. You are not now, nor were
 20 you in '06, an employee of Clearfield
 21 Hospital; correct?

22 A. I was not an employee.

23 Q. Have you held any positions at
 24 Clearfield Hospital other then being on
 25 the staff?

1 A. About ten days ago I did receive
 2 a copy of Dr. Tagala's deposition from
 3 his attorney.

4 Q. Was there anything that
 5 accompanied that deposition?

6 A. A letter stating that his
 7 attorney was not permitted to discuss
 8 this case with me, nor did he offer to.
 9 And that it was unsure whether you
 10 would have provided me a copy, so he
 11 thought that he should provide me a
 12 copy.

13 Q. Okay. Do you have that letter?

14 A. Yes, I do.

15 Q. Can I take a look at it?

16 ATTORNEY LOMUPO:

17 Thank you. All right.

18 I'm going to mark this as
 19 Exhibit One to your
 20 deposition, the letter dated
 21 June 17th, 2010 from Mr.
 22 Blasko to yourself.

23 (Deposition Exhibit One
 24 marked for
 25 identification.)

1 A. I've held multiple positions,
 2 including the Board of Directors,
 3 Parent Board of Directors, and probably
 4 chief of surgery for probably 17 or 18
 5 of the last 27 years.

6 Q. Were you on the Board of
 7 Directors in '06?

8 A. I believe so. Parent Board.

9 Q. I'm sorry?

10 A. It's called the Parent Board,
 11 which is a corp subsidiary of the
 12 Board, yes.

13 Q. Okay. In preparation for your
 14 deposition today did you speak to any
 15 of the attorneys in this office,
 16 including myself?

17 A. No, I have not.

18 Q. Did you correspond with any of
 19 the attorneys in this office, including
 20 myself?

21 A. I did not correspond with any
 22 attorney.

23 Q. Did you receive any materials
 24 from any of the attorneys in this
 25 office?

1 BY ATTORNEY LOMUPO:

2 Q. In preparation for this
 3 deposition today did you speak at all
 4 with Dr. Tagala?

5 A. I did not.

6 Q. How would you describe your
 7 relationship with him?

8 A. Professional, both members of
 9 the Clearfield Hospital staff.

10 Q. Did you socialize with him at
 11 all or have you socialized with him?

12 A. On a rare occasion.

13 Q. Other then being on the staff of
 14 Clearfield Hospital with Dr. Tagala,
 15 are you a member of any other groups
 16 that he is a member of, be it a
 17 professional or civic or lay groups?

18 A. I don't believe so.

19 Q. Did you read all or parts of Dr.
 20 Tagala's deposition?

21 A. Parts of it. I did not read it
 22 cover to cover.

23 Q. Did you take any notes while you
 24 were reading his deposition?

25 A. No, I did not.

1 Q. You've had an opportunity to
 2 look through the Clearfield Hospital
 3 chart on Kim ---
 4 A. That's correct.
 5 Q. --- in 2006; correct? In
 6 looking through it, I see that you
 7 authored certain documents. The
 8 discharge summary --- a discharge
 9 summary, consultation report, progress
 10 notes essentially every day beginning
 11 with July 2nd of 2006 and your
 12 operative note. Is there anything else
 13 that you think you authored other than
 14 those four categories?
 15 ATTORNEY BLASKO:
 16 Well, just for the
 17 record, there are two
 18 hospitalizations, aren't there?
 19 ATTORNEY LOMUPO:
 20 I'm talking about the
 21 first surgery that he did.
 22 ATTORNEY BLASKO:
 23 Oh, July 1st, is that it?
 24 ATTORNEY LOMUPO:
 25 Yes.

1 A. Anything that I authored would
 2 be in that chart, I would think, for
 3 those hospitalizations.
 4 BY ATTORNEY LOMUPO:
 5 Q. Let me ask you, what's your
 6 understanding of how you learned that
 7 there was a consult on Kim back in July
 8 of '06?
 9 A. Dr. Tagala, as I recall,
 10 personally called me about a
 11 consultation.
 12 Q. Do you recall about what time of
 13 day it was and what day?
 14 A. I know from the chart and my
 15 recollection it was in the morning.
 16 According to the chart, I think it was
 17 10:30 in the morning on July 1st. I
 18 believe it was a weekend, I'm not quite
 19 certain. It might have been a Saturday
 20 or a Sunday, but I do believe it was a
 21 weekend.
 22 Q. All right. What do you recall
 23 him telling you?
 24 A. I recall him telling me that he
 25 had admitted this patient, that he had

1 done a laparoscopic procedure
 2 approximately 48 hours earlier. She
 3 was having a considerable amount of
 4 abdominal pain, was concerned that
 5 there was a process going on in her
 6 abdomen and wanted my opinion about
 7 that.
 8 Q. Did he identify for you any of
 9 the process or processes that he
 10 believed were going on in her abdomen?
 11 A. Yes, he did.
 12 Q. What did he tell you?
 13 A. He told me this is --- are you
 14 talking about the phone conversation or
 15 when I did appear?
 16 Q. Phone conversation.
 17 A. I don't know how much detail at
 18 the phone since I was probably present
 19 within 15 minutes, or 20 minutes. So
 20 at that point we may not have discussed
 21 details of what exactly was going on
 22 except that he was concerned about her
 23 belly and further conversations were
 24 within minutes of when I arrived to see
 25 her.

1 Q. Okay. So when he did indicate
 2 to you what his thought processes were,
 3 what did he tell you that he believed
 4 was going on in her abdomen?
 5 A. He had concern that there was
 6 --- more concerned about the bowel,
 7 more problems in her belly than he
 8 could definitely blame just on the
 9 procedure that he had done.
 10 Q. Okay. Did he identify anything
 11 specific in regard to the bowel that he
 12 believed was problematic for Kim?
 13 A. Be it on the phone or when I
 14 arrived?
 15 Q. Both.
 16 A. Both. No, he told me he had a
 17 concern about the colon, the bowel,
 18 because the procedure that he had done
 19 on the left ovary and tube were
 20 adherent or adjacent to that part of
 21 the bowel, and was concerned about that
 22 issue.
 23 Q. Did he discuss the concept of a
 24 perforation or some type of tear or
 25 defect in the bowel?

1 A. No, we discussed that --- sorry.
 2 Q. I'm sorry.
 3 A. Yes, we did discuss that as
 4 a --- was a concern that that may be a
 5 possible explanation of what was
 6 transpiring.
 7 Q. You said we. Who brought up the
 8 concept of the potential of a
 9 perforation or tear or a defect in the
 10 bowel?
 11 A. He brought that up to me, and we
 12 had a joint discussion about that.
 13 Q. Did he indicate to you that
 14 there was any tear or perforation or
 15 defect in the bowel at the time of his
 16 surgery?
 17 A. No.
 18 Q. Other then having a phone
 19 conversation with Dr. Tagala and then
 20 coming to the hospital and having a
 21 face to face conversation with him, did
 22 you review any other --- or did you
 23 review any documents relative to Kim
 24 before you went to see her?
 25 A. I can't recall whether I

1 reviewed his specific records from the
 2 procedure two days before or after I
 3 saw her. But I did review those
 4 records.
 5 Q. Do you recall anything else that
 6 Dr. Tagala told you either on the phone
 7 or in person when you got to the
 8 hospital, you know, before you saw Kim?
 9 A. No, I do not.
 10 Q. Based upon your review of Dr.
 11 Tagala's records --- and I'm assuming
 12 he would have told you what her
 13 symptoms were?
 14 A. Yes.
 15 Q. Did you suspect a bowel
 16 perforation?
 17 A. Yes.
 18 Q. Why?
 19 A. Because the pain on the vital
 20 signs, the x-rays and the nature of the
 21 procedure would not have --- the
 22 symptoms that he described to me would
 23 not have been as a result of simply
 24 pelvic pain or from the laparoscopic
 25 procedure in general, we had ---

1 something else was going on.
 2 Q. You mentioned x-rays. Is that
 3 the CT scan?
 4 A. Uh-huh (yes).
 5 Q. Yes?
 6 A. Yes.
 7 Q. If you say uh-huh or uh-uh
 8 sometimes that's confusing on the
 9 record so I'll --- if you do it I'll
 10 ask you is that a yes or a no. So that
 11 was a yes?
 12 A. Yes.
 13 Q. When you reviewed the CT scan
 14 did you see free air in the pelvis?
 15 A. That was present. Although,
 16 that is 24, 48 hours after laparoscopic
 17 procedure, that would not be unusual.
 18 And so that was not necessarily
 19 indicative of the bowel perforation
 20 itself in view of the previous 48-hour
 21 history.
 22 Q. And what on the x-ray, the CT
 23 scan did you see that made you suspect
 24 a bowel perforation?
 25 A. It wasn't so much the findings

1 on the CT scan that was actually maybe
 2 excluding other causes. And the most
 3 pertinent finding was a physical exam.
 4 So the findings on the CT scan were
 5 ancillary information in my opinion.
 6 Q. Was the consult to you by Dr.
 7 Tagala a stat or an emergent consult?
 8 A. I would consider that, yes.
 9 Q. Was it defined as such in the
 10 medical record?
 11 A. I do not know. But he called me
 12 personally and I attended that patient
 13 within minutes. I probably was already
 14 in the hospital, but after our
 15 conversation I attended her within
 16 minutes of being called.
 17 Q. Other than Dr. Tagala, did you
 18 discuss Kim with anyone else before you
 19 went to see her, any other medical
 20 personnel?
 21 A. No, I did not.
 22 Q. Before you saw her had you begun
 23 to make any plans for an operation?
 24 A. No.
 25 Q. It looks like the consult was

1 around 10:30 in the morning if I'm
 2 interpreting the records correct. So
 3 you think you were there somewhere
 4 around 10:45 or so?

5 A. I would say that's probably
 6 close to the truth. I was called, I
 7 saw on the record, at 10:30. I have
 8 documented that I had written, dictated
 9 or at a consult at, I think it was
 10 timed 11:45, that's after I had seen
 11 her, reviewed the records, x-rays and
 12 discussed it with Dr. Tagala. So I
 13 would say I had probably seen her
 14 certainly within 30 minutes of being
 15 called.

16 Q. Okay. What's the first note
 17 that you author yourself on Kim?

18 A. The first note was probably the
 19 handwritten brief note consult dictated
 20 11:45, and I might have had one or two
 21 sentence notes. I dictated the note
 22 immediately following that
 23 consultation. So I can --- it's in the
 24 record. Dictated consult, of course
 25 you probably have that --- yeah, you

1 have it there.

2 ATTORNEY LOMUPO:

3 Okay. Off the record.

4 OFF RECORD DISCUSSION

5 ATTORNEY LOMUPO:

6 Back on the record. Just
 7 for identification purposes,
 8 it's Bates stamped page 46 in my
 9 records. It's called report of
 10 consultation.

11 BY ATTORNEY LOMUPO:

12 Q. Can you read the handwriting
 13 then? Let's start at the top where it
 14 says from attending physician.

15 A. Okay. From attending physician,
 16 Dr. P.H. Tagala to consulting
 17 physician, Dr. Yingling. The date
 18 7/1/06, report requested regarding
 19 persistent abdominal pelvic pain after
 20 --- that's short for laparoscopy.

21 Q. Okay.

22 A. And dictated 7/1/06 at 11:45.
 23 Impression, diffuse peritonitis post
 24 laparoscopy 48 hours, question
 25 perforated bowel. Plan, exploratory

1 lap ASAP, discuss with patient, mother,
 2 Dr. Tagala may need colostomy. They
 3 agree to proceed.

4 Q. All right. When you say diffuse
 5 peritonitis, what do you mean by that?

6 A. That means there were signs on
 7 her physical exam of infection
 8 throughout her abdominal cavity.

9 Q. What are those signs and
 10 symptoms?

11 A. Tenderness, distention, a
 12 particular term we use, guarding.
 13 There was sign of diffuse infection in
 14 her abdomen.

15 Q. Okay. Can you describe the
 16 extent of distention at the time you
 17 saw her?

18 A. She was firm. She's a thin girl
 19 so she --- and not muscular, but she
 20 had a firm but distended abdomen.

21 Q. Okay. Slight distention,
 22 moderate distention?

23 A. Moderate distention. I would
 24 think moderate distention.

25 Q. All right. When you say

1 guarding, what do you mean by that?

2 A. Guarding is a particular medical
 3 term when you examine an abdomen where
 4 there is involuntary muscular
 5 contraction of the abdominal wall in
 6 response to internal infection. So
 7 yes, when you examine a patient, the
 8 muscles go rigid or guard. The word
 9 comes from guarding against the person
 10 touching you. So that's an involuntary
 11 reaction, a sign of internal
 12 peritonitis and infection.

13 Q. So you would have performed your
 14 exam then somewhere around 10:45 to
 15 11:00 or so?

16 A. That is correct.

17 Q. And immediately made plans to do
 18 an exploratory surgery on her?

19 A. That's correct.

20 Q. Because you suspected upon
 21 seeing her and examining her that she
 22 had a perforated bowel?

23 A. That's correct.

24 Q. Now would this page that we just
 25 looked at, which is Bates stamped page

1 46, would that be the only recording of
 2 your initial exam of Kim?
 3 A. Absolutely not. I have a
 4 complete, dictated, thorough
 5 consultation in the page preceding
 6 that. That was a holding note until
 7 that was dictated at --- immediately to
 8 follow, and that is my complete
 9 consultation which outlines my exam and
 10 evaluation of her.
 11 Q. All right. I want to go over
 12 your dictated consult note now. And
 13 just for identification purposes,
 14 that's Bates stamped page 45 in my
 15 record. And it's entitled consultation
 16 report. Initially you note that she
 17 had had a laparoscopy for pelvic
 18 adhesions about 48 hours before you saw
 19 her; correct?
 20 A. That's correct.
 21 Q. All right. Then she went home,
 22 but she returned within 24 hours with
 23 increasing abdominal pain and nausea;
 24 correct?
 25 A. That's correct.

1 was 10,000 and hemoglobin 10.3, what
 2 did that indicate to you? What did
 3 that add to the analysis?
 4 A. Very little. The white count
 5 was 16,000 when she was in the
 6 emergency room, according to the
 7 record. The morning of when she was
 8 admitted that one day that was 10,000.
 9 Q. Okay.
 10 A. That number's within a normal
 11 range, but that doesn't, again, rule
 12 in, rule out the significance of an
 13 abdominal pathology.
 14 Q. Okay. Had she been started on
 15 antibiotics before you saw her?
 16 A. I believe she was started by Dr.
 17 Tagala. According to the record, was
 18 started on antibiotics following that
 19 admission.
 20 Q. Okay. Would that have any
 21 impact or effect on her white blood
 22 cell count?
 23 A. It may.
 24 Q. She complained to you of ongoing
 25 pain and increasing abdominal

1 Q. And apparently she went to the
 2 emergency room first; correct?
 3 A. That's correct.
 4 Q. SC scan was done, and you told
 5 me that those were just ancillary
 6 findings as far as you were concerned.
 7 Neither ruled in nor ruled out a bowel
 8 perforation; correct?
 9 A. That's correct.
 10 Q. When it says no obvious
 11 abscesses or pelvic pathology was
 12 noted, what did you mean by that?
 13 A. Abnormal fluid collections,
 14 blood collections, hematoma, abscesses
 15 or other obvious signs according to
 16 that report.
 17 Q. Did that help you rule in or
 18 rule out a bowel perforation at that
 19 time?
 20 A. No, it did not.
 21 Q. All right. Then because of the
 22 pain out of proportion to the findings,
 23 the patient was admitted and apparently
 24 got a Foley catheter. All right. The
 25 fact that her white count on admission

1 distention; correct?
 2 A. That's correct.
 3 Q. Would she have told you that her
 4 abdomen is appearing to get bigger? Is
 5 that what you mean when she --- when
 6 you say she continued to complain of
 7 increasing abdominal distention?
 8 A. That's correct.
 9 Q. Okay. She also had some nausea
 10 and vomiting; correct?
 11 A. That's correct.
 12 Q. It says I was asked to evaluate
 13 the patient regarding a possible acute
 14 abdomen. Did Dr. Tagala use the words
 15 possible acute abdomen?
 16 A. I can't recall whether he
 17 specifically used those words or not.
 18 Q. Do you have any recollection of
 19 the words he used to describe Kim's
 20 condition?
 21 A. The exact words I don't recall.
 22 Q. You noted that diffuse
 23 peritoneal signs; correct?
 24 A. That's correct.
 25 Q. Especially on the right.

1 A. That's correct.
 2 Q. All right. At this point the
 3 patient has evidence of diffuse
 4 peritonitis, what did you mean by that?
 5 A. As I explained before, her
 6 abdomen is rigid, she has guarding,
 7 which is a specific physical finding of
 8 peritonitis. So the physical findings
 9 were consistent with a diffuse
 10 infectious process within her abdomen.
 11 Q. And at that point did you have
 12 the likely source of that infection to
 13 be a bowel perforation?
 14 A. That was --- my presumption was
 15 it was a bowel perforation in view of
 16 the discussion with Dr. Tagala. Review
 17 of the photographs that I had seen and
 18 his previous note and his concerns and
 19 then although there can be many sources
 20 of internal infection but that was one
 21 of my primary considerations that was
 22 going on.
 23 Q. Okay. It says you discussed the
 24 situation with the patient, Dr. Tagala,
 25 and the patient's mother. Do you

1 recall what you discussed with them?
 2 A. Absolutely.
 3 Q. Tell me what you discussed with
 4 the three of those people.
 5 A. I specifically told them after
 6 my findings that I felt she had
 7 internal infection; a bowel perforation
 8 was likely and required an immediate
 9 surgical intervention. And that there
 10 was a strong likelihood, if my
 11 suspicions were correct, that she would
 12 require a colostomy for management of
 13 that problem.
 14 Q. Did Dr. ---?
 15 A. I reiterated that several times
 16 in making it quite clear, and I think
 17 as my notes said, that a colostomy may
 18 be necessary.
 19 Q. Do you recall any input that Dr.
 20 Tagala had in this discussion that
 21 we're talking about?
 22 A. With the family present at
 23 the ---?
 24 Q. Yeah. This discussion that you
 25 had with Kim and her mom and Dr.

1 Tagala, did he add anything to the
 2 conversation?
 3 A. Only in that he was going to
 4 allow me to proceed --- or suggest that
 5 they proceed with my suggestion. I
 6 don't understand your question exactly,
 7 but ---.
 8 Q. Okay. My understanding is
 9 you're probably at bedside with Kim and
 10 her mother is there and Dr. Tagala is
 11 there and you're telling her what your
 12 findings are and what you want to do.
 13 I want to know if Dr. Tagala added
 14 anything to that conversation.
 15 A. Other than that he had suggested
 16 that they follow my advice. I can't
 17 recall any other specific input he had
 18 at that setting.
 19 Q. Do you remember him mentioning
 20 anything about a bowel perforation and
 21 how it may have happened?
 22 A. At that interview with the
 23 patient, I don't recall a specific
 24 conversation in that regard. I
 25 probably initiated that discussion and

1 may have explained to the patient and
 2 the family that there is what I had
 3 presumed had happened. I'm not sure
 4 whether he had any input in that.
 5 Q. Okay.
 6 A. I can't recall.
 7 Q. It says I do not feel delaying
 8 intervention at this indicated in view
 9 of the clinical findings of the diffuse
 10 abdominal peritonitis. There may be a
 11 word missing there, but ---.
 12 A. I believe you're right.
 13 Q. Why didn't you feel that there
 14 was any benefit in delaying
 15 intervention at this time?
 16 A. There was no benefit to delay,
 17 it needed an immediate response.
 18 Q. Do you know for how long prior
 19 to your involvement she needed
 20 intervention?
 21 A. No, I do not.
 22 Q. Then you took her to surgery;
 23 correct?
 24 A. That's correct.
 25 Q. Now I want to make sure that I

1 have all of the signs and symptoms that
 2 you believe exist with an acute
 3 abdomen, its rigidness, distension,
 4 guarding, anything else?
 5 A. Of course tenderness.
 6 Q. Tenderness. Anything else?
 7 A. Lack of bowel sounds or other
 8 signs, those aren't specific to ---.
 9 The most explicit physical finding is
 10 the finding of true guarding. By the
 11 surgical definition, that is a sign of
 12 peritonitis.
 13 Q. Okay. That's that rigidness
 14 that you told us about?
 15 A. Involuntary muscular
 16 contraction. Involuntary means no
 17 matter how hard you try you cannot
 18 prevent your muscles from going rigid
 19 if I touch you. If you have
 20 peritonitis and appendicitis that's
 21 localized in one spot, when you have
 22 diffuse infection, everywhere you touch
 23 is that guarding. It's a very specific
 24 surgical term.
 25 Q. All right. Do you have your

1 operative note in front of you?
 2 A. Yes, I do.
 3 Q. Okay. Under operative
 4 indications ---.
 5 ATTORNEY LOMUPO:
 6 And just for the record,
 7 this is page --- Bates stamp
 8 page 69 of my record. It's the
 9 operative indications and it's
 10 ---.
 11 ATTORNEY BLASKO:
 12 Wait. I don't have your
 13 ---.
 14 ATTORNEY LOMUPO:
 15 Oh, I'm very sorry.
 16 ATTORNEY BLASKO:
 17 If I could get --- okay.
 18 ATTORNEY LOMUPO:
 19 Okay.
 20 BY ATTORNEY LOMUPO:
 21 Q. Since it's the second to last
 22 sentence under operative indications.
 23 It starts with I have explained, do you
 24 see that? It says, I have explained to
 25 the patient and her mother that

1 immediate surgical intervention is
 2 necessary. And you've explained to us
 3 why this is a surgical emergency;
 4 correct?
 5 A. That's correct.
 6 Q. And that the possibility of a
 7 colostomy may be required if there is a
 8 large bowel perforation. What do you
 9 mean by large bowel perforation?
 10 A. Large bowel is another term for
 11 colon. We have small intestine, we
 12 have large intestine. Large intestine
 13 is the colon.
 14 Q. Oh, okay. So you're not talking
 15 about the size of the perforation,
 16 you're talking about an anatomical
 17 structure.
 18 A. No. Anatomical, yes, that's
 19 correct.
 20 Q. Does it matter what the size of
 21 the perforation is as to whether or not
 22 a colostomy is done or not done?
 23 A. The size of the perforation is
 24 not as critical as the contamination
 25 and the infection resulting from that.

1 Q. Okay. Then you made your
 2 incisions and got to the area of
 3 interest; correct?
 4 A. That's correct.
 5 Q. It says there was significant
 6 edema throughout the abdominal wall.
 7 What does that mean?
 8 A. That means the tissues of the
 9 --- the fatty tissue, the muscular
 10 tissue, the fascial tissue, the belly
 11 wall tissue had edema, which is tissue
 12 fluid within the --- in those tissues.
 13 Q. Fluid in the tissue itself?
 14 A. Yes.
 15 Q. And what is that a reaction to?
 16 Or what is the cause of that?
 17 A. That's a reaction of internal
 18 infection. The body's response for
 19 when we have significant infection is
 20 to lose tissue fluid out of our blood
 21 system into those tissues that are in
 22 an area of infection.
 23 Q. Okay. Do you have an
 24 understanding of the amount of time it
 25 would take to produce this significant

1 fluid in the tissue, significant edema?
 2 A. Certainly 24 to 48 hours.
 3 Q. It says, upon entering the free
 4 abdomen there was a fairly large volume
 5 of foul smelling blood-tinged fluid.
 6 Where was that from?
 7 A. From the pelvis.
 8 Q. What was the source of this
 9 fluid?
 10 A. Again, the tissue fluid, the
 11 body fluid exuded, the foul smell was
 12 fecal material. The blood material was
 13 probably left over from the previous
 14 procedure.
 15 Q. All right. Then you took a
 16 specimen to be cultured; correct?
 17 A. That's correct.
 18 Q. And aspirated all of that fluid?
 19 A. That's correct.
 20 Q. Okay. Then you indicate that
 21 you directed your attention to the
 22 pelvis. And what did you find there?
 23 A. In the pelvis I first identified
 24 where her laparoscopic procedure had
 25 been performed, which was mainly left

1 tube and ovary, and the bowel adjacent
 2 to that. And that's where I directed
 3 my attention.
 4 Q. Okay. And what did you find
 5 there?
 6 A. I found evidence of cautery
 7 effect and surgical procedure on the
 8 tube and ovary. And I found evidence
 9 of a bowel perforation on the sigmoid
 10 colon, or sigmoid large bowel. On the
 11 --- that adjacent piece of bowel,
 12 adjacent to that tube and ovary.
 13 Q. When you say a free perforation
 14 of the lower sigmoid colon, what do you
 15 mean by free perforation?
 16 A. That means there's a free
 17 opening, a hole that was visually seen
 18 that went into the lumen of the colon.
 19 Q. Okay. So with your naked eye
 20 you could see this perforation?
 21 A. Absolutely.
 22 Q. And okay, it says free
 23 perforation of the lower sigmoid colon
 24 with cautery effect around this. What
 25 does that mean?

1 A. That means there was necrotic
 2 tissue, did not have the normal pink
 3 appearance. It was more of a
 4 yellowish, viable --- nonviable,
 5 non-bleeding area consistent with a
 6 cautery effect.
 7 Q. Are you talking about lower
 8 sigmoid colon or bowel tissue?
 9 A. The lower site of perforation
 10 had an area of this cautery effect.
 11 Q. Okay. I'm just trying to make
 12 the distinction that this tissue that
 13 you were describing that's not viable,
 14 no blood supply, necrotic, that is
 15 bowel tissue?
 16 A. That's correct.
 17 Q. And it appeared to have a
 18 cautery or burn effect around the
 19 perforation?
 20 A. The perforation was the burn.
 21 Q. Okay.
 22 A. Around that was more normal
 23 appearing bowel.
 24 Q. So there was a burn and a
 25 perforation ---

1 A. That's correct.
 2 Q. --- in the same area? And then
 3 you tell us that the perforation and
 4 cautery effect area is two and a half
 5 by three centimeters; is that correct?
 6 A. Correct.
 7 Q. And it matched up spatially with
 8 a matching cautery effect on the left
 9 tube and ovary; correct?
 10 A. Basically they were adherent,
 11 contiguous --- almost contiguous
 12 structures, that's correct.
 13 Q. When you saw that did you show
 14 it to Dr. Tagala?
 15 A. Absolutely.
 16 Q. And what did Dr. Tagala say?
 17 A. I'm not sure he said anything.
 18 I'm directing a procedure but he
 19 certainly was aware that it was there.
 20 Q. Did you show to him that there
 21 was a burn and perforation of the
 22 colon?
 23 A. Absolutely. Dr. Tagala was
 24 assisting me at that procedure and I'm
 25 sure that was brought up. So I had

1 asked him to keep that exposure so I
 2 could close it.
 3 Q. All right. Did Dr. Tagala at
 4 that time or at any other time explain
 5 to you how this burn and perforation
 6 occurred?
 7 A. I don't recall specifics of the
 8 conversation in the operating room
 9 setting, but it was obvious to me that
 10 the discussion was that there was a
 11 bowel perforation adjacent to the
 12 cautery work done on the tube and
 13 ovary. So I think it was --- I don't
 14 know if it was that needed or just we
 15 didn't have necessarily a personal
 16 discussion regarding it was there.
 17 Q. I mean was it obvious to you
 18 that the cautery device had touched the
 19 lower bowel?
 20 A. I can't answer that question.
 21 Q. Okay.
 22 A. There are other ways to get
 23 cautery effect. It was obvious that
 24 there was a perforation which appeared
 25 to me to be due to a cautery effect.

1 Q. Did Dr. Tagala at any time
 2 explain to you how he believed the
 3 cautery caused the perforation?
 4 A. Not in any specific technical
 5 detail from his original procedure
 6 other than it was obvious that they
 7 were adjacent to each other. And at
 8 that point exactly how that occurred is
 9 not my interest. I had to deal with
 10 the problem.
 11 Q. All right. And then tell me
 12 what you did when you identified this
 13 burned area with the perforation?
 14 A. Immediately because of the size
 15 I wanted to reduce further
 16 contamination so I did put several
 17 sutures to temporarily close that, and
 18 then to eliminate any further
 19 contamination of fecal material into
 20 the operative field. Once that was
 21 accomplished, we rinsed out things. I
 22 actually removed that segment of the
 23 bowel. In my opinion, it's not safe to
 24 do a repair or expect it to heal in the
 25 face of peritonitis. So the treatment

1 of choice is to remove the involved
 2 segment, divert the fecal stream and
 3 clean out the infected area. And
 4 that's what I did.
 5 Q. So you would divert the fecal
 6 stream to outside of the body?
 7 A. That's correct.
 8 Q. And with the remaining
 9 unattached portion of the bowel, how do
 10 you secure that?
 11 A. Staple it. I use a stapling
 12 instrument.
 13 Q. And then the area that you
 14 removed, you just simply remove that
 15 from the body?
 16 A. I removed that. Of course we
 17 sent it to pathology, but that is
 18 removed.
 19 Q. All right. How much tissue on
 20 either side of the burned perforated
 21 area did you remove?
 22 A. I think, according to my notes,
 23 several inches, one or two inches,
 24 three inches on ---.
 25 Q. On either side of the

1 had no problem and I appreciated the
 2 assistance. I should make it clear
 3 that I do my own surgery, he was an
 4 assistant.
 5 Q. Understood. Have you ever done
 6 a laparoscopic lysis of adhesions like
 7 Dr. Tagala was doing, or is that
 8 something that you don't do?
 9 A. I do laparoscopic surgery but
 10 not gynaecologic laparoscopy. I do not
 11 do the type of laparoscopy he does.
 12 Q. Do you use electrocautery
 13 devices?
 14 A. Absolutely.
 15 Q. And you know what the effect of
 16 the cautery device is on tissue by
 17 visualizing it?
 18 A. Absolutely.
 19 Q. And that's what you saw on the
 20 lower bowel?
 21 A. That's correct.
 22 Q. In following through in your
 23 operative report, there's a section
 24 towards the end where it says there's a
 25 fair amount of inflammatory exudative

1 that to mean.
 2 Q. Are you able to quantify the
 3 distance between the cautery effect on
 4 the left ovary and the cautery effect
 5 on the bowel?
 6 A. I would say they were
 7 contiguous.
 8 Q. Contiguous to me means next to
 9 and touching?
 10 A. Correct.
 11 Q. How about the --- can you
 12 quantify the distance between the left
 13 ovary and the cautery effect on the
 14 bowel?
 15 A. Anatomically the left tube would
 16 have separated that. That tube was
 17 removed in the original procedure, so
 18 at the time of when I examined it
 19 again, they were abutting each other.
 20 Q. Is that a typical anatomic
 21 relationship? When the tube is there,
 22 there's a distance between them?
 23 A. Normally they are not. They are
 24 really separable. So to answer your
 25 question, no, the tube and the ovary

1 material on the distal small bowel
 2 which was freed, then the small bowel
 3 was examined and no other sites of
 4 perforation was noted. What does that
 5 mean?
 6 A. That means to me that the
 7 infectious or inflammatory processes in
 8 her abdomen had been present for a
 9 period of time for that kind of a
 10 reaction to present itself.
 11 Q. What type of time frame are we
 12 talking about?
 13 A. I would think at least 24 to 48
 14 hours to be able to present that kind
 15 of process.
 16 Q. Back on the first page of your
 17 operative report, under operative
 18 technique and findings, it says, five
 19 lines up from the bottom, you had a
 20 discussion with Dr. Tagala about where
 21 he had removed the adhesions. And then
 22 it says, there's a moderate amount of
 23 soiling. What does that mean?
 24 A. Fecal drains through the area of
 25 perforation, that was what I intended

1 are not adherent toward --- contiguous
 2 with the bowel.
 3 Q. All right. Then my
 4 understanding is you would have
 5 followed Kim essentially every day
 6 thereafter while she was still in the
 7 hospital; correct?
 8 A. I followed her --- I transferred
 9 her to my service immediately and I saw
 10 her through her entire hospital stay
 11 and also subsequent days that she was
 12 --- from that procedure and subsequent
 13 procedures.
 14 Q. Okay. Why did you transfer her
 15 to your service?
 16 A. This was a general surgical
 17 problem at this point and required my
 18 opinion, the expertise of a general
 19 surgeon.
 20 Q. What's your first post-op
 21 progress note? When did that occur in
 22 a date and time? I'm thinking it's
 23 July 2nd at 9:45 in the morning, but I
 24 could be wrong.
 25 A. That may have been the first

1 time I wrote a progress note and dated
 2 it and timed it, that's correct.
 3 Q. Do you think it's your first
 4 progress note after the procedure?
 5 A. That is the first progress note
 6 in this chart after the procedure.
 7 Q. Because of your handwriting I'm
 8 going to need you to read that into the
 9 record.
 10 A. Sure. 7/2/06, 9:45 a.m., alert,
 11 moderate pain, pulse 110 to 120, lab
 12 stable, urine output okay. Stoma clean
 13 and healthy, abdomen softly distended.
 14 Cultures gram negatives, IV pending.
 15 Gentamicin trough increased, will
 16 decrease to 80 milligrams q8. That's
 17 an antibiotic. Trough means the blood
 18 level. Assessment plan, continue ICU
 19 monitor to today, secondary to
 20 tachycardia, decreased Gentamicin,
 21 continue NG, triple antibiotics 'til
 22 culture and sensitivities are back.
 23 Q. When it says secondary to
 24 tachycardia, what was going on with Kim
 25 and her heart?

1 hours.
 2 Q. Okay. Your next note then ---
 3 your next progress note, would it be
 4 the next day, July 3rd?
 5 A. Yes. I don't have a copy of
 6 that, so my chart is incomplete. So we
 7 don't have a copy of that progress
 8 note.
 9 Q. Okay. I think that that bottom
 10 note is yours from July 3rd.
 11 A. Yes, it is.
 12 Q. Again, can you read that into
 13 the record for us?
 14 A. July 3rd, '06. Alert,
 15 nauseated, pulse down to 75 to 80.
 16 Vital signs --- VSS, vital signs
 17 stable. Good urine output, moderate
 18 distention. Stoma edematous, but
 19 healthy, incision clean. Lab stable.
 20 Gentamicin trough still elevated, will
 21 change to q12h dosage. CNS E. coli
 22 sensitive to Gentamicin. The
 23 assessment plan, leave NG in, mobilize,
 24 adjust Gent dosing, transfer to floor
 25 tomorrow.

1 A. Her pulse rate was increased
 2 somewhat, 110 to 120, which is a little
 3 high to maintain justification. To
 4 keep her in an ICU setting, I have to
 5 make justification. And having a
 6 tachycardia justified --- I have to
 7 document a reason why I'm keeping her
 8 there.
 9 Q. And you wanted to keep her in
 10 the ICU?
 11 A. I wanted to keep her in the ICU.
 12 Q. And I'm assuming the antibiotic
 13 that you prescribed for her was as a
 14 result of the culture and sensitivity
 15 results or preliminary report from ---?
 16 A. No. I have to run triple
 17 antibiotics covering broad spectrum
 18 until --- wait 'til I get my cultures
 19 and then I adjust the antibiotic
 20 pending the sensitivities. So in this
 21 circumstance, I covered her with triple
 22 --- three varieties of antibiotics,
 23 covered the whole spectrum of potential
 24 bacteria. Then simplify it pending
 25 those reports, which are usually 48

1 Q. Okay. So you adjusted her
 2 medication then to Gentamicin and she
 3 was progressing appropriately?
 4 A. I believe she was progressing
 5 appropriately for the procedure, yes.
 6 Q. On either the --- let's say on
 7 the 3rd, do you recall any
 8 conversations that you would have had
 9 with Dr. Tagala?
 10 A. I do not.
 11 Q. Do you believe you would have
 12 had any conversations with him on the
 13 3rd? Let's say the first or second day
 14 post-op, would you have had any
 15 conversations with him?
 16 A. Maybe in passing, how's she
 17 doing or in that regard, but not in a
 18 patient management ---.
 19 Q. My next note is July 4th of '06,
 20 and if you could read that into the
 21 record, I'd appreciate it.
 22 A. July 4th, '06, complain of NG
 23 tube. Complain of nausea with Demerol,
 24 colostomy moving air, abdomen softer.
 25 Q. Can I stop you there, colostomy

1 moving air, what does that mean?
 2 A. That means she is returning
 3 bowel function and expelling gas out
 4 her colostomy.
 5 Q. So this is a good finding?
 6 A. That's a sign of bowel function,
 7 that's a good finding.
 8 Q. Okay. And then it says abdomen
 9 ---?
 10 A. Abdomen softer, incision clean,
 11 packing out of the incision. Glucose
 12 increased probably secondary to
 13 Decadron. Lytes okay, that's
 14 electrolytes. Good urine output, stoma
 15 therapy here, will DC NG, transfer her
 16 to floor, ambulate, continue Gen,
 17 Flagyl. DC Foley tomorrow, decrease
 18 IV.
 19 Q. Stoma therapy here, what is
 20 that?
 21 A. I consulted a stoma therapist,
 22 which is a nurse specialist in stoma
 23 care, for evaluation of the appliance
 24 and care of the stoma and eventual
 25 teaching of the patient and care for

1 the stoma --- the colostomy.
 2 Q. Okay. What's involved in that,
 3 the care of the stoma and the bag and
 4 all of that, what's involved?
 5 A. Of course a colostomy is the end
 6 of the bowel coming out through the
 7 abdomen. It's going to be draining
 8 air, liquid stool. We put appliances,
 9 or bags adherent to the skin around the
 10 colostomy to catch the bowel movement,
 11 the drainage. What's involved in that
 12 appliance needs to be changed ---
 13 emptied frequently, the bag, whenever
 14 it becomes full. The appliance
 15 adherent to the skin needs to be
 16 changed periodically. And there is the
 17 --- the involvement is cleansing the
 18 area, placing a new well-fitted bag on
 19 there. And so it does take some care.
 20 Q. Okay. I'm assuming in the
 21 hospital setting that's done by a
 22 medical care provider. And when she
 23 would be released to home, that's
 24 something that she would need to care
 25 for herself?

1 A. When she went home I probably
 2 --- or I arrange for all my patients
 3 stomal therapy consultation at home and
 4 home health consultation to assist in
 5 that. But the goal of course is to
 6 have the patient eventually do it
 7 independently themselves.
 8 Q. At or around this time frame in
 9 early July, how long did you believe
 10 that Kim would be required to have a
 11 colostomy bag?
 12 A. Generally speaking, in an
 13 otherwise healthy person with this kind
 14 of problem, I usually advise them that
 15 they would probably need that colostomy
 16 a minimum of three months, two to three
 17 months, maybe longer.
 18 Q. What's the determining factor as
 19 to when you terminate the colostomy and
 20 do the procedure to reconnect the
 21 bowel?
 22 A. It depends on the underlying
 23 pathology that you did it for.
 24 Sometimes we'll do this procedure for
 25 malignancies and they will be going

1 under ancillary treatment, so that
 2 could be extended to 6 months, 12
 3 months.
 4 A person's general medical
 5 condition, underlying medical
 6 conditions may necessitate an extended
 7 period of time. But the degree of
 8 contamination at the time of surgery
 9 may determine how long I would wait for
 10 things to all resolve before I would
 11 consider that. But most importantly is
 12 how --- the patient's physical well
 13 being. I would not --- I have to make
 14 sure that I consider a positive
 15 nitrogen balance, totally recovered
 16 physically, to withstand another
 17 procedure. So generally, three months,
 18 give or take a few weeks would be the
 19 earliest I would do that.
 20 Q. All right. Is that your only
 21 note that you read us on July 4th?
 22 There's another one dated July 4th, but
 23 I can't tell if that's Dr. Tagala's.
 24 A. That's Dr. Tagala's signature,
 25 it's not mine.

1 Q. Okay. Then we move to July 5th,
 2 it appears that you have one note;
 3 correct?
 4 A. Again, my record is incomplete.
 5 I don't have that one.
 6 Q. Okay. It actually contains July
 7 5th and July 6th.
 8 A. Okay.
 9 Q. So I'll ask you to read July 5th
 10 first.
 11 A. July 5th, feels much better
 12 today, colostomy moving, voiding post-
 13 Foley removal. Ambulated, abdomen
 14 soft, culture and sensitivity positive
 15 for anaerobes, will keep on Flagyl.
 16 Will start liquid diet, DC IV fluids,
 17 continue IV antibiotics.
 18 Q. Okay. Again, is she progressing
 19 appropriately?
 20 A. Coming along nicely at that
 21 time.
 22 Q. July 6th.
 23 A. Alert, vital signs stable.
 24 Starting full liquids, colostomy
 25 moving, abdomen soft. Advancing diet.

1 Q. Okay. Explain to me what you
 2 would have said to her, exactly as you
 3 can.
 4 A. I would --- in a location I
 5 would have said, she sustained a
 6 perforation or a hole in her bowel
 7 adjacent to the area where she had had
 8 the adhesions removed from her left
 9 tube and ovary. And that that resulted
 10 in a leakage of the bowel material,
 11 necessitating what I had to do.
 12 Q. Would you have told her what
 13 caused the perforation?
 14 A. I would have said it was related
 15 to the procedure that she had on the
 16 tube and ovary on that side.
 17 Q. Would you have used the word
 18 electrocautery as the cause of the
 19 perforation?
 20 A. I may or may not have used that
 21 word.
 22 Q. It looks then that your next
 23 note is the 7th. And could you please
 24 read that for us?
 25 A. Afebrile colostomy meeting,

1 DC IV, continue IV antibiotics. Check
 2 labs tomorrow, stomal teaching.
 3 Q. Again, progressing
 4 appropriately?
 5 A. Correct.
 6 Q. Did you make any assessment of
 7 Kim as to how she was handling this
 8 either emotionally or mentally? Do you
 9 have any impression of that?
 10 A. I thought she was very strong
 11 and did very well with this.
 12 Q. Did she discuss with you any
 13 displeasure with Dr. Tagala while she
 14 was in the hospital?
 15 A. Never.
 16 Q. Did she ever ask you how did my
 17 bowel become perforated or questions of
 18 that type?
 19 A. She may have asked. I would
 20 have explained it to her whether she
 21 had asked or not. So I know during the
 22 hospitalization, probably within a day
 23 or two of the surgery I probably
 24 explained to her how I interpreted this
 25 attack.

1 voiding well, abdomen soft and incision
 2 clean. Poor appetite, labs okay.
 3 Assessment plan, continue IV
 4 antibiotics another 24 hours, stomal
 5 teaching, anticipate discharge Sunday.
 6 Q. I'm assuming that her time in
 7 the hospital from July 1st until when
 8 she is discharged is as a result of the
 9 perforation and the need for a repair
 10 of the perforation?
 11 A. That's correct.
 12 Q. Again, on the 7th, she's
 13 progressing appropriately?
 14 A. Correct.
 15 Q. You have a note on the 8th, do
 16 you have that?
 17 A. No. I'll have to thank my
 18 hospital lawyer who gave me this
 19 record.
 20 ATTORNEY HARTYE:
 21 I didn't give it to you.
 22 A. No, your --- our in-house
 23 lawyer.
 24 ATTORNEY HARTYE:
 25 Oh, okay.

1 A. July 8th, '06, afebrile, some
 2 muscular side pain, abdomen soft,
 3 eating a little better, voiding well.
 4 Will switch to PO antibiotics today,
 5 home tomorrow.
 6 BY ATTORNEY LOMUPO:
 7 Q. The abdominal pain that she was
 8 having, would you ascribe a cause to
 9 that?
 10 A. Surgical incisional pain.
 11 Q. And again, on the 8th she was
 12 progressing appropriately; correct?
 13 A. That's correct.
 14 Q. And do you have the 9th?
 15 A. Yes.
 16 Q. Okay. I think that this is your
 17 last note, progress note. So would you
 18 read the note of July 9th?
 19 A. Afebrile, ambulating well,
 20 anxious to go home. Mild ankle edema,
 21 Doppler negative. Incision clean,
 22 staples out. Will discharge. Keep on
 23 Cipro/Flagyl five more days. Home
 24 health to see. I will see ten days in
 25 office.

1 Q. Okay. Were you thinking that
 2 she potentially had a blood clot or
 3 some blockage or something in her
 4 ankle?
 5 A. That was a concern, so I ordered
 6 a venous Doppler to rule that out,
 7 which was negative.
 8 Q. All right. Then you discharged
 9 her, correct, on the 9th?
 10 A. Yes. That's correct.
 11 Q. All right. How often did you
 12 see Kim then in the office setting
 13 after she was discharged from
 14 Clearfield Hospital?
 15 A. Kim returned on July 19th, two
 16 and a half weeks post-op.
 17 Q. How was she doing?
 18 A. Doing very well.
 19 Q. Everything is fine with the
 20 colostomy?
 21 A. According to my notes and my
 22 recollection, it was moving well. She
 23 was handling it, she was eating well
 24 and she was basically asymptomatic.
 25 Q. When did you see her after that?

1 A. August 9th, '06, five and a half
 2 weeks post-op.
 3 Q. And how was she doing?
 4 A. Feels quite well, eating well.
 5 And I can read you my note if you like.
 6 Q. Okay.
 7 A. Abdomen benign, will arrange to
 8 take down colostomy in September.
 9 Q. So you felt she was well enough
 10 at that point to schedule something in
 11 September to reverse the colostomy;
 12 correct?
 13 A. That's correct.
 14 Q. And did Kim ever express to you
 15 any concerns at all --- I'll
 16 characterize as either emotional or
 17 mental about having to deal with the
 18 colostomy?
 19 A. Other than a normal displeasure
 20 that every patient I have given a
 21 colostomy experiences, but I thought no
 22 more than normal --- realizing very
 23 happily that she had a circumstance
 24 where she could be reversed.
 25 Q. And then you did the reversal

1 surgery in September, correct, on the
 2 12th?
 3 A. September 12th.
 4 Q. And how long did she stay in the
 5 hospital?
 6 A. Four days.
 7 Q. Okay. To the 16th.
 8 Essentially, tell me, you know, in
 9 layman's terms, what you would do in a
 10 reversal surgery?
 11 A. Reversal surgery is still a
 12 major operation, we would at this point
 13 have prepared the intestine, bowel.
 14 She would have gone through a bowel
 15 preparation prior to the surgery, which
 16 means cleansing of the bowel,
 17 mechanically get rid of the bowel
 18 movement. And she would have had an
 19 antibiotic bowel prep within 24 hours
 20 to sterilize the bowel. We'd gone to
 21 the operating room, we open the
 22 incision that she had had, freed up the
 23 colostomy, the end of the bowel here,
 24 and re-anastomosed or connected to the
 25 remaining lower bowel.

1 Q. And how is it connected to the
 2 remaining lower bowel?
 3 A. It can be done very --- various
 4 technical methods. In her case we used
 5 a --- I used a stapling device.
 6 Although sometimes I hand sew these
 7 together.
 8 Q. So I'm assuming the entire
 9 hospitalization of September 12 to the
 10 16th of 2006 is as a result of the fact
 11 that she had a bowel perforation?
 12 A. That's correct.
 13 Q. And then did you follow her
 14 after the reversal surgery?
 15 A. I saw her --- following her
 16 discharge, she returned to my office on
 17 September 22nd, 2006 for post-op
 18 checkup.
 19 Q. So that's about ---.
 20 A. Ten days.
 21 Q. Ten days later. And how was she
 22 doing?
 23 A. Doing very well.
 24 Q. Did she express any concerns to
 25 you about anything involving the

1 A. Absolutely.
 2 Q. Okay. What would they be?
 3 A. Heavy lifting, strenuous
 4 exercise, overexertion physically until
 5 I was satisfied with the healing.
 6 Q. What about in terms of what she
 7 could eat or not eat?
 8 A. I had no diet restriction on her
 9 after she left the hospital from the
 10 first procedure.
 11 Q. Okay. So it was just a
 12 situation of trying to have her limit
 13 any pulling or tugging or tearing from
 14 lifting on that area?
 15 A. That's correct.
 16 Q. Were there any limitations
 17 placed upon her after the reversal
 18 surgery until you saw her let's say
 19 four to six weeks later?
 20 A. Same restrictions physically.
 21 Dietary, once I re-anastomosed that, my
 22 routine is to generally have a low kind
 23 of --- what we call a low residue diet
 24 for several weeks after the reversal.
 25 And at that point, I had no diet

1 colostomy at that time or the reversal?
 2 A. The reversal, no. There was no
 3 more colostomy.
 4 Q. I didn't know if she had
 5 mentioned anything about either how she
 6 was handling the fact that she had
 7 emotionally or mentally at that point?
 8 A. Not to me specifically.
 9 Q. After that visit did you see her
 10 again?
 11 A. Yes, I did.
 12 Q. And what would be the purpose in
 13 seeing her again after ten days?
 14 A. Again, at least one more visit
 15 would be necessary in a four to six-
 16 week period, and that is the time when
 17 I would release people to full
 18 functional activities.
 19 Q. That was going to be my next
 20 question. Was she under any
 21 restrictions between when she left the
 22 hospital after the colostomy and when
 23 she came back for the reversal surgery?
 24 Were there any limitations placed on
 25 her by you?

1 restrictions.
 2 Q. Did she come back in the four to
 3 five, six-week time frame?
 4 A. Yes, she did.
 5 Q. And how is she doing?
 6 A. Feels well, normal bowel
 7 movements, eating well, abdomen soft,
 8 benign, and wanted to resume full
 9 activities and return to work.
 10 Q. Okay. And did you at that time
 11 release her with no restrictions?
 12 A. Yeah, I do have a copy of a
 13 release to work somewhere. But shortly
 14 thereafter, I did release her to full
 15 unrestricted activity.
 16 Q. Okay. Approximately what time
 17 frame was that date-wise? Are we in
 18 October?
 19 A. Yeah. I think I might have a
 20 copy of it somewhere. It would have
 21 been six to eight weeks following that
 22 surgery, but I'm not sure the exact
 23 date. I know I have it here somewhere.
 24 Returned to work --- this was a --- I
 25 don't know if you have a copy of that.

1 I think I probably gave it to you, but
 2 it was dated 10/9/06.
 3 Q. Okay. October 9th of 2006,
 4 return to work.
 5 A. That's correct.
 6 Q. Without any limitations?
 7 A. That's correct.
 8 Q. Have you seen Kim since that
 9 time?
 10 A. No, I have not.
 11 Q. Have you spoken to her since
 12 that time?
 13 A. No, I have not.
 14 Q. From the time of your original
 15 surgery, creating the colostomy, until
 16 today, have you had discussions with
 17 Dr. Tagala about what happened to Kim
 18 during his procedure?
 19 A. No, I have not.
 20 Q. Have you talked to him about the
 21 lawsuit during that time frame?
 22 A. No, I have not.
 23 Q. Have you --- during that same
 24 time frame, have you talked with anyone
 25 from Kim's family ---

1 A. No, I have not.
 2 Q. --- about Dr. Tagala or any of
 3 the issues pertinent to this case?
 4 A. No, I have not.
 5 Q. Have you discussed this case and
 6 what happened to Kim with any hospital
 7 personnel?
 8 A. No, I have not.
 9 Q. Did you discuss this case with
 10 the hospital attorney, the in-house
 11 hospital attorney?
 12 A. Not specifically the case other
 13 than to ask for a copy of the chart.
 14 Q. I believe on the floor next to
 15 you is the Clearfield Hospital chart;
 16 correct?
 17 A. That's correct.
 18 Q. And then the other part of your
 19 office records?
 20 A. That's correct.
 21 Q. I don't think I have any other
 22 questions for you, but I'd like to look
 23 through just your portion of the
 24 records that you have just to make sure
 25 I have everything. And at this point,

1 I'll turn you over to the other
 2 attorneys because they may have some
 3 questions for you.
 4 ATTORNEY HARTYE:
 5 This is Frank Hartye. I
 6 don't have any questions for the
 7 Doctor. Thank you.
 8 CROSS EXAMINATION
 9 BY ATTORNEY BLASKO:
 10 Q. Doctor, rather then hold you up,
 11 I'll just go ahead and ask a few
 12 questions, if I may. As I indicated,
 13 I'm John Blasko, I represent Dr.
 14 Tagala. And you had indicated that an
 15 explicit finding of peritonitis, I
 16 believe, is that a true guarding and
 17 ridging, I guess the type of guarding;
 18 is that correct?
 19 A. That's correct.
 20 Q. I have the hospital records
 21 here, too. Do you have the hospital
 22 records --- I have mine numbered, maybe
 23 I can ask you a couple questions about
 24 it.
 25 ATTORNEY BLASKO:

1 I'll just mark this as a
 2 medical --- this would be
 3 Exhibit Number Two. Yes. What
 4 is it, do you know?
 5 (Deposition Exhibit
 6 Number Two marked for
 7 identification.)
 8 ATTORNEY LOMUPO:
 9 The whole chart.
 10 ATTORNEY BLASKO:
 11 Yeah. I don't know what
 12 you were referring to, I don't
 13 have your numbers. I just want
 14 to make sure we have the same
 15 ---.
 16 BY ATTORNEY BLASKO:
 17 Q. Doctor, I'll show you Exhibit
 18 Number Two, which is the critical
 19 chart, which I have an index on.
 20 A. Okay.
 21 Q. It's on the right-hand bottom
 22 corner, and I have on here numbers so I
 23 can refer you to pages.
 24 A. Okay.
 25 Q. Doctor, on page four of the

1 chart there's a part of the exam by, I
 2 believe it was Dr. Edwards, the
 3 emergency room physician. James C.
 4 Edwards. Do you see that?
 5 A. Yes, I do.
 6 Q. Is Dr. Edwards still at the
 7 hospital, do you know?
 8 A. Yes, he is.
 9 Q. Okay. Under gastrointestinal he
 10 has abdominal exam, auscultation of
 11 bowel sounds, hypoactive bowel sounds
 12 heard in all four quadrants. Palpation
 13 of abdomen, pain in --- guarding in
 14 suprapubic area, complains of abdominal
 15 pain. Pain index ten, frowning,
 16 moaning, guarding and holding the
 17 painful area. Onset frequency,
 18 duration symptoms began spontaneously
 19 2:00 a.m. Symptoms are constant, sharp
 20 and increase with movement. Severity,
 21 quality, location, there is sharp pain
 22 located suprapubic area. Would this be
 23 the description which you indicated
 24 that there had to be true guarding or
 25 rigid to be an exclusive finding of

1 infection in the surgical avenue.
 2 A. His description is not that of a
 3 surgical avenue.
 4 Q. Okay. Doctor, over on page 19,
 5 that's Dr. Tagala's history and
 6 physical, and the date is 6/30/2006.
 7 Under abdomen he has there is
 8 tenderness on all quadrants of the
 9 abdomen on palpation, there is no
 10 masses, guarding or rigidity, bowel
 11 sounds present and hypoactive. Would
 12 that be one of the specific findings of
 13 peritonitis?
 14 A. His description is not that of
 15 peritonitis.
 16 ATTORNEY LOMUPO:
 17 What page were you
 18 looking ---?
 19 ATTORNEY BLASKO:
 20 Nineteen (19).
 21 ATTORNEY LOMUPO:
 22 What is it?
 23 A. History and physical.
 24 ATTORNEY BLASKO:
 25 It's Dr. Tagala's history

1 peritonitis?
 2 A. His descriptions are consistent
 3 with peritonitis.
 4 Q. And on page ---.
 5 A. But I do caution that non-
 6 surgeons don't interpret --- or in my
 7 opinion, they're using the word
 8 guarding as not always as specific as
 9 the surgeon is. But to answer your
 10 question, that would be a sign that
 11 there is a problem there.
 12 Q. What about on page eight? Under
 13 abdomen he has normal bowel sounds,
 14 which abnormal bowel sounds occur with
 15 peritonitis?
 16 A. No, you would not.
 17 Q. Diffusely distended, would that
 18 be an explicit finding?
 19 A. Can be, not exclusive, but ---.
 20 Q. Soft and tender diffusely,
 21 greatest in the lower quadrants with no
 22 rebound. Is that important?
 23 A. That is a sign --- important for
 24 what?
 25 Q. To establish peritonitis or

1 and physical.
 2 BY ATTORNEY BLASKO:
 3 Q. Doctor, on page 46 I have your
 4 typed note and consult.
 5 A. I have it.
 6 Q. You have it. And in the brief
 7 history you have, in the third sentence
 8 I think, yeah, third sentence she had
 9 been seen in the ER --- I'm sorry,
 10 that's --- she apparently --- I'm
 11 sorry. Second sentence, she apparently
 12 had done initially well from the
 13 surgery, had gone home the same day of
 14 surgery, however, returns within 24
 15 hours of increasing pain and nausea.
 16 Has been seen in the ER, a CT scan done
 17 approximately 24 hours shows free air,
 18 consistent with her recent laparoscopy.
 19 No obvious abscesses or pelvic
 20 pathology was noted. That last
 21 sentence, was that the result of your
 22 interpretation of the records or was
 23 that the result of the report prepared
 24 by Dr. Coren in his ---?
 25 A. Both.

1 Q. You actually looked at the
2 films?
3 A. Yes, I did.
4 Q. And when you say no obvious
5 abscesses, what did you mean by pelvic
6 pathology?
7 A. Pelvic collection, free air ---
8 free air is not going to be seen there,
9 that'd be in the upper abdomen, gravity
10 takes it out.
11 Q. Okay.
12 A. In the pelvis I'm looking for
13 fluid collections, blood collections,
14 mass affects, something obvious that
15 was going on down there.
16 Q. Okay. On your interpretation
17 you would see that on the films?
18 A. That's correct.
19 Q. And I believe the records
20 indicate the films were taken shortly
21 after she was admitted on page 48,
22 Doctor, if that would help you.
23 A. Probably done in the emergency
24 room through the emergency room. Yes,
25 I would say you're right.

1 then there was adjacent cauterity effect
2 on the omentum or near the bowel?
3 ATTORNEY LOMUPO:
4 I object to the form of
5 the question.
6 ATTORNEY HARTYE:
7 Object to the form of the
8 question.
9 ATTORNEY LOMUPO:
10 That was just a type of
11 legal --- you can answer it.
12 BY ATTORNEY BLASKO:
13 Q. Is the omentum a covering of the
14 bowel, is that the idea?
15 A. No.
16 Q. No? Okay.
17 A. The omentum is a particular
18 fatty organ that drapes over our
19 abdominal contents. It arises from our
20 stomach and what we call the transverse
21 colon. Omentum is --- technically
22 means fatty apron in Latin. That
23 drapes down, it sticks to other tissue,
24 and it could well have been stuck or
25 adjacent to the colon. We also have

1 Q. And they were completed with
2 contrast and without contrast, the
3 pelvis and the abdomen; is that
4 correct?
5 A. Reading his note, that is what
6 transpired.
7 Q. We can't interpret, but Doctor,
8 did you indicate that you also --- you
9 viewed the records from Dr. Tagala's
10 operative laparoscopic procedure on
11 June 29th, 2006 also?
12 A. That's correct.
13 Q. I have you --- I represent he
14 --- in his operative report and history
15 and findings he states that during the
16 surgery there were --- pelvic adhesions
17 in initially the left ovary is not
18 visible, the right ovary shows multiple
19 lysis of adhesions, her left ovary is
20 removed, it became adherent to the
21 pelvic wall covered by the omentum and
22 the retrosigmoid area.
23 Doctor, is that the area where
24 you were talking about that he had
25 cauterity effect on the left ovary and

1 many fat pads that arise and come
2 directly off the bowel, they're called
3 epiploicae, which are, again, fatty
4 nodules, pads that are normal
5 appearance --- are normally on our
6 bowel.
7 Q. In this particular case do you
8 recall what you just described as the
9 omentum fatty tissue at or near or over
10 the bowel?
11 A. At my surgery?
12 Q. Yes.
13 A. There was omentum there and
14 these --- of course we all have
15 epiploic fat, which looks the same.
16 Q. Was there any of this cauterity
17 effect on that --- on the omentum that
18 you recall seeing?
19 A. There was cauterity effect in the
20 fatty tissue in that area. That is
21 correct.
22 Q. Was there any of the fatty
23 tissue or omentum over the area of
24 which there was a perforation?
25 A. It was adjacent to that. That's

1 correct.
 2 Q. The perforation was adjacent to
 3 it, is that what you're saying?
 4 A. Yes. The area of perforation
 5 had fatty tissue around it.
 6 Q. Oh, okay.
 7 A. Whether it's an epiploica or an
 8 omentum.
 9 Q. Okay. When you look for the
 10 perforation during your procedure, do
 11 you literally lift the bowel out of the
 12 belly and then take a look at it, is
 13 that how you do it?
 14 A. This portion of the bowel is not
 15 liftable as it goes into the pelvis, so
 16 we expose it, separate other organs
 17 away from that area and then look at
 18 that area.
 19 Q. In your operative report I think
 20 you stated that you have over-sewn the
 21 perforation with a 3-0 Vicryl ---.
 22 A. Vicryl (corrects pronunciation).
 23 Q. Vicryl suture. Does that mean
 24 there's just one suture?
 25 A. There may have been --- probably

1 Q. Would I be correct also, Doctor,
 2 in making your recommendation --- well,
 3 let's strike that.
 4 You had not made a
 5 recommendation to Ms. Podliski or Acey
 6 to go through a procedure unless there
 7 were the clinical peritoneal signs
 8 establishing that there was a surgical
 9 abdominal --- abdominal; is that
 10 correct? In other words, you wouldn't
 11 make a recommendation by signs and
 12 symptoms of peritoneal involvement?
 13 A. That's correct.
 14 Q. Doctor, on page 47 of the
 15 records I provided you is the pathology
 16 report. Have you reviewed that
 17 pathology report before today?
 18 A. Yes, I have.
 19 Q. Do you agree with that report?
 20 A. I believe this report is
 21 consistent with my described operative
 22 findings.
 23 Q. Doctor, I'm going to your
 24 procedure of 9/12/06, September 12th,
 25 '06. In your discharge summary --- I

1 several sutures to temporarily close
 2 the leak so that I didn't have further
 3 contamination. Vicryl is a particular
 4 brand of a suture material.
 5 Q. And that supports then the ---
 6 then dissected or incised a section of
 7 the sigmoid colon and sent it to the
 8 pathology?
 9 A. That's correct.
 10 Q. Doctor, on page 21 is your
 11 report of your operative procedure.
 12 And under operative indications you
 13 have on the beginning of that third
 14 sentence there, she initially had done
 15 well, however, returned within 24 hours
 16 with increasing abdominal pain, nausea
 17 and vomiting. Over the course of the
 18 last 24 hours she has developed
 19 increasing pain, has developed diffuse
 20 peritoneal signs. Am I reading that
 21 correctly that those peritoneal signs,
 22 according to your statement here,
 23 developed over a 24-hour period prior
 24 to you seeing her?
 25 A. That interpretation is accurate.

1 don't know if you have that discharge
 2 summary, you indicated that she had
 3 successfully recovered from the sigmoid
 4 resection, which was your operation you
 5 performed on July 1, 2006?
 6 A. So you are referring to my
 7 discharge summary from the second
 8 procedure; is that correct?
 9 Q. Yes.
 10 A. Okay. I do have a copy of that
 11 somewhere. Okay.
 12 Q. Doctor, there in the first ---
 13 under history in the first paragraph of
 14 your discharge summary you indicate she
 15 made a successful recovery from this
 16 procedure, and we're talking about the
 17 procedure performed on July 1; is that
 18 correct?
 19 A. That's correct.
 20 Q. And by successful you mean there
 21 were no problems, is that --- can you
 22 tell me what you mean by successful?
 23 A. That she had recovered without
 24 complication and returned to basically
 25 normal health, or good health.

1 Q. And then in the second paragraph
 2 you indicate that her postoperative
 3 course while in the hospital on
 4 September 12 through 16, 2006 was
 5 generally benign, her bowel function
 6 returned; is that correct?
 7 A. That is correct.

8 Q. And moved spontaneously, she had
 9 full control of her bowel and was
 10 healed without evidence of infection?
 11 A. That is correct.

12 Q. And when she was discharged she
 13 was tolerating solid diet, had firm
 14 bowel movements, was afebrile, benign
 15 abdomen. That would indicate that your
 16 operation was successful, would you
 17 say?
 18 A. That's correct.

19 Q. Okay. And I think you already
 20 testified, but in your take down on
 21 September 5, 2006 you went through the
 22 same incision that you used in your
 23 laparotomy (sic) on July 1; is that
 24 correct?
 25 A. That's correct.

1 Q. Doctor, we have taken the
 2 deposition of Ms. Acey or Podliski, she
 3 indicated that she has this lump now in
 4 the incision. Have you ever seen that
 5 particular problem?
 6 A. No.

7 Q. Is that something that occurs?
 8 A. It can be various causes, a lump
 9 could be a hernia, a lump could be just
 10 that scar. So without examining her
 11 and not being aware of that, I can't
 12 answer that question.

13 Q. She described it as being
 14 protruding that you could even see it
 15 through her clothing and dresses, would
 16 that help you at all?
 17 A. I would have to examine her and
 18 see that.

19 Q. She had indicated in her
 20 deposition also that after you last saw
 21 her in October of 2006, sometime before
 22 Christmas of 2006, during that period
 23 of time, that she had called your
 24 office complaining of abdominal pain
 25 and she was advised well, you can

1 expect that. Do you have any record of
 2 that call?
 3 A. I do not have record or

4 knowledge of that. I do not have any
 5 personal record or knowledge of that.
 6 I don't know whether she talked to my
 7 staff, but I can --- if there was a
 8 problem, she would have been advised to
 9 come and see me.

10 Q. Doctor, would --- in your
 11 experience, the procedure performed on
 12 July 1, or the take down on September
 13 12th, 2006, could a person develop high
 14 blood pressure because of going through
 15 those procedures?

16 A. I would not anticipate somebody
 17 to have a chronic high blood pressure
 18 problem as a result of those procedures
 19 in a chronic nature.

20 Q. Doctor, at any time after the
 21 July 1, 2006 discharge or after the
 22 September 12, 2006 discharge, did Ms.
 23 Acey complain to you of any depression
 24 she might have had been undergoing?
 25 A. I don't specifically recall

1 depressive symptoms other than what I
 2 would call reactionary depression,
 3 which would be natural after going
 4 through these types of procedures. But
 5 I don't recall her describing any more
 6 than what I would anticipate for
 7 somebody going through what she went
 8 through.

9 Q. Well how would you just
 10 generally describe her as a patient
 11 after she had gone through two
 12 procedures that you performed?

13 A. I thought she was an excellent
 14 patient, strong, stoic, anxious to go
 15 back to work and get back to normal
 16 life. So I thought she was a very good
 17 patient in that regard.

18 Q. And I think, I don't know ---
 19 and I apologize if you did, but you saw
 20 her on October 20, 2006, you have an
 21 office note.

22 A. Yes, I do.

23 Q. Read that note into the record.

24 A. Nine and a half weeks post-op,
 25 follow up, colon closure colostomy.

1 Heals great, regular BM, eating well,
 2 abdomen soft and benign, incision
 3 clean, resume full activities, follow
 4 up with me p.r.n.
 5 Q. And p.r.n. means that ---?
 6 A. As needed.
 7 Q. She could follow up as needed;
 8 is that correct?
 9 A. That's correct.
 10 Q. Doctor, as a result of the
 11 removal of the colostomy, or the take
 12 down in September or even the procedure
 13 in July, is there a risk of the surgery
 14 that you could develop abdominal pain
 15 subsequently for say a year, two years?
 16 A. There's a risk for late post-op
 17 complications for the next 30 years.
 18 Q. And what would that be?
 19 A. Hernias, bowel obstructions
 20 would be the two common in late
 21 surgical --- not unique to this
 22 procedure, but two late complications
 23 of any abdominal surgery.
 24 Q. And can they be corrected?
 25 A. Yes.

1 Q. The hernia, is it a simple
 2 operation --- I wouldn't say simple, no
 3 operation is simple, but by an
 4 operation?
 5 A. That's correct.
 6 Q. And the same way with any
 7 strictures?
 8 A. If a bowel obstruction were to
 9 occur, yes, it's a correctable problem.
 10 ATTORNEY BLASKO:
 11 All right. That's all
 12 the questions I have.
 13 ATTORNEY LOMUPO:
 14 Okay.
 15 REDIRECT EXAMINATION
 16 BY ATTORNEY LOMUPO:
 17 Q. Conversely, a bowel obstruction
 18 can be a very significant event for a
 19 patient as well; correct?
 20 A. Absolutely.
 21 Q. If not caught timely and treated
 22 appropriately, ---
 23 A. Absolutely.
 24 Q. --- it can cause death?
 25 A. Absolutely.

1 Q. The lump or scar that Mr. Blasko
 2 asked you about, the lump or the dense
 3 scar I think he described it as, that
 4 happens from time to time with people?
 5 A. Assuming that's what it is, but
 6 I'm not aware of that. He's explained
 7 that she did not come back to see me
 8 and I'm not aware of what she is
 9 talking about.
 10 Q. I'm just asking, is that a
 11 phenomenon that can occur?
 12 A. Oh, absolutely.
 13 Q. Someone gets a dense scar and it
 14 feels like a lump to them at the area
 15 where the colostomy reversal was?
 16 A. Right. In her particular case,
 17 without seeing or examining her, she
 18 could have a hernia, she could have a
 19 dense scar or just simply a mild muscle
 20 bulging because of muscle weakness that
 21 the colostomy went through there. But
 22 there could be a number of different
 23 things causing that.
 24 Q. Okay. In the surgical pathology
 25 report, if you can get that in front of

1 the omentum or ---?
 2 A. Epiploica, yeah.
 3 Q. Epiploica, okay.
 4 A. I could bring you a chart if
 5 you'd like to see a picture, which I
 6 have, or a replica of the colon if
 7 you'd like to see ---.
 8 Q. Okay. Maybe we'll take a look
 9 at that when we're done. Then when he
 10 does --- you know, I guess his gross
 11 exam, he says, if I'm interpreting
 12 correctly, he sees dusky tan, brown to
 13 yellow material on the colon.
 14 ATTORNEY BLASKO:
 15 Where are you reading
 16 from? I'm sorry.
 17 A. Identified second sentence.
 18 ATTORNEY LOMUPO:
 19 Second sentence, yeah.
 20 ATTORNEY BLASKO:
 21 You're not reading it,
 22 you're paraphrasing is what
 23 you're doing.
 24 ATTORNEY LOMUPO:
 25 I'm trying to find out if

1 my understanding is correct.
 2 BY ATTORNEY LOMUPO:
 3 Q. And then it says, the remainder
 4 of the mucosal surfaces are pink-tan
 5 and thrown into irregular folds. As I
 6 am understanding what he is trying to
 7 convey, the colon itself is dusky tan,
 8 brown to yellow, which you told us is
 9 a cautery effect --- or the color that
 10 you would see with a cautery effect.
 11 And then the mucosal surfaces, which I
 12 understand to be either the omentum or
 13 the epiploica, is pink-tan?
 14 A. No.
 15 Q. Okay. Correct me then.
 16 A. Okay. The mucosal surface is
 17 the inner lining of the colon, called
 18 the mucosa. And that is normally a
 19 pink-tan or maybe brown color because
 20 that's where the bowel movement is
 21 coming from. So the mucosa is the
 22 inner lining.
 23 Q. Oh, that's the inside of the
 24 colon.
 25 A. That's inside the bowel.

1 Q. Okay. I understand.
 2 A. Now what they're identifying on
 3 the serosa, which is the outside, there
 4 at so many centimeters from one margin,
 5 a firm, dusky tan, brown-yellow area,
 6 that is the area of the necrosis or
 7 perforation.
 8 Q. Okay.
 9 A. The outside lining of the colon
 10 is light pink, a nice light pink,
 11 smooth pink. The folds in the inner
 12 lining, that is normal appearance of
 13 the mucosa. So the interpretation of
 14 this, it's basically a normal colon
 15 except at a site, which was the
 16 perforation.
 17 Q. And that's where this cautery
 18 effect is and the color change is?
 19 A. That's correct. It is a firm,
 20 dusky tan, brown-yellow --- that area.
 21 Q. That is part of the colon, the
 22 exterior of the colon?
 23 A. That was the outside serosal
 24 lining of the colon at the site of
 25 perforation.

1 Q. Okay. Different from the
 2 omentum and the epiploica?
 3 A. Absolutely.
 4 Q. Now, you were referred to your
 5 operative report, and I think you may
 6 have mentioned that signs of
 7 peritonitis appear 24 hours before,
 8 paraphrasing again.
 9 A. I would say that the peritonitis
 10 process was easily 24 to 48 hours prior
 11 to my surgery.
 12 Q. Okay. Your surgery was July
 13 1st?
 14 A. That's correct.
 15 Q. So the peritoneal signs were
 16 either ---?
 17 A. No, the peritoneal ---
 18 peritonitis evidence was beginning, I
 19 would say, at that point. Peritoneal
 20 science is a clinical diagnosis of a
 21 physical finding. That may be delayed
 22 from the development of the process.
 23 Q. Okay.
 24 A. It takes --- make sure that you
 25 understand what I'm talking about. You

1 could be leaking bowel content and have
 2 a belly ache but not develop
 3 peritonitis signs, which is a physical
 4 finding, for 12 to 24 hours.

5 Q. Okay.

6 A. But the process is ongoing in
 7 your abdomen. It would take that
 8 amount of time to then get a physical
 9 finding consistent with it. So when I
 10 say, you know, the perforation, when
 11 did it occur or whenever, my findings
 12 intraoperatively were consistent of at
 13 least 24 to 48 hours. Physical
 14 findings may not have been there 24, 48
 15 hours, but the process was going on.

16 Q. All right. The findings of the
 17 emergency room physician, the
 18 hypoactive bowel sounds, the pain on
 19 palpation and guarding in the
 20 suprapubic area, the complaints of
 21 abdominal pain to the pain index of
 22 ten, with her frowning, moaning,
 23 guarding and holding the painful area.

24 ATTORNEY BLASKO:
 25 I'm going to object to

1 hypoactive bowel sounds, pain on
 2 palpation, guarding, complaints of
 3 abdominal pain to the index of ten.
 4 Frowning, moaning, guarding, holding
 5 the painful area. Symptoms are
 6 constant and sharp and increase with
 7 movement. Is that consistent with
 8 peritonitis?

9 A. Those findings would be
 10 consistent with that. And again, if I
 11 could help clarify this, and I tried to
 12 emphasize that the terms that I use for
 13 guarding are things like that are
 14 specific to my specialty. How a nurse
 15 interprets that word, how an emergency
 16 room doctor interprets the word, or how
 17 somebody else, they may have their own
 18 concept. But when I use the word, it's
 19 a specific finding. I find that how
 20 medical professionals use that term is
 21 variable in their training and their
 22 experience and their exposure to the
 23 word. But when I use a word, that may
 24 mean something different than what they
 25 mean. It's a specific surgical entity

1 the form of the question because
 2 that was not the physician, that
 3 was a --- I think that's the
 4 nurse assistant. That's the
 5 nurse assistant I believe, page
 6 four. The Doctor's begin on
 7 page eight.

8 ATTORNEY LOMUPO:

9 Okay. Well, your
 10 objection is noted. That
 11 description I read to you ---.

12 ATTORNEY BLASKO:

13 But it wasn't that ---

14 you said a doctor --- that was
 15 the Doctor's. That was not the
 16 Doctor's findings.

17 ATTORNEY LOMUPO:

18 Okay. I'm talking about
 19 the findings now.

20 ATTORNEY BLASKO:

21 The nurse's findings.

22 ATTORNEY LOMUPO:

23 The nurse's findings.

24 BY ATTORNEY LOMUPO:

25 Q. Of what I just read, the

1 as I described to you with the
 2 involuntary muscular actions. And then
 3 also to your point, these charts are
 4 difficult to read 'cause one is a
 5 nursing assessment and the other one is
 6 the physician assessment.

7 Q. But at least the nursing
 8 assessment as of June 30th, in the
 9 early afternoon, is consistent with
 10 peritonitis?

11 A. From my definition of those
 12 terms, it would be certainly a
 13 consideration, yes.

14 Q. And there was some discussion
 15 with Mr. Blasko about the CT exam. If
 16 I'm interpreting what I've heard from
 17 you today appropriately, you find this
 18 to be more of a clinical diagnosis than
 19 one that is, you know, definitive by CT
 20 scan?

21 A. Absolutely.

22 Q. Okay.

23 A. This is a clinical diagnosis.

24 Q. So you have to do an exam and
 25 you put it into the context of what has

1 happened before in terms of a procedure
 2 on the patient?
 3 A. Absolutely. The patient who
 4 presented de novo in the emergency room
 5 with the CAT scan with free air and
 6 abdominal pain, that has a total
 7 different significance to me than
 8 somebody who's 48 hours from a
 9 laparoscopic procedure with free air.
 10 So you have to --- it's one piece of
 11 information of the total process you go
 12 through to evaluate somebody with an
 13 acute abdomen.

14 Q. And part of the information that
 15 you use is that, in fact, there was a
 16 previous surgical procedure, cautery
 17 was used; it was in and around the area
 18 of the bowel. You have to factor those
 19 issues in as well, correct, in making
 20 your diagnosis?

21 A. That's correct.

22 ATTORNEY LOMUPO:
 23 I don't think I have any
 24 other questions for him. That's
 25 it.

1 basically means intra-abdominal
 2 infection, whether it be appendicitis,
 3 again, you have pain, whether it's a
 4 diverticulitis or whether it's a
 5 perforation of the bowel, or whatever
 6 the cause may be. But there can be
 7 leaking --- the process may be
 8 initiated, the leak in the bowel, from
 9 whatever cause that can develop at a
 10 certain time. Pain may be present but
 11 the findings that I found on a physical
 12 examination at which point a patient is
 13 developing spreading internal infection
 14 --- I mean, we use the word
 15 peritonitis, or peritoneal signs, that
 16 can take 12 to 24 hours to have
 17 developed.

18 Appendicitis, for instance, you
 19 get abdominal pain, you get pain, it
 20 hurts kind of lower. In 24 hours, for
 21 most people, it will be localized and
 22 develop peritoneal signs with guarding.
 23 That's where the surgeon's word is very
 24 important. May be in this
 25 circumstance. If you want my opinion

1 ATTORNEY BLASKO:
 2 Okay. I just want to
 3 ---.

4 RECROSS EXAMINATION
 5 BY ATTORNEY BLASKO:

6 Q. So as I understand your
 7 testimony, Doctor, here, that you can
 8 have a process going on say for 24 or
 9 48 hours, but you as a surgeon, you
 10 have to make a clinical judgment on
 11 peritoneal signs that occur at the time
 12 of your exam --- or what you see at the
 13 time of the exam; is that correct? The
 14 process doesn't necessarily mean that
 15 you have peritoneal signs and symptoms;
 16 is that correct?

17 A. I'm not sure.

18 Q. Can you explain that to me?

19 A. I want to make sure that you
 20 understand.

21 Q. Would you, please?

22 A. Okay. What I was describing was
 23 that you can have a source of
 24 peritonitis, a cause for peritonitis
 25 that is developing or developed. That

1 --- if you want my opinion on what was
 2 going on, I think she perforated five
 3 hours before --- I mean freely leaked
 4 five hours before she came to the
 5 emergency room, by her own admission,
 6 her history, the records, the timing,
 7 everything I see.

8 But it would not be surprising
 9 to me --- that might have been 0200 on
 10 whatever day that was, 6:30, whatever
 11 it was. But it would not be ---
 12 especially were it's surprising, that
 13 the physical findings were not present
 14 for 12 to 24 more hours. When I'm
 15 seeing the patient now, that is
 16 probably 36 hours --- or maybe from
 17 when her pain suddenly increased. At
 18 that point things are quite obvious to
 19 me --- she had obvious signs to a
 20 surgeon, and that is my specialty, to
 21 evaluate acute abdomen. At that point
 22 it was obvious to me they were
 23 peritoneal signs. But it takes that
 24 amount of time to develop.

25 ATTORNEY BLASKO:

1 No questions.
 2 ATTORNEY LOMUPO:
 3 You have none?
 4 REDIRECT EXAMINATION
 5 BY ATTORNEY LOMUPO:
 6 Q. As I understand your function as
 7 a general surgeon, when you're called
 8 in to a case like this, I'm assuming a
 9 history is important to you, history
 10 from the patient, history in this
 11 particular case from previous ---.
 12 ATTORNEY BLASKO:
 13 I object. It's already
 14 been asked and answered. He
 15 said he looked at the prior
 16 records and ---.
 17 BY ATTORNEY LOMUPO:
 18 Q. Correct?
 19 A. Absolutely.
 20 Q. And you're trying to find
 21 initially what is the cause of this
 22 woman's abdominal pain; correct?
 23 A. That's correct.
 24 Q. Would I be correct that the
 25 thing that would rise to, you know,

1 anyway ---.
 2 BY ATTORNEY LOMUPO:
 3 Q. But when you got in there you
 4 found that there was electrocautery at
 5 the perforation site?
 6 A. I expected that --- what was the
 7 cause.
 8 Q. So you put the history together
 9 with the findings and you say okay,
 10 something was going on in and around
 11 the bowel, she's got signs that could
 12 be consistent with a bowel perforation.
 13 I know that that's a surgical
 14 emergency, go to the OR, that's your
 15 logical progression of thought?
 16 A. Exactly my thoughts and what I
 17 did.
 18 ATTORNEY LOMUPO:
 19 Okay. No other
 20 questions.
 21 RECROSS EXAMINATION
 22 BY ATTORNEY BLASKO:
 23 Q. You had mentioned, Doctor, in
 24 regards to whether there was cautery or
 25 what have you on the laparoscopic

1 utmost before you or to you immediately
 2 is she's had a prior procedure in the
 3 abdomen, in and around the bowel, and
 4 electrocautery was used. And her signs
 5 and symptoms are --- since they're
 6 diffuse, are consistent with an acute
 7 abdomen or bowel perforation?
 8 ATTORNEY BLASKO:
 9 What time?
 10 ATTORNEY LOMUPO:
 11 As soon as you see her.
 12 ATTORNEY BLASKO:
 13 You mean on the 1st at
 14 10:30 or ---?
 15 ATTORNEY LOMUPO:
 16 As soon as he sees her,
 17 yeah, July 1st.
 18 A. That's correct. I may add to
 19 that though, whether there was cautery
 20 used or not, that's immaterial to what
 21 my decision making was at that time, so
 22 yes, the causative effect may have been
 23 an electrical thing. This same process
 24 can happen whether you use an
 25 electrical instrument or not. But

1 procedure and you say you performed
 2 laparoscopic procedure, not OB/GYN?
 3 A. That's correct.
 4 Q. And one of the risks of the
 5 procedure is an injury to adjacent
 6 organs?
 7 ATTORNEY LOMUPO:
 8 I object. Objection.
 9 It's calling for expert opinion
 10 and is regarding the technique
 11 and the procedures done by an
 12 OB/GYN.
 13 BY ATTORNEY BLASKO:
 14 Q. Is a risk of a laparoscopic
 15 procedure an injury to adjacent organs?
 16 A. I am not the judge, but I hear
 17 you. Let me answer my questions. I do
 18 laparoscopic surgery. I do diagnostic
 19 laparoscopic surgery. I do liver
 20 biopsy surgery. I do laparoscopic
 21 gallbladder surgery. Regardless of the
 22 type of procedure or what you're doing
 23 laparoscopically, the procedure itself
 24 runs risk of perforation from whether
 25 it's cautery, needle, Tokar (phonetic)

1 injections or whatever the mechanism.
 2 And as an aside, whether you want to
 3 throw this in your testimony or not,
 4 you just look at the John Murtha
 5 circumstances. That was probably an
 6 electrocautery injury, from what I
 7 understand, the --- from the lay press
 8 from having a laparoscopic gallbladder.
 9 Unfortunately, they didn't recognize it
 10 or treat it appropriately and had an
 11 untoward result. But that was, again,
 12 a complication of the laparoscopic
 13 procedure. But those problems are not
 14 unique necessarily to laparoscopic
 15 procedures. Injuries can occur when
 16 you have an open procedure, which is
 17 any surgery carries risk.

18 ATTORNEY BLASKO:

19 Thank you very much,

20 Doctor.

21 ATTORNEY LOMUPO:

22 I well --- unfortunately,

23 I have one more question, Doc.

24 REDIRECT EXAMINATIO

25 BY ATTORNEY LOMUPO:

1 He is not the judge is
 2 right.
 3 BY ATTORNEY LOMUPO:
 4 Q. Well, it can be caused by a
 5 bowel perforation during the
 6 laparoscopic procedure, can be caused
 7 by operator error; correct?

8 ATTORNEY BLASKO:

9 By the way, I object
 10 further. We only came here to
 11 take his testimony.

12 ATTORNEY LOMUPO:

13 Well, I didn't start
 14 this, John, you did. I didn't
 15 start this, John, you did.

16 ATTORNEY BLASKO:

17 But he doesn't have to
 18 give an expert opinion either.

19 ATTORNEY LOMUPO:

20 Well, you elicited it, so
 21 now I'm going to explore iy.

22 ATTORNEY BLASKO:

23 I didn't elicit it.

24 ATTORNEY LOMUPO:

25 You sure did, but the

1 Q. A perforation, although it may
 2 --- you've never done the type of
 3 surgery that Dr. Tagala did on Kim;
 4 correct?

5 A. I have not done it as an
 6 independent general surgeon in
 7 practice, although my formal training
 8 incorporated formal gynecologic
 9 training at my training center. So
 10 have I done that type of surgery? Yes.

11 Q. Okay.

12 A. But do I do it in my practice
 13 now? No.

14 Q. And there are ways of
 15 eliminating or reducing risk, correct,
 16 in any laparoscopic procedure?

17 A. That's the purpose of training.

18 Q. And perforations can be caused
 19 by electrocautery devices by
 20 negligence; correct?

21 ATTORNEY BLASKO:

22 I object to that. That's
 23 a legal conclusion.

24 A. I'm not the judge.

25 ATTORNEY BLASKO:

1 transcript will speak for
 2 itself.

3 BY ATTORNEY LOMUPO:

4 Q. Can it be caused by operator
 5 error?

6 A. Absolutely. Can I give you a
 7 scenario of my --- do you want my
 8 expert opinion of the scenario?

9 Q. Sure.

10 A. I read in --- you do or you
 11 don't, I don't care. If you want the
 12 truth, that's what I'm sworn to do. So
 13 you can handle it or ---. You can't
 14 handle the truth. Where have I heard
 15 that?

16 I read in detail Dr. Tagala's
 17 note, and I looked at his pictures. No
 18 surgeon, and I have --- you didn't ask
 19 how long have I known Dr. Tagala, 26,
 20 27 years or whatever that is. No
 21 surgeon would intentionally cauterize a
 22 visualized bowel. Seeing what I saw at
 23 the time of surgery, reading his notes,
 24 seeing his picture, I suspect that
 25 there was a --- at least an

1 interpretation that there was a buffer
 2 zone between that adherent ovary and
 3 the tube and the colon with this fatty
 4 tissue. Whether you want to call it an
 5 omentum or an epiploica.
 6 Unfortunately, tissue is an electrical
 7 conduit, so that buffer may not have
 8 been as much as what was expected, and
 9 the electrical current and energy is
 10 transmitted. And if it was closer than
 11 what was anticipated, even though you
 12 may not visualize the colon, that
 13 energy was transmitted and resulted in
 14 eventually tissue injury.
 15 So you know, was there a cause
 16 and effect? Yes. But was it something
 17 directly visualized? Probably not.
 18 Not in my findings. As I said, there
 19 was this fatty tissue, and I said you
 20 could look at the model just to get
 21 your own --- have a better
 22 understanding of what I'm talking
 23 about. But that would be my
 24 interpretation. When did that occur,
 25 the thermal injury like a burn, you got

1 Q. So the electrocautery touches
 2 the omentum or the epiploica; correct?
 3 A. (Indicates yes).
 4 Q. It could also have touched the
 5 bowel itself; correct?
 6 A. It could be --- thermal energy
 7 could have been transmitted from that
 8 point to the bowel. That's correct.
 9 Q. It could have been transmitted
 10 through the omentum or the epiploica to
 11 the bowel. That's one scenario;
 12 correct?
 13 A. That is correct.
 14 Q. Another scenario is it could
 15 have been a direct touch between the
 16 electrocautery device and the bowel?
 17 A. That is a potential.
 18 Q. All right. You can't rule that
 19 out?
 20 A. No, I wasn't there.
 21 Q. So either one of those could
 22 happen; correct?
 23 A. That's possible.
 24 Q. Touching the bowel with the
 25 electrocautery device is operator

1 a blister, like a second degree burn.
 2 That blister may not break for 48
 3 hours. I think in this case there may
 4 have been injury, did not leak. I'm
 5 interpreting the record five hours
 6 before she came to the ER. The patient
 7 was very explicit, they are often very
 8 explicit. The patients are very
 9 accurate in that regard. At 2:00 in
 10 the morning I was awakened. I would
 11 read that as when it probably did leak.
 12 And then as I gave a lengthy
 13 explanation of the things that
 14 transpire, time takes --- it takes time
 15 to develop these clinical findings that
 16 we find. And then by the time I was
 17 seeing the patient, things were quite
 18 obvious.
 19 Q. I don't understand what you mean
 20 by --. Following up on what you just
 21 said, I'm assuming with the laparoscope
 22 the area that the electrocautery
 23 touches is under the visualization of
 24 the operator; correct?
 25 A. That's correct.

1 error, correct, in this type of a
 2 surgery because it's not intended to
 3 touch --- he wasn't working to do
 4 anything with the bowel; correct?
 5 A. Again, yes, it could be an
 6 operator error and --- which would be
 7 unlikely in normal anatomy. And the
 8 likelihood of a problem like that
 9 increases with pathology. And so if
 10 you want to address this particular
 11 case, as I said, her pathology was a
 12 tube and ovary adhesions, and they were
 13 adhered on to the bowel. And so these
 14 types of problems would be considered
 15 increased in frequency, depending on
 16 the degree of pathology that you were
 17 there for in the first place.
 18 Q. As I'm understanding the
 19 procedure, you're trying to lyse the
 20 adhesions close to the tube and the
 21 ovary; correct? That's where you want
 22 to make your disconnect?
 23 ATTORNEY BLASKO:
 24 I object to that because
 25 he says he doesn't do OB/GYN.

1 BY ATTORNEY LOMUPO:

2 Q. Well, you don't want to cut the
3 adhesion right at the bowel line, do
4 you? You want to cut it at the area of
5 the ovary and tube; correct?

6 A. I'll address this in a general
7 term that when I do laparoscopic
8 surgery I fully want to use an
9 electrical --- any dissecting
10 instrument, electrical, non-electrical,
11 sharp or whatever on the object that I
12 want to use it on.

13 Q. In this case it's tube and
14 ovary?

15 A. In that case it would have been
16 the tube and ovary.

17 Q. Not the bowel?

18 A. That is correct.

19 ATTORNEY LOMUPO:

20 All right. I'm going to
21 mark that as Exhibit One. No
22 other questions.

23 ATTORNEY BLASKO:

24 Are you going to advise
25 him ---? The Doctor has a right

1 you want, or you can rely on her
2 accuracy and let the record
3 stand as it is.

4 A. What was Dr. Tagala's response
5 to that?

6 ATTORNEY LOMUPO:

7 Well, his attorney said
8 he wanted to review it.
9 A. Then I'd like to read it --- I
10 was never advised by anybody that I
11 should have had an attorney represent
12 me here today. Was that something that
13 should have been done or advised?

14 ATTORNEY BLASKO:

15 He's the one that set it
16 up.

17 ATTORNEY LOMUPO:

18 I'm only required to send
19 you a subpoena because I wanted
20 information from you. I guess
21 the responsibility to do that
22 would have been with Counsel for
23 the hospital, in-house counsel
24 for the hospital, since you went
25 to him.

1 to ---.

2 ATTORNEY LOMUPO:

3 I didn't know if Frank
4 was going to do that or not.

5 ATTORNEY HARTYE:

6 Me? No.

7 ATTORNEY LOMUPO:

8 Well, then I guess not.

9 You mentioned hospital attorney,
10 I guess it was the other one.
11 You have the right to review
12 this transcript after the court
13 reporter types it out to make
14 sure that you completely
15 understood the question, and the
16 answer that you gave is
17 responsive to that question. Or
18 you can waive that right and
19 rely on the court reporter's
20 typical accuracy in taking
21 depositions.

22 It's totally your choice
23 whether you want her to send it
24 to you so that you could look it
25 over and make any changes that

1 ATTORNEY BLASKO:

2 Are we still on the
3 record? Well, let's go off
4 record.

5 A. Well, I don't know, maybe we
6 shouldn't. Would you --- I mean, I
7 haven't been advised to have an
8 attorney present.

9 ATTORNEY BLASKO:

10 I think this should be on
11 the record because he ---.

12 A. They should have told me --- if
13 that's the advice, then I definitely
14 want to review this record with my
15 attorney. I was not advised of this.

16 ATTORNEY LOMUPO:

17 You're testifying as to
18 the facts and what you know and
19 what you did.

20 A. That's right.

21 ATTORNEY LOMUPO:

22 So do you need an
23 attorney? I don't know. That's
24 a question for ---.

25 A. You're the attorney.

1 ATTORNEY LOMUPO:
 2 Not every witness and
 3 every case has an attorney.
 4 ATTORNEY HARTYE:
 5 Yeah. From what you've
 6 said, Doctor, it sounds as
 7 though you would like to review
 8 the transcript to make sure that
 9 everything is accurate.
 10 A. That is correct. I'm asking
 11 you, should I have been advised to have
 12 an attorney ---
 13 ATTORNEY HARTYE:
 14 For this proceeding
 15 earlier?
 16 A. --- for this proceeding?
 17 ATTORNEY HARTYE:
 18 I can only tell you what
 19 generally happens. Generally if
 20 we have what I thought this was,
 21 as a treating physician
 22 deposition, most of the time the
 23 physicians are not represented
 24 by an attorney at the
 25 proceeding. When it turns into

1 in Workmen's Comp.
 2 ATTORNEY HARTYE:
 3 Really? Okay. All
 4 right. Well, then it varies.
 5 ATTORNEY BLASKO:
 6 It's a carrier's.
 7 requirement they just do that.
 8 ATTORNEY HARTYE:
 9 It varies. I mean I ---.
 10 ATTORNEY BLASKO:
 11 And then you have to
 12 write a report.
 13 ATTORNEY LOMUPO:
 14 None of your conduct is
 15 in question. That was not the
 16 purpose of what happened today.
 17 A. Right.
 18 ATTORNEY LOMUPO;
 19 Which is another reason
 20 why, you know, probably an
 21 attorney was not necessary.
 22 ATTORNEY BLASKO:
 23 Who is the counsel for
 24 the hospital, Doctor?
 25 A. John Stein is, although not

1 --- towards the end was getting
 2 opinions from you, those
 3 opinions you could have either
 4 --- you give an opinion or you
 5 could say I choose not to give
 6 an opinion. Once you get into
 7 that area then sometimes you
 8 have an attorney to advise you
 9 on those types of things. Let's
 10 put it that way. Would you guys
 11 agree that normally if you're
 12 just doing a treating physician,
 13 that they're not represented by
 14 counsel normally?
 15 ATTORNEY LOMUPO:
 16 True.
 17 ATTORNEY BLASKO:
 18 Well, I represent PMSLIC,
 19 which is --- and any time the
 20 physician is noticed for a
 21 deposition, they always ---
 22 ATTORNEY HARTYE:
 23 Auto accident.
 24 ATTORNEY BLASKO:
 25 --- appoint counsel, even

1 technically counsel, ---
 2 ATTORNEY BLASKO:
 3 An attorney.
 4 A. --- he is an attorney that does
 5 work in the administrative office and
 6 does provide some ---.
 7 ATTORNEY BLASKO:
 8 Is he an employee of the
 9 hospital?
 10 ATTORNEY HARTYE:
 11 Yes.
 12 A. He's a risk manager. He does
 13 lots of things at the hospital.
 14 ATTORNEY BLASKO:
 15 But you get the
 16 transcript and look it over and
 17 you make any changes, do
 18 anything you want to it.
 19 ATTORNEY LOMUPO:
 20 Yeah, and that's an
 21 additional safeguard. But
 22 again, I mean, your conduct is
 23 not in question. So you're just
 24 --- I mean, my purpose in taking
 25 the deposition was to have you

1 testify as a fact witness to
 2 what you saw, and you did.
 3 ATTORNEY HARTYE:
 4 Right. And that's ---
 5 and that varies sometimes.
 6 Apparently sometimes doctors do
 7 have attorneys for those
 8 depositions. Other times they
 9 don't. For future purposes ---.
 10 ATTORNEY BLASKO:
 11 He's never had one
 12 before, he hopes it doesn't
 13 happen again.
 14 ATTORNEY HARTYE:
 15 Yeah, that's right. In
 16 the future, I mean, you may
 17 consult with your insurance
 18 company. They would assign
 19 someone through your insurance
 20 company, whoever that is, and I
 21 don't know that. If they
 22 thought you should have any,
 23 they may ask you a few questions
 24 and find out --- or their
 25 attorney would find out, you

1 Since we're all friends,
 2 Doctor, I can tell you that's
 3 true because I called him and
 4 said, are you PMSLIC insured?
 5 ATTORNEY HARTYE:
 6 But for the future then,
 7 if you have any questions or any
 8 concerns, you would contact
 9 them, they have an attorney.
 10 We're done. I think we're done
 11 on the record.
 12 * * * * *
 13 DEPOSITION CONCLUDED AT 1:03 P.M.
 14 * * * * *

1 know, whether the statute of
 2 limitations would run, so
 3 whether you could be brought
 4 into the suit or not. In this
 5 case, it's long gone, so you
 6 couldn't. And that wasn't the
 7 purpose of today.

8 ATTORNEY LOMUPO:
 9 Yeah, and I think also
 10 what Frank's saying is neither
 11 one of us have an
 12 attorney/client relationship
 13 with you.

14 ATTORNEY HARTYE:
 15 With you, no, we can't.
 16 ATTORNEY LOMUPO:
 17 So we actually can advise
 18 you what to do or what not to
 19 do.
 20 A. And for your information, I am
 21 not involved with PMSLIC. We do not
 22 have a relationship either.

23 ATTORNEY HARTYE:
 24 Okay.
 25 ATTORNEY BLASKO:

1 COMMONWEALTH OF PENNSYLVANIA)
 2 COUNTY OF VENANGO)
 3
 4 CERTIFICATE
 5 I, Wendy Blair, a Notary Public in and
 6 for the Commonwealth of Pennsylvania, do hereby
 7 certify:
 8 That the witness whose testimony appears
 9 in the foregoing deposition, was duly sworn by me
 10 on said date and that the transcribed deposition
 11 of said witness is a true record of the testimony
 12 given by said witness;
 13 That the proceeding is herein recorded
 14 fully and accurately;
 15 That I am neither attorney nor counsel
 16 for, nor related to any of the parties to the
 17 action in which these depositions were taken, and
 18 further that I am not a relative of any attorney
 19 or counsel employed by the parties hereto, or
 20 financially interested in this action.



Wendy Blair

EXHIBIT - C

EXHIBIT - C

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FRED DUBOE MD

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Fred J. Duboe, M.D., F.A.C.O.G.

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October 28, 2010

Mr. Kevin R. Lomupo, Esquire
Gilardi Oliver & Lomupo, Attorneys at Law
The Benedum Trees Building
10th Floor
223 Fourth Avenue
Pittsburgh, PA 15222

RE: *Podliski (Asey) v. Tagala, et al.*

Dear Mr. Lomupo:

I am a board-certified obstetrician/gynecologist, licensed to practice in my specialty without restriction in the state of Illinois. I have been engaged in the active practice of obstetrics and gynecology for over 26 years continuously and without interruption. I am quite familiar with and knowledgeable regarding the issues involved in the above-captioned case. I am a Diplomate of the American Board of Obstetrics and Gynecology and a Fellow of the American College of Obstetricians and Gynecologists. My qualifications are stated in my C.V., found under separate cover.

I have reviewed all of the records submitted to me in the above matter, including:

1. Records of Clearfield Hospital/OR Admission and Operative Report
2. Records of Clearfield Hospital E.R. Second Admission
3. Consultation Reports
4. Operative Report of Dr. Yingling 7/1/06
5. Clearfield Hospital Imaging Department Records
6. Nursing Admission Assessments
7. Respiratory Therapy Evaluations
8. Deposition of Dr. Tagala
9. Deposition of Dr. Yingling
10. Photographs of June 29, 2006 Laparoscopy

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FRED DUBDE MD

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HISTORY

Briefly, Ms. Kimberly Acey (Podlaski) was a 40 year old G2P2002 patient with left sided pain and progressive dyspareunia for several months prior to 6/29/06. Dr. Praviddio H. Tagala provided gynecologic care to Ms. Acey at this time. She had a prior vaginal hysterectomy performed in 11/04, prior laparoscopies and tubal sterilization performed at 25 years of age. Laparoscopy was scheduled by Dr. Tagala to rule out pelvic endometriosis and/or adhesions/ovarian cysts on 6/29/06.

At the time of surgery, omental/pelvic adhesions were noted and initially the left ovary was not visualized. The right ovary showed multiple cysts and after further adhesiolysis with the use of laparoscopic scissors and bipolar cautery, the left ovary was noted to be densely adherent to the pelvic wall, covered by omentum which was contiguous with the rectosigmoid area. The left tube was noted to be consistent with hydrosalpinx, the appendix not visualized and the remainder of the pelvic/abdominal contents described as unremarkable. Ms. Acey was discharged from Clearfield Hospital later that day.

On 6/30/06 at 11:56 AM, Ms. Acey was seen in the Clearfield ER for abdominal pain and hematuria, nausea, weakness and feeling "like passing out when the pain was worse". These complaints began spontaneously at 0200 and were described as constant, severe, sharp, suprapubic and increasing with patient movement. Nursing exam showed abdominal pain, guarding in the suprapubic area, pain index of "10", moaning, guarding and holding the painful area. Dr. Tagala examined Ms. Acey in the ER at 1346 and found the abdomen to be diffusely distended, soft and tender diffusely and more so in the lower quadrants. Bowel injury and "acute urinary bladder retention" were the working diagnoses considered by Dr. Tagala at 14:18 PM based upon his history and physical. CT scan on 6/30/06 demonstrated free air "consistent with her prior laparoscopy" IV fluids, NPO status, blood work, IV analgesia were all ordered with plans to consult with a general surgeon if no better in 12-24 hours. After further observation and IV analgesia, Dr. Yingling was finally consulted at 1030 AM on 7/1/06 due to Ms. Acey's continued abdominal and pelvic pain symptoms. At 1135, Dr. Yingling found Ms. Acey's abdomen to include diffuse peritoneal signs on the right with guarding and he therefore arranged for immediate surgical exploration, performed at 1400 that day. Findings included fecal peritonitis due to a large perforation of the sigmoid colon with cautery effect, measuring at least 2.5 x 3.0 cm and appearing adjacent to where there was cautery effect on the left ovary. Dr. Tagala stated that this was the site where he had removed adhesions of the colon where they were bound to the left ovary. A sigmoid resection, Hartmann's pouch, end sigmoid colostomy and peritoneal lavage were performed by Dr. Yingling. Pathology demonstrated sigmoid perforation and severe acute serositis. These findings were found to be compatible with a bowel thermal injury. Ultimately, Ms. Acey was discharged home on 7/9/06, to be followed with stoma therapy by Home Health and by Dr. Tagala in the

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office ten days postoperatively.

OPINIONS

Dr. Tagala's operative report stated that a Veress needle was used but no mention was made of CO2 insufflation. This would imply that Dr. Tagala moved directly to placement of a 10 mm trocar insertion in the umbilicus and that no insufflation with CO2 to distend the abdominal wall away from the underlying bowel was performed. The placement of a second operative port is never mentioned in the operative report either. He mentions that "careful lysis of adhesions was carried out with the use of bipolar electro coagulating forceps and laparoscopic scissor" and "at this point the fallopian tube was also grasped on the left side and because of the presence of hydrosalpinx and fallopian tube being adherent to the pelvic wall and covered with omentum careful lysis of adhesions was then performed until the entire fallopian tube was noted and the mesosalpinx was then electro-coagulated with the bipolar electrocoagulating forceps and this was then cut and removed from the field." One cannot imagine how this could have been safely and effectively performed via adequate traction/countertraction without the use of at least three separate ports, including the umbilical trocar. This lack of documentation of critical safety measures, usually implemented in the performance of operative laparoscopy in a high risk patient with multiple prior abdominal entries, otherwise lacks support for proper surgical technique. If CO2 insufflation (as opposed to Hasson open technique of entry, which is definitely not described here) and placement of multiple port sites were NOT performed, this clearly represents a deviation below the standard of care on Dr. Tagala's part under these specific circumstances.

Of interest is also that Dr. Tagala dictated his operative report on 7/1/06, on the same day of Ms. Acey's emergent laparotomy for the perforated sigmoid/peritonitis, while the actual laparoscopic procedure took place two days earlier on 6/29/06. While late dictation is not, in and of itself, a deviation below the standard of care, its content may have been influenced by knowing the ultimate complications that took place as a result of laparoscopy.

Dr. Tagala acknowledged in his deposition that "the electrocautery effect is on the surface of the omentum, which is the covering of the bowel...covering of the sigmoid colon". He admitted that his intent to apply the cautery to the surface of the omentum was part of the procedure and that "when (he) cut the adhesions close to the omentum, then you will have cautery effect now on the surface of the omentum" and that "there was cautery effect, but there was no injury into the layer of the bowel...this could just be related to the weakening of the surface where there was cautery, and in there the layer of the bowel now weakened and 16-20 hours later, the weakened area then just perforate". Finally, he stated that "so in itself there was no injury of that bowel at the time of the surgery..it was just on the surface of the omentum." He also admitted that he saw the cautery effect on the omentum and "this effect of cautery is just on the omentum, on the fatty covering of the bowel of the sigmoid area" and that "where (he) cut all those

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adhesions, yes, there is a cauter effect...not only on that part but all over the pelvis." He finally stated that "wherever the ...cauter effect also on the lower part of that remaining adhesions or part of the bowel or rectosigmoid that was adherent to the pelvic wall..that's were (he) cut all those adhesions." Dr. Tagala stated that "100% certainty that I did not touch the bowel with the electrocautery device" but oddly, when asked if he had an idea as to how close the tip of the device got to the area where the perforation was found, Dr. Tagala had no recollection thus point and stated that he used ONE trocar, when asked how many were employed in this procedure.

CONCLUSIONS

While bowel injuries are known and accepted complications of laparoscopic surgery, there are important steps that a prudent and careful gynecologic laparoscopic surgeon takes to avoid them.

In this set of circumstances, this includes careful and meticulous layered dissection of adhesions, with clear visualization of layer by layer. The surgeon needs to constantly visualize exactly where the application of any thermal energy is applied. Bipolar energy will burn and cauterize the area of application where the two poles (forcep edges, in this case) are applied, running electrical energy from pole to pole; hence the term "bipolar". However, the energy will also spread laterally adjacent to this location as well and this needs to be clearly recognized and visualized during dissection. Based upon the medical records and depositions reviewed, it is my opinion that Dr. Tagala applied bipolar cauter to the omentum/appendices epiplocae without proper visualization of tissues that were lying below and/or laterally to the previously-described thick bands of adhesions. This included the sigmoid colon, which was attached to the left tube/ovary and bound to the left pelvic sidewall. In this case, bipolar coagulating forceps were used to cauterize in an attempt to gain hemostasis prior to cutting with laparoscopic scissors in this area of the pelvis.

Dr. Tagala failed to recognize that the bipolar transmission of energy was spreading laterally, below and beyond where the bipolar forceps were applied and hence failed to exercise the usual precautions that a reasonably prudent and careful gynecologic surgeon would have implemented under similar circumstances. Cautery injury of the sigmoid colon would have likely been avoided if either careful layered dissection without thermal energy would have been utilized in this situation where visualization was difficult OR if meticulous layered dissection would have taken place while only applying thermal energy where its effects could be visualized. Following left salpingectomy, the pathology examination of the left fallopian tube showed extensive cauter artifact after resection. This is one area where dissection of the left ovary and tube away from the sigmoid colon took place. The closer one gets to bowel via such exploration and dissection, the farther away any thermal energy should be applied and for lesser periods of time. Sharp dissection would have been far safer in this environment. Heat buildup, increasing the risk of lateral thermal spread of electrical energy with prolonged cauter in the same location also is a

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risk of thermal instrumentation and likely took place in the above scenario. It is the failure to appreciate these risks and dissection too close to the sigmoid that was below the standard of care in this case.

Finally, it is my opinion that earlier consultation by Dr. Tagala should have been called to general surgery after admission at 1432 on 6/30/06. Severe abdominal/pelvic pain and diffuse distension of the abdomen following laparoscopic lysis of severe adhesions, accompanied by symptoms of hematuria, urinary retention, almost fainting while voiding, and extensive IV narcotic analgesia should have prompted this rapid consultation. In fact, Dr. Tagala's impression was "need to watch closely for possible incident bowel injury and/or leakage of any gas from the bowel from the lysis of adhesions and/or weakening of bowel musculature" were quite clearly outlined. This should have prompted consultation and to delay this by 12-24 hours as per Dr. Tagala's plan was also below the standard of care in this clinical situation.

I do hold the above opinions to within a reasonable degree of medical certainty and stand by ready to attest to these opinions if called upon to do so.

Very truly yours,



Fred J. Duboe, M.D., F.A.C.O.G.
Diplomate, American Board OB/GYN
Chairman, Perinatal Advisory Committee
St. Alexius Medical Center

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLISKI

Plaintiff,

vs.

PRAXIDIO H. TAGALA, M.D., and
PRAXIDIO H. TAGALA, M.D., P.C.,

Defendants.

CIVIL DIVISION, MEDICAL
PROFESSIONAL LIABILITY ACTION

No.: 2008 - 1121 - CD

Pleading:
PRAECIPE TO VOLUNTARILY DISMISS
WITH PREJUDICE

Filed On Behalf Of:
Plaintiff

Counsel Of Record For This Party:

Kevin R. Lomupo, Esquire
PA I.D. # 40996

GILARDI, OLIVER & LOMUPO
Firm #157

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JURY TRIAL DEMANDED

FILED NO CC
M 12/4/2011
RJ/09 2011
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William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY a/k/a KIMBERLY A. PODLISKI,	]	CIVIL DIVISION - MEDICAL PROFESSIONAL LIABILITY ACTION
Plaintiff,]	
vs.	]	No.: 2008-1121-CD
PRAXIDO H. TAGALA, M.D., and PRAXIDIO H. TAGALA, M.D., P.C.,]	
Defendants.	]	JURY TRIAL DEMANDED

PRAECIPE TO VOLUNTARILY DISMISS WITH PREJUDICE

TO: PROTHONOTARY

Please voluntarily dismiss the above-captioned case with prejudice.

Respectfully submitted,

GILARDI, OLIVER & LOMUPO

By:


Kevin R. Lomupo, Esquire
Counsel for Plaintiff

I hereby certify that the foregoing is a true and correct statement of the above case.

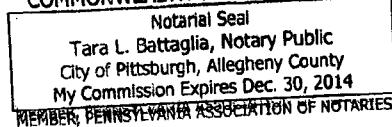
This statement is made subject to the penalties of 18 PA. C.S. §4904 relating to unsworn falsifications to authorities.

SWORN TO AND SUBSCRIBED BEFORE ME THIS 11th DAY OF November, 2011.


Tara L. Battaglia
Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within *Praecipe to Voluntarily Dismiss with Prejudice* been served on the following by first class mail, postage prepaid on this 7th day of November, 2011.

TO: Allen Neely, Esquire
McQuaide, Blasko, Fleming & Faulkner, Inc.
811 University Drive
State College, PA 16801-6699
Counsel for Praxidio H. Tagala, M.D. and Praxidio H. Tagala, M.D., P.C.



Kevin R. Lomupo, Esquire
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**Kimberly A. Acey
a/k/a Kimberly A. Podliski**

Vs.

**Praxidio H. Tagala MD, and
Praxidio H. Tagala, M.D., P.C.**

No. 2008-01121-CD

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 9, 2011, marked:

Dismissed with Prejudice

Record costs in the sum of \$95.00 have been paid in full by Kevin R. Lomupo, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 22nd day of November A.D. 2011.



William A. Shaw, Prothonotary