

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. PODLSKI

Plaintiff,

vs.

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

Defendants.

CIVIL DIVISION, MEDICAL
PROFESSIONAL LIABILITY ACTION

No.: 2008-1121-CD

Pleading:
COMPLAINT and CERTIFICATES
OF MERIT

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 10:59 AM CK
JUN 20 2008

ATTY PAID 95.00
3 CC TO SHERIFF

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,

Plaintiff,

vs.

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

Defendants.

] CIVIL DIVISION – MEDICAL
] PROFESSIONAL LIABILITY
] ACTION

] No.:

] 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
a/k/a KIMBERLY A. PODLISKI

Plaintiff,

vs.

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

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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 cautery 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.

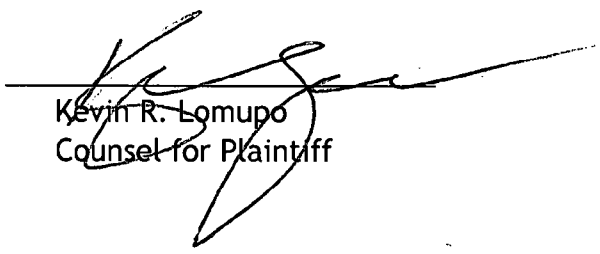
WHEREFORE, plaintiff demands judgment against the defendants in an amount in excess of Twenty Five Thousand (\$25,000.00) Dollars, exclusive of costs and interest.

JURY TRIAL DEMANDED

Respectfully submitted,

GILARDI, COOPER & LOMUPO

By

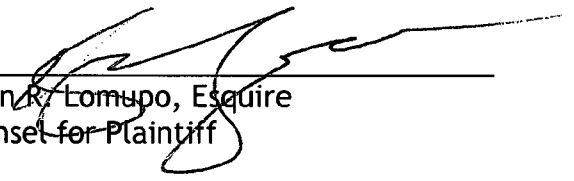

Kevin R. Lomupo
Counsel for Plaintiff

- ☒ 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,

Plaintiff,

vs.

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

Defendants.

] CIVIL DIVISION - MEDICAL
] PROFESSIONAL LIABILITY
] ACTION

] No.:

] 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,

Plaintiff,

vs.

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

Defendants.

] CIVIL DIVISION - MEDICAL
] PROFESSIONAL LIABILITY
] ACTION

] No.:

] 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. Lomupo, 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

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO: 08-1121-CD

KIMBERLY A. ACEY aka KIMBERLY A. PODLISKI

vs

SERVICE # 2 OF 3

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., 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
9/3:15cm
JUN 25 2008

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 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

SERVICE # 1 OF 3

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

OCCUPIED

ATTEMPTS

FILED

03:15 PM

JUN 25 2008

William A. Shaw

Prothonotary/Clerk of Courts

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 _____ 2008

So Answers: CHESTER A. HAWKINS, SHERIFF

BY:

Deputy Signature

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

SERVICE # 3 OF 3

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

9/3:15 cm

JUN 25 2008

William A. Shaw

Prothonotary/Clerk of Courts

SHERIFF'S RETURN

NOW, 6/25/08 AT 1028 AM / PM SERVED THE WITHIN

COMPLAINT AND CERTIFICATES OF MERIT ON CLEARFIELD HOSPITAL, DEFENDANT

BY HANDING TO Theresa Polachek 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.

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

Defendants

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§

CIVIL ACTION –Medical Professional
Liability Action

Docket No: 2008-1121-CD

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. ck

JUL 01 2008

NO CC

William A. Shaw
Prothonotary/Clerk of Courts

62

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INTERIOR - INTERIOR

THE YOUNG LAY INTERIOR
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INTERIOR - INTERIOR

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

Defendants

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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 the Praecipe 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 OK
JUL 01 2008 No CC

William A. Shaw
Prothonotary/Clerk of Courts

GW

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:
PRAECIPE FOR APPEARANCE

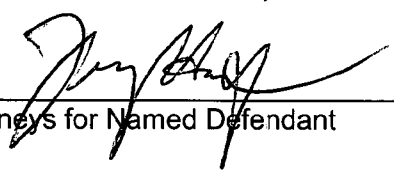
Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

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 am GK

JUL 01 2008

no cc

William A. Shaw
Prothonotary/Clerk of Courts

(6/2)

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

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 §

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

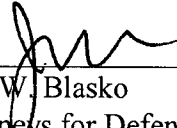
I hereby certify that a true and correct copy of Defendant Tagala's Request for Production
(Set Two), directed to plaintiff in the above-captioned matter, was mailed by regular mail,
postage prepaid, at the Post Office, State College, Pennsylvania, on this 17th day of

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
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 *mpcc*
m/11/5/08
JUL 18 2008
William A. Shaw
Prothonotary/Clerk of Courts *WAS*

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 08-11-00 BY 60322 UCBAW

U.S. DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

MEMORANDUM FOR THE DIRECTOR

FROM: SAC, NEW YORK (100-100000)

SUBJECT: [REDACTED]

RE: [REDACTED]

1. [REDACTED]

2. [REDACTED]

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 §

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 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
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 *no cc*
m/11/15/08
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 §

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 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 *no cc*
JUL 22 2008
William A. Shaw
Prothonotary/Clerk of Courts

JUL 22 2008

William A. Shaw
Prothonotary/Clerk of Courts

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2000-01-01

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

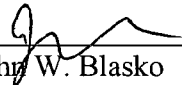
CERTIFICATE OF SERVICE

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 *no cc*
10:38:61
JUL 22 2008
W
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,

Plaintiff

VS.

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

Defendants

No. 2008 – 1121 – CD

ISSUE: ANSWER AND NEW MATTER

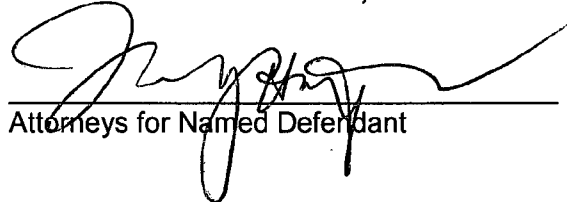
Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

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 7TH DAY OF AUGUST, 2008.


Attorneys for Named Defendant

FILED ^{NO CC}
MID:47/80
AUG 14 2008 (610)

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,

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

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.

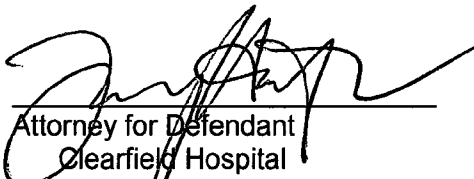
22. All injuries and damages suffered by the plaintiff are the direct, sole, and proximate result of preexisting medical conditions and not as a result of a violation of the standard of care.

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



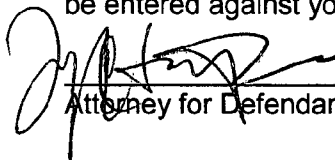
Attorney for Defendant
Clearfield Hospital

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

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

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

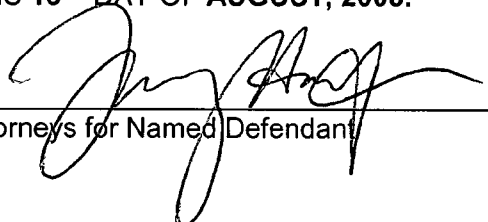
Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

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 Defendant

FILED *no cc*
mb:0130
AUG 15 2008

William A. Shaw
Prothonotary/Clerk of Courts

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
m/2:0037
AUG 15 2008
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 §

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 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

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CLERK OF COURTS

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CLERK OF COURTS

RECEIVED

FILED No CC.
m/ll:15cm
AUG 18 2008

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

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
DEFENDANT CLEARFIELD HOSPITAL**

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
a/k/a KIMBERLY A. PODLISKI,

Plaintiff,

vs.

PRAXIDO 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

] JURY TRIAL DEMANDED
]

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 }
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
14th day of August, 2008

Tara Battaglia
Notary Public

My Comm. ~~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 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

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:
Answer and New Matter

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

FILED NO
11-26-08
AUG 20 2008
CC
(64)

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

v.

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

Defendants

§
§
§
§
§
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§

CIVIL ACTION –Medical Professional
Liability Action

Docket No: 2008-1121-CD

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

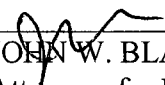
TWENTY-SECOND: The Plaintiff's complaint fails to state a cause of action against Dr. Tagala.

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: 8/19, 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

v.

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

Defendants

§
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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 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.

FILED No CC.

m/11:40am
AUG 27 2008

William A. Shaw
Prothonotary/Clerk of Courts

Docket No. 2008 - 1121- CD

Type of Case: Civil Action

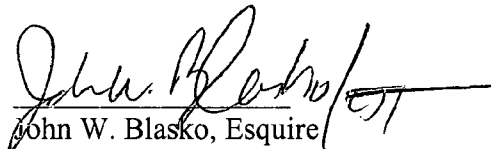
☒ Medical Professional Liability
Action (check if applicable)

Type of Pleading:
Certificate of Service

Filed on Behalf of 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 §

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 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. PODLSKI

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 12:20 p.m. EK

SEP 05 2008 *NO CC*

William A. Shaw
Prothonotary/Clerk of Courts *(EK)*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

KIMBERLY A. ACEY
a/k/a KIMBERLY A. PODLSKI

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 12:20pm, EK

SEP 05 2008

NO CC

William A. Shaw
Prothonotary/Clerk of Courts

(EK)

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

Defendants.

] CIVIL DIVISION - MEDICAL
] PROFESSIONAL LIABILITY
] ACTION

] No.: 2008-1121-CD

] 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

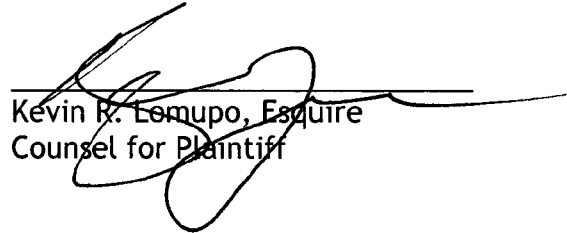
Member, Pennsylvania Association of Notaries

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. Lomupo, Esquire
Counsel for Plaintiff

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

FILED

SEP 24 2008

William A. Shaw
Prothonotary/Clerk of Courts

Court of Common
Pleas

Went 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.

**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:

Douglas Yingling, MD

All available

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: 8/19/2008

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 Hartye, Esquire, Frank J.	Benedum Trees Building 223 Fourth Avenue, 10th Floor Pittsburgh PA 15222 P. O. Box 533 Hollidaysburg PA 16648	Opposing Counsel Other

ph: 412-391-9770 f: 412-391-9780
ph: 814-696-3581 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
012:5534N
OCT 03 2008
William A. Shaw
Prothonotary/Clerk of Courts

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,



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

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 RESPONSE
TO REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO
DEFENDANT CLEARFIELD
HOSPITAL

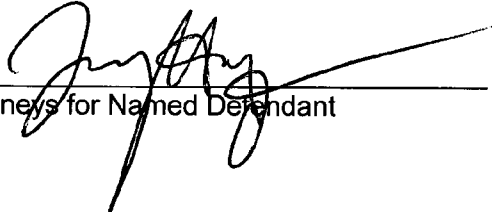
Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

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 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,

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

**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


Attorneys 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

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

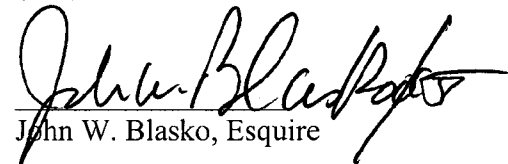
☒ Medical Professional Liability
Action (check if applicable)

Type of Pleading:
Certificate of Service

Filed on Behalf of 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
JAN 06 2009
William A. Shaw
Prothonotary/Clerk of Courts

4

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 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. Neches/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

FILED

JAN 06 2009

William A. Shaw
Prothonotary/Clerk of Courts

4

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

FILED

JAN 27 2009

12:15 PM
William A. Shaw
Prothonotary/Clerk of Courts

Court of Common
Pleas

SENT 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

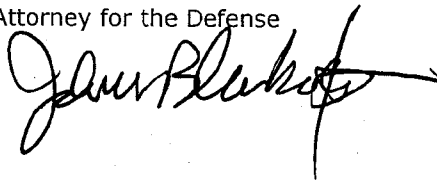
CERTIFICATE PREREQUISITE TO THE SERVICE OF A SUBPOENA
PURSUANT TO RULE 4009.22

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.

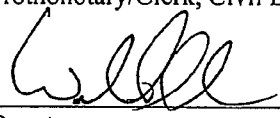
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

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

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


Deputy

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

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.

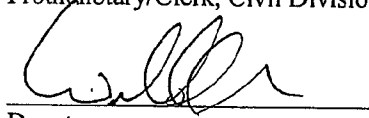
THIS SUBPOENA WAS ISSUED AT THE REQUEST OF THE FOLLOWING PERSON:

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

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


Deputy

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

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.

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:

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

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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

MAR 04 2009
 12:05 PM
 William A. Shaw
 Prothonotary/Clerk of Courts
 No 61660

Dated: March 3rd, 2009

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 §

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 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

FILED NO CC
MAR 09 2009
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 §

CIVIL ACTION - Medical Professional Liability
Action

Docket No: 2008-1121-CD

FILED

MAY 04 2009

2/12/20/

William A. Shaw

Prothonotary/Clerk of Courts

no c/c

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 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

FILED
MAY 04 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

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 04 2009
m/12:20/c
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

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FILED
MAY 07 2009
William A. Shaw
Prothonotary/Clerk of Courts

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

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/12:30/4
William A. Shaw
Prothonotary/Clerk of Courts
no c/c

CERTIFICATE OF SERVICE

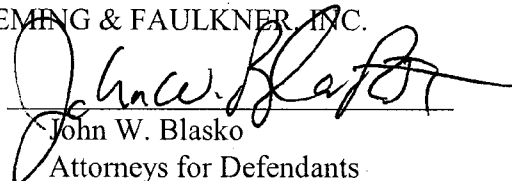
I hereby certify that a true and correct copy of Defendant Tagala's Notice of Intent to Serve a Subpoena to Produce Documents and Things Pursuant to Rule 4009.21, in the above-referenced matter, regarding subpoenas to Mary Askey and Fullington Auto Busy Company, was mailed through Litigation Services,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

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

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JUL 01 2009

W/12:55/610
William A. Shaw

Prothonotary/Clerk of Courts

Court of Common
Pleas

1 cent to

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

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


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

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

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

Kimberly A. Acey
Plaintiff(s)

Vs.

Praxidio H. Tagala MD
Praxidio H. Tagala, 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: 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)

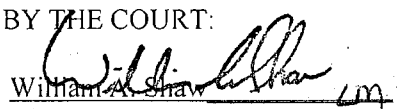
You may deliver or mail legible copies of the documents or produce things requested by
this subpoena, together with the certificate of compliance, to the party making this request at the
address listed above. You have the right to seek in advance the reasonable cost of preparing the
copies or producing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

Praxidio H. Tagala MD
Praxidio H. Tagala, 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: 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

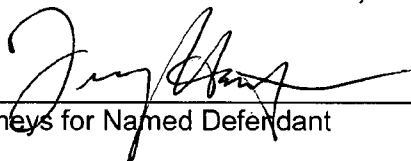
Counsel of Record:

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/10-33374
SEP 17 2009
William A. Shaw
Prothonotary/Clerk of Courts
NOCC

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

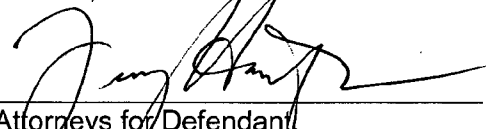
**NOTICE OF SERVICE OF ANSWERS TO PLAINTIFF'S FIRST SET
OF INTERROGATORIES AND REQUEST FOR PRODUCTION**

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,

Plaintiff

vs.

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

Defendants

No. 2008 – 1121 – CD

ISSUE:
MOTION REQUESTING SCHEDULING
ORDER

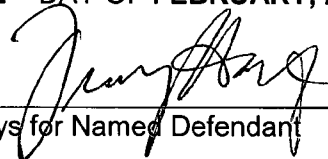
Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

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 12TH DAY OF FEBRUARY, 2010.


Attorneys for Named Defendant

FILED No CC.
m/11:17am
FEB 16 2010 @

William A. Shaw
Prothonotary/Clerk of Courts

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

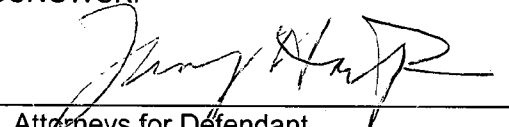
(d) trial to be scheduled for February 2011.

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


Attorneys for Defendant,
CLEARFIELD HOSPITAL

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

(3)

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

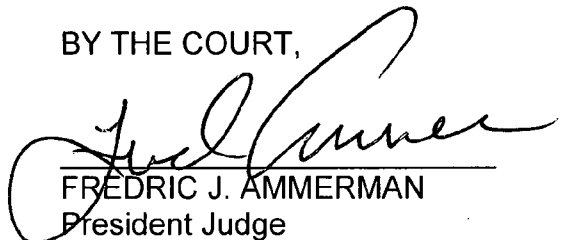
* No. 08-1121-CD
*
*
*
*
*
*

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,


FREDRIC J. AMMERMAN
President Judge

FILED 502
0/3/25/10
FEB 19 2010

William A. Shaw
Prothonotary/Clerk of Courts

FILED

FEB 19 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 2/19/10

X

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

64

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
KIMBERLY A. PODLISKI,
Plaintiff

VS

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

* No. 08-1121-CD
*
*
*
*
*
*

ORDER

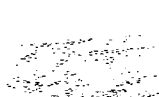
NOW, this 19th day of February, 2010, upon consideration of Defendant's Motion for Scheduling Order, it is hereby ORDERED, DIRECTED and DECREED as follows:

- 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.


Prothonotary/
Clerk of Courts

BY THE COURT,

/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

FILED

JUN 11 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,

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 ~

JOHN 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,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

CERTIFICATE OF SERVICE

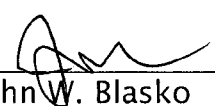
I hereby certify that a true and correct copy of **Defendant Praxidio H. Tagala, M.D.'s Request of Plaintiff to Supplement Prior Responses to Interrogatories and Requests for Production** in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, 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
William A. Shaw
Prothonotary/Clerk of Courts
no C/L

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

Dated: June 14, 2010

JURY TRIAL DEMANDED

FILED *no cc*
mt 10:15/30
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,

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
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. Shaw
Prothonotary/Clerk of Courts

gates will be kept
admitted to service
of process and the
court will be kept
advised.

MEMORANDUM FOR THE COURT
ON THE MOTION OF THE
PROSECUTOR FOR A
WRIT OF HABEAS CORPUS

Page 8

RECEIVED JUN 15 2010

0705 11:11 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

Dated: June 14, 2010

JURY TRIAL DEMANDED

FILED

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,

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 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
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

W 11:40 AM
William A. Shaw
Notary Public/Clerk of Courts

NO 9/2

(66)

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:
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
a/k/a KIMBERLY A. PODLISKI,

Plaintiff,

vs.

PRAXIDO 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

] 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 exparte 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 exparte 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. Weikel Steven S. Hurvitz James M. Horné Wendell V. Courtney Darryl R. Sliemak Mark Righter Daniel E. Bright
Janine C. Gismondi John A. Snyder April C. Simpson Allen P. Neely Katherine V. Oliver Katharine M. Allen Wayne L. Mowery, Jr. Chena L. Glenn-Hart
Livinia N. Olawolé Cristin R. Long Anthony A. Simon Dominick J. Muracco Thomas S. Schück 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. Rutch 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,

Plaintiff,

vs.

PRAXIDO 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

] 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
a/k/a KIMBERLY A. PODLISKI,

Plaintiff,

vs.

PRAXIDO 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

JURY TRIAL DEMANDED

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}
01:36 PM
AUG 17 2010
William A. Shaw
Prothonotary/Clerk of Courts
Lomupo
(60)

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*
SEP 02 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,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

Type of Pleading ~

CERTIFICATE OF SERVICE

**(re: Brief in Opposition 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: 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,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

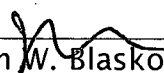
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **Defendant Praxidio H. Tagala, M.D.'s 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-

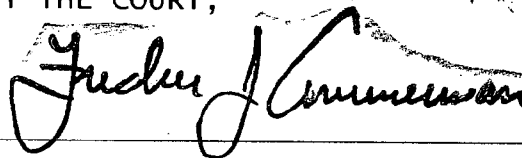
No. 08-1121-CD

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

SEP 08 2010

William A. Shaw
Prothonotary/Clerk of Courts

ICE Attys:
Lomupo
Hartye
Blasko

60

FILED

SEP 08 2010

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 9/8/10

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

☐ Defendant(s) ☒ Defendant(s) Attorney

☐ Special Instructions:

CA

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

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

vs.

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

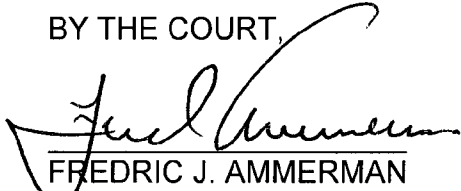
NO. 2008-1121-CD

⁵ FILED (60)
SEP 17 2010
6/4:00 PM
William A. Shaw
Prothonotary/Clerk of Courts
CPC
D. Buske
K. Lomura
F. HAYE

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
MTT 1861
AUG 26 2010
William A. Shaw
Prothonotary/Clerk of Courts
Note
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 a.m. 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 “exparte 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.

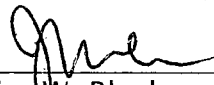
b. Plaintiff's allegation of extreme prejudice is without any factual basis, since the contact by Dr. Tagala's counsel was simply by letter providing the deposition in fairness to Dr. Yingling, who had never given a deposition before, and, did not have the opportunity to discuss his testimony with his 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

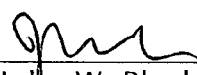
I hereby certify that a true and correct copy of **Response of Defendant Praxidio H. Tagala, M.D. to Plaintiff's Motion for Sanctions** in the above-captioned matter was mailed by regular mail, postage prepaid, at the Post Office, State College, Pennsylvania, on this 25th day of August, 2010 to the attorney(s)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

CIVIL ACTION - Medical Professional
Liability Action

Docket No: 2008-1121-CD

FILED No. 013-1281
SEP 22 2010

William A. Shaw
Prothonotary/Clerk of Courts

**AFFIDAVIT OF FACTS IN SUPPORT OF
FACTS SET FORTH IN BRIEF**

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.

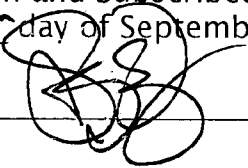
4. During the deposition of Terry Sherry on April 15, 2010 in the same case, Mr. Lomupo examined Ms. Sherry on the prior deposition testimony of another healthcare provider, as "highlighted" in the attached portions of the deposition transcript, Exhibit "C" attached.

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



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Stephanie A. Peachey, Notary Public
State College Boro, Centre County
My Commission Expires March 6, 2012
Member, Pennsylvania Association of Notaries

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

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Exhibit "A"

I N D E X

WITNESS: MARY KRUSZEWSKI, D.O.

EXAMINATION

By Attorney Lomupo 9 - 219

EXAMINATION

By Attorney Sopher 220 - 312

RE-EXAMINATION

By Attorney Lomupo 312 - 328

CERTIFICATE 330

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

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by the certifying agency.

I N D E X

1
2
3 WITNESS: PRISCILLA J. STAHLMAN

4 EXAMINATION

5 by ~~Attorney Lomupo~~ 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

1 A. I don't remember.

2 Q. ~~You were asked about a~~
3 conversation that Melissa related in
4 her deposition, that ~~--- 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,

Plaintiffs

vs.

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

Defendants

Case No.

2007-362-CD

COPY

* * * * *

DEPOSITION OF
TERRY SHERRY
April 28, 2010

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by the certifying agency.

Sargent's Court Reporting Service,
(814) 536-8908

Exhibit "C"

I N D E X

WITNESS: TERRY SHERRY

EXAMINATION

By Attorney Lomupo 8 - 52

EXAMINATION

By Attorney Sopher 52 - 56

EXAMINATION

By Attorney Blasko 56 - 57

RE-EXAMINATION

By Attorney Lomupo 57 - 58

CERTIFICATE 59

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
: Professional Liability
Plaintiffs, : Action
: vs. : 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

CCM

I N D E XBY DEFENDANT - MARY KRUSZEWSKI, D.O.EXAMINATION

LORIE NATOLI, PA-C

By MR. BLASKO

4, 203, 209

By MR. LOMUPO;

(125, 208)

By MS. SOPHER

188, 209

E X H I B I T SDEFENDANT'S EXHIBITSMARKED

No. 1 - SUPERVISING PHYSICIAN REGISTRATION PACKET

7

No. 2 - 7/6 TELEPHONE LOG

43

No. 3 - 7/6 TELEPHONE LOG

44

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. LOMUPO:

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
mhaistad
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

Dated: October 15, 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
:
:
:

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").

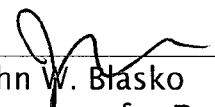
9. Counsel for the Defendant Clearfield Hospital concurs and agrees with this Motion.

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

vs

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

* No. 08-1121-CD
*
*
*
*
*
*

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,

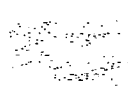
/S/ Fredric J Ammerman

FREDRIC J. AMMERMAN
President Judge

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

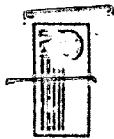
FEB 19 2010

Attest.



William L. Hume
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

FAKED

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)

FAKED

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

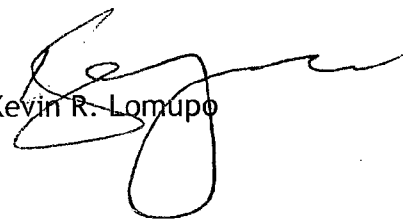
Re: Kimberly A. Acey a/k/a Kimberly A. Podliski vs. Praxidio H. Tagala, M.D.;
Praxidio H. Tagala, M.D., P.C.; and Clearfield Hospital

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.

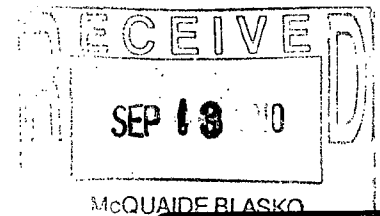
Very truly yours,

GILARDI, OLIVER & LOMUPO



Kevin R. Lomupo

KRL/pan
cc: Frank J. Hartye, Esquire



THE BENEDUM 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

Kevin R. Lomupo

KRL/pan

cc: Frank J. Hartye, Esquire

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

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

Plaintiff

v.

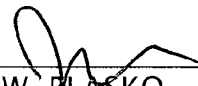
PRAXIDIO H. TAGALA, M.D.; PRAXIDIO
H. TAGALA, M.D., P.C.; and
CLEARFIELD HOSPITAL,

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 NO CC
M12:53 PM
OCT 22 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,

Defendants

CIVIL ACTION -Medical Professional
Liability Action

Docket No: 2008-1121-CD

Type of Pleading ~

CERTIFICATE OF SERVICE

(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,

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 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. Stary
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

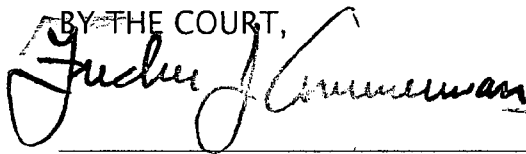
CIVIL ACTION -Medical Professional
Liability Action

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

9/15/2010
OCT 20 2010

Att'y Blasko

William A. Shaw
Prothonotary/Clerk of Courts

(60)

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 _____
____ Special Instructions:

CA

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

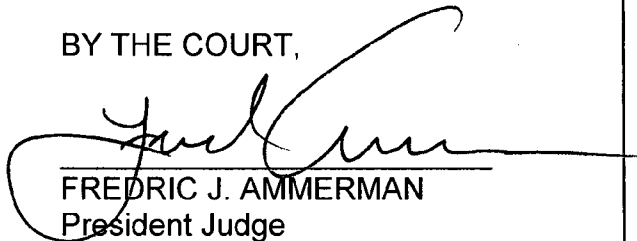
* No. 08-1121-CD
*
*
*
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*
*

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 11/2/2010
DEC 10 2010
William A. Shaw
Promotary/Clerk of Courts
ICC Atty's:
Blasko
Hartge
Lomupo

FILED

DEC 10 2010

DATE: 12/10/10 William A. Shaw
Prothonotary/Clerk of Courts

☐ You are not a party to this case and are not an appropriate party.

☒ The Plaintiff(s) and/or Defendant(s) has provided service to the following parties:

☐ Plaintiff(s) ☒ Defendant(s) Attorney ☐ Other

☐ Defendant(s) Attorney ☒ Defendant(s) Attorney

☐ Special appearances:

CA

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,
CLEARFIELD HOSPITAL, ONLY

FILED

JAN 07 2011

11:30 AM

William A. Shaw

Prothonotary/Clerk of Courts

no c/c

Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

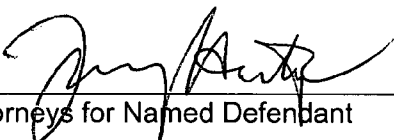
Counsel of Record:

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

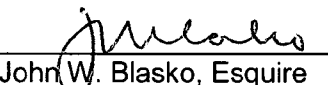
JURY TRIAL DEMANDED

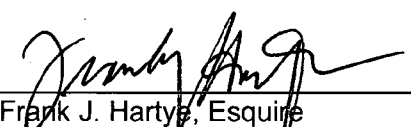
**STIPULATION TO DISCONTINUE ACTION AS TO
DEFENDANT, CLEARFIELD HOSPITAL, ONLY**

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. Hartys, Esquire
Counsel for Defendant, Clearfield Hospital

23

FILED
JAN 07 2011
William A. Shaw
Prothonotary/Clerk of Courts

CA

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

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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^{ve}

4 JAN 07 2011

William A. Shaw
Prothonotary/Clerk of Courts

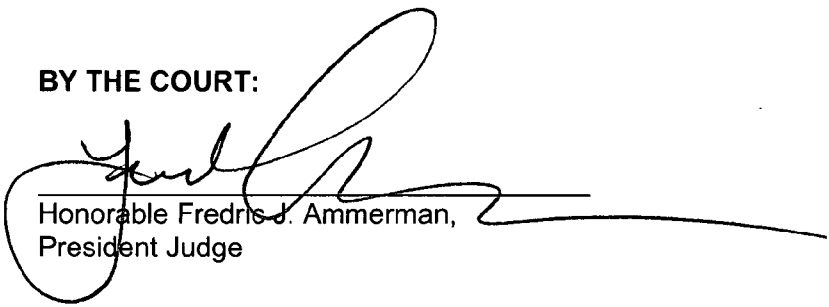
1 case to file

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 Fredric 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,

Plaintiff

vs.

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

Defendants

No. 2008 – 1121 – CD

ISSUE:

PRAECIPE TO AMEND CAPTION

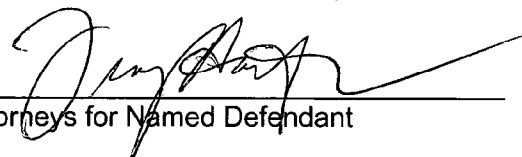
Filed on behalf of Defendant,
CLEARFIELD HOSPITAL

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 12th DAY OF **JANUARY, 2011.**


Attorneys for Named Defendant

FILED No
3 JAN 13 2011 cc
William A. Shaw
Prothonotary/Clerk of Courts

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

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:
MOTION TO CONTINUE

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

FILED NO CC
MAR 03 2011
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,

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. Lomupo, Esquire
Counsel for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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

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
]

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.

*Bill -
Judge A already
Signed the filed
Copy of this
motion.
Sharon*

FILED

MAR 04 2011

William A. Shaw
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

☐ Special Instructions:

CA

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:
MOTION TO CONTINUE

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. Lomupo, Esquire
Counsel for Plaintiff



THE BENEDICT TILES BUILDING
10TH FLOOR
223 FOURTH AVENUE
PITTSBURGH, PA 15222

ATTORNEYS AT LAW

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

9/9/3761
MAR 22 2011

iccAlys:
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

vs

PRAXIDO H. TAGALA, M.D. and PRAXIDO H. TAGALA, P.C.
Defendants

* NO. 08-1121-CD
*
*
*
*
*

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 that 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,


FREDRIC J. AMMERMAN
President Judge

FILED

MAR 22 2011

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 3/22/11

 You are responsible for serving all appropriate parties.

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

 Plaintiff(s) X Plaintiff(s) Attorney Other

 Defendant(s) X Defendant(s) Attorney

 Special Instructions:

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

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

Plaintiff §

v. §

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

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 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

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

10:48 AM
OCT 18 2011

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. 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 NO CC
112734
OCT 24 2011
William A. Shaw
Prothonotary/Clerk of Courts

OFFICE OF THE CLERK OF COURTS
JANUARY 1, 2011

KIMBERLY A. ACHRY aka KIMBERLY A.
PODLISKI

Prisoner

FILED

OCT 24 2011

William A. Shaw
Prothonotary/Clerk of Courts

Office, State College, Pennsylvania, on the _____ day of _____, 2011, to the
attorney(s) of record:

Kevin B. Lanning & Associates

1000 State College Blvd.

State College, PA 16801

Phone: (814) 353-4000

Fax: (814) 353-4001

Kevin B. Lanning & Associates
1000 State College Blvd.
State College, PA 16801
Phone: (814) 353-4000
Fax: (814) 353-4001

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

Defendants :

CIVIL ACTION –Medical Professional Liability
Action

Docket No: 2008-1121-CD

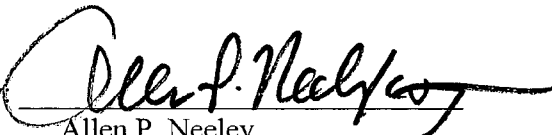
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Defendant 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

William A. Shaw
Prothonotary/Clerk of Courts

FILED

OCT 24 2011

William A. Shaw
Prothonotary/Clerk of Courts

Bowie - I'm
finding more
originals when
purging some old
files.
Jensen

CA

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:
**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

krlomupo@lawgol.com

JURY TRIAL DEMANDED

FILED No cc
11:26 AM
OCT 27 2011
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,

Plaintiff,

vs.

PRAXIDO 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

] 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 witnesses 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.

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 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 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 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.

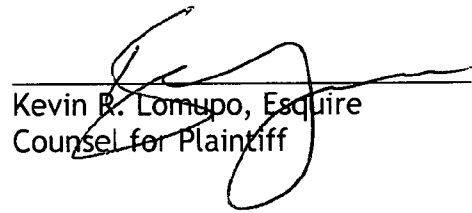
ATTORNEY BLASKO:

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
MTH 29/2011
NOV 03 2011
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. and
PRAXIDIO H. TAGALA, M.D., P.C.

Defendants

CIVIL ACTION –Medical Professional Liability
Action

Docket No: 2008-1121-CD

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

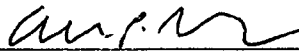
KIMBERLY A. ACEY a/k/a KIMBERLY A. :
PODLISKI :
Plaintiff : CIVIL ACTION –Medical Professional Liability
: Action
v. :
: Docket No: 2008-1121-CD
PRAXIDIO H. TAGALA, M.D. and :
PRAXIDIO H. TAGALA, M.D., P.C. :
Defendants :

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 1st 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
Attorneys for Defendants
Praxidio H. Tagala, M.D. and
Praxidio H. Tagala, M.D., P.C.
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FILED

NOV 03 2011

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.

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

Dated: November 1, 2011

JURY TRIAL DEMANDED

FILED

NOV 03 2011

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.

Defendants

CIVIL ACTION –Medical Professional
Liability Action

Docket No: 2008-1121-CD

**DEFENDANTS' ANSWER TO PLAINTIFF'S MOTION IN LIMINE
TO PRECLUDE TESTIMONY OF DOUGLAS YINGLING, 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 elctrocautery touches the omentum or the epoploica; 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).

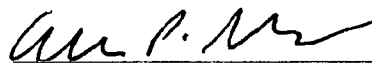
8. Denied, for the reasons set forth above.

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,

Plaintiff,

vs.

PRAXIDO 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

] 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

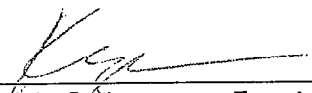
TAKE NOTICE that the deposition of **Douglas B. Yingling, M.D.** will be taken for the purpose of discovery and for use at trial pursuant to the Rules of Civil Procedure before an officer duly authorized to administer oaths at the office of **Douglas B. Yingling, M.D., 1212 Turnpike Avenue, Clearfield, 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

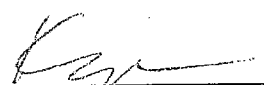

Kevin R. Lomupo, Esquire
Counsel for Plaintiff

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
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

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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Internet: www.sargents.com

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

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

DEPOSITION
OF

DOUGLAS BRUCE YINGLING, M.D., taken on behalf of the Plaintiff herein, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Wendy Blair, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the offices of Douglas B. Yingling, M.D., 1212 Turnpike Avenue, Clearfield, Pennsylvania, on Thursday, July 8th, 2010 beginning at 10:48 a.m.

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State College, PA 16801
COUNSEL FOR DEFENDANT, PRAXIDIO H. TAGALA, M.D.

EXHIBIT PAGE

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before?

A. No.

Q. You haven't? Okay. Ground rules are, please make sure you understand my question before you answer it. If you don't think you understand my question, ask me to try to explain it in a different way and I'll be happy to do that. Please don't guess at the answers to any of the questions that I ask you but do give me your best recollection.

There's a court reporter here who's taking down everything that we say, so we have to, number one, try not to speak at the same time. And two, you have to give all of your responses to my questions in verbal form as opposed to just shaking your head or, you know, giving a hand gesture. I don't believe your deposition is going to take very long. But I want you to know, if you need the opportunity to take a break for whatever reason, please feel free to do that. Just let

PROCEEDINGS

DOUGLAS BRUCE YINGLING, M.D., HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION
BY ATTORNEY LOMUPO:

Q. Would you give us your full name, please?

A. Douglas Bruce Yingling,
Y-I-N-G-L-I-N-G.

Q. Dr. Yingling, my name is Kevin Lomupo and I represent your patient, Kim Podliski or Kim Acey, in a lawsuit that she has filed against Dr. Tagala and the Clearfield Hospital. Your name has come up in the medical chart and, therefore, I wanted to take this opportunity to ask you some questions about what you saw and did and heard regarding Kim's care back in 2006.

In terms of ground rules for the deposition today --- and I'm assuming you've had your deposition taken

me know and we'll make that time available to you. Okay?

A. Uh-huh (yes).

Q. Before the deposition started I asked you for your CV and I don't think you have one apparently available or that's up-to-date. So can you give me the highlights of what would be on your CV?

A. Okay. Born and raised in Clearfield, went to Clearfield High School, graduated in 1970. Went to Gettysburg College, graduated in 1974 with a Bachelor's in biology, magna cum laude, fie beta kappa. I went immediately to Jefferson Medical College in Philadelphia, graduated in '78 with an M.D. degree in alpha omega alpha. I spent the next five years at Dartmouth Medical Center in Hanover, New Hampshire, did my general surgery training there. Finished in 1983 and then immediately started private practice here in 1983 at Clearfield 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. 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 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 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 than 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 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 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 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

46, would that be the only recording of your initial exam of Kim?

A. Absolutely not. I have a complete, dictated, thorough consultation in the page preceding that. That was a holding note until that was dictated at --- immediately to follow, and that is my complete consultation which outlines my exam and evaluation of her.

Q. All right. I want to go over your dictated consult note now. And just for identification purposes, that's Bates stamped page 45 in my record. And it's entitled consultation report. Initially you note that she had had a laparoscopy for pelvic adhesions about 48 hours before you saw her; correct?

A. That's correct.

Q. All right. Then she went home, but she returned within 24 hours with increasing abdominal pain and nausea; correct?

A. That's correct.

Q. And apparently she went to the emergency room first; correct?

A. That's correct.

Q. SC scan was done, and you told me that those were just ancillary findings as far as you were concerned. Neither ruled in nor ruled out a bowel perforation; correct?

A. That's correct.

Q. When it says no obvious abscesses or pelvic pathology was noted, what did you mean by that?

A. Abnormal fluid collections, blood collections, hematoma, abscesses or other obvious signs according to that report.

Q. Did that help you rule in or rule out a bowel perforation at that time?

A. No, it did not.

Q. All right. Then because of the pain out of proportion to the findings, the patient was admitted and apparently got a Foley catheter. All right. The fact that her white count on admission

was 10,000 and hemoglobin 10.3, what did that indicate to you? What did that add to the analysis?

A. Very little. The white count was 16,000 when she was in the emergency room, according to the record. The morning of when she was admitted that one day that was 10,000.

Q. Okay.

A. That number's within a normal range, but that doesn't, again, rule in, rule out the significance of an abdominal pathology.

Q. Okay. Had she been started on antibiotics before you saw her?

A. I believe she was started by Dr. Tagala. According to the record, was started on antibiotics following that admission.

Q. Okay. Would that have any impact or effect on her white blood cell count?

A. It may.

Q. She complained to you of ongoing pain and increasing abdominal

distention; correct?

A. That's correct.

Q. Would she have told you that her abdomen is appearing to get bigger? Is that what you mean when she --- when you say she continued to complain of increasing abdominal distention?

A. That's correct.

Q. Okay. She also had some nausea and vomiting; correct?

A. That's correct.

Q. It says I was asked to evaluate the patient regarding a possible acute abdomen. Did Dr. Tagala use the words possible acute abdomen?

A. I can't recall whether he specifically used those words or not.

Q. Do you have any recollection of the words he used to describe Kim's condition?

A. The exact words I don't recall.

Q. You noted that diffuse peritoneal signs; correct?

A. That's correct.

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 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 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 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 rigidity, 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 rigidity
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 perforation?

2 A. At least, yes.

3 **Q. So would it be fair to say you**
4 **removed anywhere from two to six inches**
5 **of bowel?**

6 A. I would say four to six inches
7 would be closer to the truth.

8 **Q. Four to six inches. What's your**
9 **understanding of why Dr. Tagala**
10 **assisted you in this surgery?**

11 A. It's his patient. I may have
12 asked him to. As I recall, it was a
13 weekend. I needed an extra --- an
14 assistant. So I say a combination of
15 reasons that he wanted to, I may have
16 asked him to and I needed an extra pair
17 of hands.

18 **Q. Do you typically have another**
19 **surgeon when you do a procedure of this**
20 **type with you assisting?**

21 A. Often, but not always.

22 **Q. So you can't tell us if it was**
23 **his idea to assist you or your idea for**
24 **him to assist you?**

25 A. That was a joint decision. I

<p style="text-align: right;">Page 46</p> <p>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</p>	<p style="text-align: right;">Page 48</p> <p>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</p>
<p style="text-align: right;">Page 47</p> <p>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</p>	<p style="text-align: right;">Page 49</p> <p>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</p>

13 (Pages 46 to 49)

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 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 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 **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 stomal therapist,
22 which is a nurse specialist in stomal
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 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 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 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 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 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 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 than 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 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 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 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 cautery 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 cautery 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 cautery
17 effect on that --- on the omentum that
18 you recall seeing?

19 A. There was cautery 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 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 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 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 you?
2 A. Yes.
3 ATTORNEY HARTYE:
4 Which one, Kevin, the
5 first one?
6 ATTORNEY LOMUPO:
7 It is dated for the
8 procedure date July 1, 2006.
9 ATTORNEY BLASKO:
10 Look at page one seven.
11 A. Oh, okay.
12 BY ATTORNEY LOMUPO:
13 Q. Do you have it? Okay. I want
14 to see if I'm interpreting this
15 surgical pathology report correctly.
16 The pathologist is indicating that he
17 received sections of the two segments
18 of the colon; correct?
19 A. That's what it says.
20 Q. And attached to those segments
21 of the colon is some pericolic
22 tissue?
23 A. Correct.
24 Q. Okay. So you have the colon.
25 And this pericolic tissue, is that

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 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 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 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 ATTORNEY BLASKO:

2 Okay. I just want to

3 ---.

4 RE-CROSS 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 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 surgeons word is very
24 important. May be in this
25 circumstance. If you want my opinion

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 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 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.
 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 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 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 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

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 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.

<p style="text-align: right;">Page 118</p> <p>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</p>	<p style="text-align: right;">Page 120</p> <p>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.</p>
<p style="text-align: right;">Page 119</p> <p>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</p>	<p style="text-align: right;">Page 121</p> <p>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.</p>

31 (Pages 118 to 121)

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 --- 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 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 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 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 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 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 any parties hereto, or
 20 financially interested in this action.

21
 22 Wendy Blair
 23
 24
 25

EXHIBIT - C

EXHIBIT - C

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FRED DUBOE MD

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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: *Podlisky (Acey) 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. Praxidio 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 stomal 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 electrocoagulated 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 cautery effect...not only on that part but all over the pelvis." He finally stated that "wherever the ...cautery 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 that this 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 cautery 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 cautery 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 cautery in the same location also is a

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FRED DUBOE MD

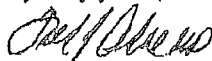
PAGE 05

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

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

(412) 391-9770

krlomupo@lawgol.com

JURY TRIAL DEMANDED

FILED No CC
10/13/08
10/13/08 2011
William A. Shov
Prothonotary/Clerk of Courts

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
]

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

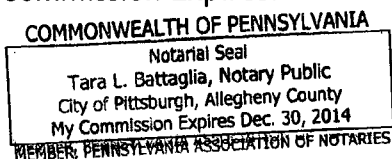
I hereby certify that the foregoing is a true and correct statement of the above case.

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 4th DAY OF November, 2011.


Notary Public

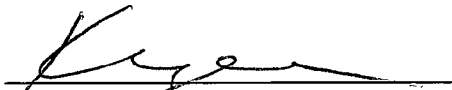
My Commission Expires:



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.

No. 2008-01121-CD

**Praxidio H. Tagala MD, and
Praxidio H. Tagala, M.D., P.C.**

CERTIFICATE OF DISCONTINUATION

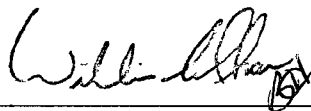
Commonwealth of PA
County of Clearfield

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