

08-2442-CD
Randall Burns al vs J. Rice Oral et al

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FILED \$75.00
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DEC 23 2008

William A. Shaw (m)
Prothonotary/Clerk of Courts

2008-2442-CD

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF JEFFERSON

SS: }

I TONYA S. GEIST, Prothonotary of the
Court of Common Pleas in and for said County, do hereby certify that the foregoing is a
full, true and correct copy of the whole record of the case therein stated, wherein
RANDALL BURNS,
SUSAN BURNS,

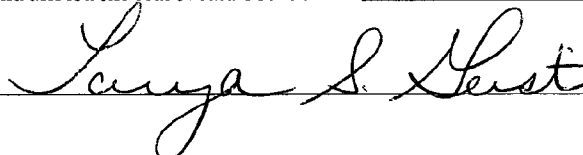
Plaintiff

and J. RICE ORAL MAXILLOFACIAL AND AESTHETIC FACIAL
SURGERY, P.C. AND ADAM C. MILLER DDS MD

Defendant

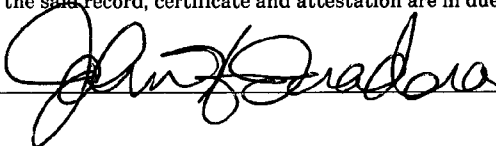
as the same remains of record before the said Court at No. 146 - 2008 C.D.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 18TH day of
DECEMBER A. D. 2008



Prothonotary

I JOHN H. FORADORA, President Judge of the 54TH Judicial District, composed of the County
of Jefferson in the Commonwealth of Pennsylvania, do certify that Tonya S. Geist, by whom
the annexed record, certificate and attestation were made and given, and who in his own proper handwriting, thereunto subscribed his name and
affixed the seal of the Court of Common Pleas of said County was at the time of so doing and now is Prothonotary, in and for said County of Jef-
ferson in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all of whose acts as such full faith and credit are and ought to
be given as well in Courts of judicature as elsewhere; and that the said record, certificate and attestation are in due form of law, and made by the
proper officer.



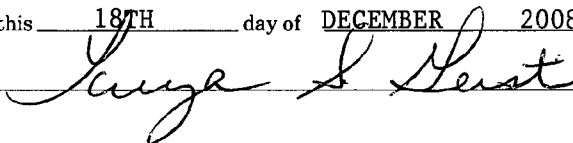
President Judge

COMMONWEALTH OF PENNSYLVANIA,
COUNTY OF JEFFERSON

SS: }

I TONYA S. GEIST, Prothonotary of the Court of Common Pleas in and for the said County, do certify that the
Honorable JOHN H. FORADORA by whom the foregoing attestation was made, and who has
thereunto subscribed his name was at the time of making thereof and still is President Judge of the Court of Common Pleas, Orphans' Court and
Court of Quarter Sessions of the Peace in and for said County, duly Commissioned and qualified; to all whose acts as such full faith and credit are
and ought to be given, as well in Courts of judicature or elsewhere.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said
Court, this 18TH day of DECEMBER 2008



Prothonotary

NO. 146 - 2008 C.D. TERM, 19__

RANDALL, BURNS,

SUSAN BURNS,

VERSUS

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY P.C.

ADAM C. MILLER DDS MD

Exemplified Record

From Jefferson County

Debt \$ _____

Interest from _____

Costs Writ of Summons 104.00

Entered and Filed FEBRUARY 7, 2008

Leandra D. Hunt
Prothonotary

AMONG THE RECORDS AND PROCEEDINGS enrolled in the Court of Common Pleas in and for the County of Jefferson, in the Commonwealth of Pennsylvania, to No. 146 - 2008 C.D., is contained the following:

COPY OF DOCKET ENTRY

} filings attached

2008-00146 RANDALL BURNS ET AL (vs) J RICE ORAL MAXILLOFACIAL ETAL

Reference No.:
 Case Type.....: WRIT OF SUMMONS
 Judgment.....: .00
 Judge Assigned:
 Disposed Desc.:
 ----- Case Comments -----

Filed.....: 2/07/2008
 Time.....: 12:07
 Execution Date 0/00/0000
 Jury Trial....
 Disposed Date: 0/00/0000
 Higher Crt 1.:
 Higher Crt 2.:

 General Index Attorney Info

BURNS RANDALL	PLAINTIFF	PRIBANIC, VICTOR H.
BURNS SUSAN	PLAINTIFF	PRIBANIC, VICTOR H.
J RICE ORAL MAXILLOFACIAL AND AESTHETIC FACIAL SURGERY PC	DEFENDANT	WHITE, DAVID B., ESQUIRE
MILLER ADAM C DDS MD	DEFENDANT	WHITE, DAVID B., ESQUIRE

 * Date Entries *

***** FIRST ENTRY *****

2/07/2008	PRAECIPE FOR WRIT OF SUMMONS FLD BY VICTOR PRIBANIC, ESQ CPS TKN DS
2/07/2008	WRIT OF SUMMONS ISSUED AND GIVEN TO ATTY BAZYLAK FOR SERVICE DS
2/19/2008	COMPLAINT W/NTC FLD BY VICTOR PRIBANIC, ESQ W/CERTIFICAT OF MERIT AS TO BOTH DEFTS C/RTND DS
3/03/2008	PRAECIPE FOR ENTRY OF APPEARANCE FLD BY DAVID WHITE, ESQ ON B/OF DEFT W/CERT OF SERVICE C/RTND DS
4/14/2008	PRAECIPE FOR RULE TO FILE COMPLAINT FLD BY DAVID WHITE, ESQ W/CERT OF SERVICE C/CVR RTND DS
4/14/2008	RULE TO FILE COMPLAINT ISSUED AND RETURNED TO ATTY WHITE FOR SERVICE DS
6/11/2008	SHERIFF'S RETURN: FEBRUARY 7, 2008 I DEPUTIZED SHERIFF OF CLEARFIELD COUNTY TO SERVE J.RICE ORAL MAXILLOFACIAL & AESTHETIC FACIAL SURGERY PC AND ADAM C MILLER D.D.S., M.D. MY COSTS: \$54.00 DM
10/24/2008	ANSWER AND NEW MATTER FLD BY DAVID WHITE,ESQ. ON B/OF DEFTS W/CERT OF SERVICE. CPS RTND DM
10/29/2008	PLTFS REPLY TO NEW MATTER OF DEFTS FLD BY VICTOR PRIBANIC,ESQ. W/CERT OF SERVICE. CPY RTND DM
11/26/2008	PRAECIPE FOR SUBSTITUTION OF VERIFICATION OF ANSWER AND NEW MATTER FLD BY DAVID WHITE,ESQ, ON B/OF DEFTS W/CERT OF SERVICE. CPY RTND DM
12/08/2008	CONSENT ORDER;AGREEMENT TO TRANSFER OF VENUE SIGNED BY VICTOR PRIBANIC,ESQ. AND DAVID B WHITE,ESQ. {SEE DOCUMENT FOR DETAILS} CPS TKN DM
12/09/2008	ORDER OF COURT; ABOVE CAPTIONED CASE SHALL BE TRANSFERRED TO CLEARFIELD COUNTY. CPS TO PRIBANIC AND WHITE DM

***** LAST ENTRY *****

 * Escrow Information *

* Fees & Debits	Beg Bal	Pymts/Adj	End Bal
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WRIT OF SUMMONS	88.50	88.50	.00
WRIT OF SUM TAX	.50	.50	.00
WRIT OF SUM JCP	10.00	10.00	.00
WRIT SUM AUTO	5.00	5.00	.00

2008-00146 RANDALL BURNS ET AL (vs) J RICE ORAL MAXILLOFACIAL ETAL

Reference No.:
Case Type.....: WRIT OF SUMMONS
Judgment.....: .00
Judge Assigned:
Disposed Desc.:

Filed.....: 2/07/2008
Time.....: 12:07
Execution Date 0/00/0000
Jury Trial....
Disposed Date: 0/00/0000
Higher Crt 1.:
Higher Crt 2.:
.00

----- Case Comments -----

104.00 104.00

* End of Case Information *

FILED

2008 FEB -7 P 12: 03

IN THE COURT OF COMMON PLEAS
OF JEFFERSON COUNTY, PENNSYLVANIA

TONYA S. GEIST
JEFFERSON COUNTY
PROTHONOTARY AND
CLERK OF COURTS

RANDALL BURNS,
and
SUSAN BURNS, his wife,
Plaintiffs,

v.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C.,
and
ADAM C. MILLER, D.D.S., M.D.,
Defendants.

JURY TRIAL DEMANDED

CIVIL DIVISION

Docket No. 08 -

146-2008-CD

**PRAECIPE FOR
WRIT OF SUMMONS**

Code:

Filed on behalf of Plaintiffs:

RANDALL BURNS and **SUSAN BURNS**, his
wife

Counsels of Record for this Party:

Victor Hunter Pribanic, Esq.

Pa. I.D. No.: 30785

Dr. Christopher Buck, Esq.

Pa. I.D. No.: 205265

PRIBANIC & PRIBANIC, L.L.C.

1735 Lincoln Way

White Oak, PA 15131

(412) 672-5444

CB

ENTERED

SCANNED

IN THE COURT OF COMMON PLEAS
OF JEFFERSON COUNTY, PENNSYLVANIA

FILED

2008 FEB -7 P 12:03

RANDALL BURNS,
and
SUSAN BURNS, his wife,
Plaintiffs,

v.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C.,
and
ADAM C. MILLER, D.D.S., M.D.,
Defendants.

CIVIL DIVISION

TONYA S. GEIST
JEFFERSON COUNTY
PROTHONOTARY AND
CLERK OF COURTS

Docket No. 08 - 146 2008 - CD

**PRAECIPE FOR
WRIT OF SUMMONS**

Code:

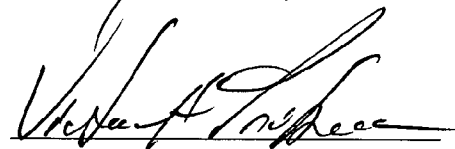
PRAECIPE FOR WRIT OF SUMMONS

TO THE PROTHONOTARY:

Kindly issue a Writ of Summons regarding the above-captioned action. Thank you.

Respectfully submitted,
PRIBANIC & PRIBANIC, L.L.C.

By:



Victor H. Pribanic, Esq.
1735 Lincoln Way
White Oak, PA 15131
(412) 672-5444
Counsel for Plaintiffs,
Randall Burns and Susan Burns.

ENTERED

COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA
CIVIL DIVISION

RANDALL BURNS,
and
SUSAN BURNS, his wife
Plaintiff s
VS

No: 146-2008 C.D.

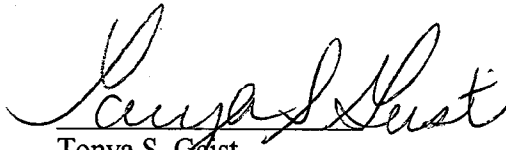
J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C.,
and
ADAM C. MILLER, D.D.S., M.D.
Defendants

WRIT OF SUMMONS

TO: J. RICE ORAL MAXILLOFACIAL AND AESTHETIC FACIAL SURGERY, P.C.
AND ADAM C. MILLER, D.D.S., M.D.:

You are hereby notified that **RANDALL BURNS and SUSAN BURNS, his wife**, has commenced and action against you.

February 7, 2008


Tonya S. Geist
Prothonotary & Clerk of Court

Victor H. Pribanic
PRIBANIC & PRIBANIC, L.L.C.
1735 Lincoln Way
White Oak, PA 15131
(412) 672-5444

SCANNED

ENTERED

FILED

2008 FEB 19 P 12:02

IN THE COURT OF COMMON PLEAS
OF JEFFERSON COUNTY, PENNSYLVANIA

TONYA S. GEIST
JEFFERSON COUNTY
PROTHONOTARY AND
CLERK OF COURTS

CIVIL DIVISION

CIVIL ACTION
MEDICAL PROFESSIONAL LIABILITY
ACTION

RANDALL BURNS,
and
SUSAN BURNS, his wife,
Plaintiffs,

v.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C.,
and
ADAM C. MILLER, D.D.S., M.D.,
Defendants.

Docket No. 08 - 146 - 2008 - CD

COMPLAINT

Code: 007

Filed on behalf of Plaintiffs:

RANDALL BURNS and SUSAN BURNS, his
wife

Counsels of Record for this Party:

Victor Hunter Pribanic

Pa. I.D. No.: 30785

Dr. Christopher Buck

Pa. I.D. No.: 205265

JURY TRIAL DEMANDED

PRIBANIC & PRIBANIC, L.L.C.

1735 Lincoln Way

White Oak, PA 15131

(412) 672-5444

CB

ENTERED

SCANNED

FILED

IN THE COURT OF COMMON PLEAS
OF JEFFERSON COUNTY, PENNSYLVANIA

2008 FEB 19 P 12:02

TONYA S. GEIST
JEFFERSON COUNTY
PROTHONOTARY AND
CLERK OF COURTS

RANDALL BURNS,
and
SUSAN BURNS, his wife,
Plaintiffs,

v.
J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C.,
and
ADAM C. MILLER, D.D.S., M.D.,
Defendants.

CIVIL DIVISION

CIVIL ACTION
MEDICAL PROFESSIONAL LIABILITY
ACTION

Docket No. 08 - 146 - 2008 - CD

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 an attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that, if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court, without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.
- **YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**
- **IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

LAUREL LEGAL SERVICES, INC.
194 Main Street
Brookville, PA 15825
(814) 849-3044

ENTERED

IN THE COURT OF COMMON PLEAS
OF JEFFERSON COUNTY, PENNSYLVANIA

FILED

RANDALL BURNS,
and
SUSAN BURNS, his wife,
Plaintiffs,

v.
J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C.,
and
ADAM C. MILLER, D.D.S., M.D.,
Defendants.

CIVIL DIVISION 2008 FEB 19 P 12:02

TONYA S. GEIST
JEFFERSON COUNTY
CIVIL ACTION
PROTHONOTARY AND
CLERK
MEDICAL PROFESSIONAL LIABILITY
ACTION

Docket No. 08 - 146 - 2008 - CD

COMPLAINT

COMPLAINT

NOW COME Plaintiffs, Randall Burns and Susan Burns, who—by and through their counsels, Victor H. Pribanic and Dr. Christopher Buck—bring this medical professional liability action sounding in dermatologic laser surgery malpractice against Defendants, and in support thereof aver as follows:

PLAINTIFFS

1. **Randall Burns:** Plaintiff, Randall Burns (“Mr. Burns”), is an adult individual and resident of Jefferson County at 13054 Route 36, Brookville, Pennsylvania 15825.
2. **Susan Burns:** Plaintiff, Susan Burns (“Ms. Burns”), is an adult individual and resident of Jefferson County at 13054 Route 36, Brookville, Pennsylvania 15825, and is the wife of Plaintiff, Randall Burns.

DEFENDANTS

ENTERED

3. **J. Rice Oral Maxillofacial and Aesthetic Facial Surgery:** Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, is a licensed medical professional corporation in Jefferson County engaged in the operation of a medical facility, with its principal place of business, as of December 6, 2006, located in Jefferson County at 90 Beaver Drive, Suite 101, Du Bois, Pennsylvania 15801, where this Defendant may be personally served with this Complaint and Notice to Defend.
4. **Dr. Adam Miller:** Defendant, Adam C. Miller, D.D.S., M.D., is a licensed practicing physician in the Commonwealth of Pennsylvania, who maintains an office at, *inter alia*, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery (also called PA Oral and Facial Center), located in Jefferson County at 90 Beaver Drive, Suite 101, Du Bois., Pennsylvania 15801, where he may be personally served with this Complaint and Notice to Defend; with an additional office located in Jefferson County at at 850 Leonard Street, P. O. Box 1428, Clearfield, PA 16830.

FACTS COMMON TO ALL COUNTS

Facts Based on Medical Records

5. Plaintiff, Randall Burns, who now pursues medical malpractice claims against Defendants, has suffered severe facial bruising, erythema and petechiae in a profound phototoxic adverse reaction to aminolevulinic acid photodynamic therapy (ALA- PDT), which, even after extensive corrective treatments, has resulted in permanent facial hypopigmentation under the following facts, all of which are based upon information and belief and on the medical records as well:
6. On December 30, 2005, Mr. Burns submitted himself to Levulan pulse dye laser treatment (long-pulsed pulsed dye laser V-Beam), laser treatment) to reduce recalcitrant sebaceous hyperplasia lesions (enlarged sebaceous glands), rosacea and facial spider veins (telangiectasia).

7. Sebaceous hyperplasia (SH), a proliferation of the sebaceous glands, are benign skin lesions and generally do not require treatment.
8. However, SH lesions can be cosmetically unfavourable and cumbersome when irritated.
9. On December 30, 2005, Dr. Adam Miller, D.M.D., a maxillofacial surgeon, treated Mr. Burns with a pulse dye laser "to activate Levulan [cream] 3.4 J/cm², 10 spot size, 0.5 ms [msec], 345 hits," which "Pt [patient] tolerated well." (Dr. Miller, *Progress Notes*.)
10. Levulan is the product name of Aminolevulinic acid 20% 5-aminolevulinic acid HCl; "ALA").
11. The photodynamic therapeutic process involves the topical application of 5-aminolevulinic acid (5-ALA), which is the precursor molecule in the heme biosynthesis pathway from which protoporphyrin IX (PpIX) is formed after several enzymatic reactions.
12. Thus Levulan is absorbed by the skin and converted into a potent photosensitizer, Protoporphyrin IX.
13. This process of activating Levulan with laser light is termed Photodynamic Therapy (PDT).
14. As a form of programmed cell death, PDT involves the treatment of tumors or dysplastic tissue by irradiation of photosensitized cells with drugs that produce cytotoxic metabolites when exposed to light leading to photodamage at subcellular sites where the photosensitizing agent has accumulated.
15. A physician or registered clinician is required to perform the Levulan Photodynamic Therapy procedure.
16. For his practice, Dr. Miller used, *inter alia*, a V-Beam, which is a modified variable-pulse pulsed-dye laser device (manufactured by Candela in Wayland, MA) that emits laser beams at at 595-nm laser wavelength, with laser energy output ranging from 3 to 25 J/cm², with pulse durations of 1.5, 3, 6, 10, 20, 30, and 40 ms, and apertures or spot sizes of 7, 10, and 3 x 10 mm, along with

a dynamic cooling device using a cryogen (1,1,1,2-tetrafluoroethane) spray, with a spray duration 20 to 100 ms with a 10- to 100-ms delay.

17. On February 7, 2006, Dr. Miller, upon information and belief, treated Mr. Burns a second time, using the same procedure, but at more intense settings.
18. Specifically, Dr. Miller, upon information and belief, treated Mr. Burns “for sebaceous hyperplasia using Kerastick application and a one-hour incubation, followed by activation using the V-Beam long-pulse PDL set at 7 mm. spot size, 7 J/cm² fluence, and a possible 10 msec pulse,” although the parameters are not completely certain. (Stuart Marcus to Dr. Adam Miller, e-mail message dated 06/04/06.)
19. Fluence is energy output per surface area.
20. In both ALA-PDT treatment sessions, photoactivation was conducted with a pulse dye laser (PDL) one hour after application of 20% ALA.
21. The relevant entry in Dr. Miller’s “Progress Notes” reports the following:

2-7-06 pulse dye laser w [with] levulan cream

Alcohol prep. Levulan applied. Sat in dark room 1 hour. Washed face. Pulse dye laser to face. 7 spot 7.0 J

Multiple blistered areas noted, Bruising. (Dr. Miller, *Progress Notes*, 02/07/06.)
22. In Dr. Miller’s entry, “7 spot 7.0 J” was struck through with line, over which “ERROR” was written. (Dr. Miller, *Progress Notes*, 02/07/06.)
23. In other words, Mr. Burns was given ALA (Levulan) incubation of 1 hour, then Candela’s V-Beam pulsed dye laser (a vascular device) 595-nm wavelength, using a 10-mm diameter spot size at a maximum energy of 7.0 J/cm² fluence, at a possible 10-ms pulse.

24. When Mr. Burns showed up for the office procedure to undergo a relatively a new procedure on the spider veins of his face with a "brand new laser machine," much to his surprise, he first met Theresa Prentice, who was "Dr. Miller's assistant" at the time of the procedure on 02/07/06. (*Progress Notes*, entry 09/15/06), an R.N., who performed the procedure.
25. Upon information and belief, no doctor was ever in the room during the procedure.
26. Upon information and belief, Theresa Prentice was not a nurse practitioner, but rather a technician who operated the PDL.
27. Upon information and belief, there are no national standards for laser education and certification.
28. As a result of this procedure, Mr. Burns was injured by severe laser burns to his face, as a direct and proximate result of the treatment of his sebaceous hyperplasia with pulse dye.
29. The relevant entry in Dr. Miller's "Progress Notes" reports the following:
2-10-06 reck [= recheck]
Severe bruising & ulcerations noted to entire face." (Dr. Miller, *Progress Notes*, 02/10/06.)
30. Specifically, Mr. Burns "developed severe bruising erythema and petechiae which progressed to erythema and crusting with a border of petechiae around each treated spot at 6 days post-treatment." (Stuart L. Marcus, M.D., Ph.D. Vice-President, Scientific Affairs and Chief Medical Officer, DUSA Pharmaceuticals, Inc., to Dr. Adam Miller, e-mail message dated 06/04/06.)
31. This procedure, known as Levulan Pulsed Dye Treatment, was performed "at energies sufficient to bruise." (Dr. Stuart Marcus to Dr. Adam Miller, e-mail message dated 06/04/06.)
32. The "Pulsed-Dye Laser settings ... in and of themselves produced selective photothermolysis of the blood vessels in the area, resulting in purpura." (Dr. Stuart Marcus to Dr. Adam Miller, e-mail message dated 06/04/06.)

33. Upon information and belief, Theresa Prentice burned Mr. Burns over 130 times.
34. Following these injuries, Mr. Burns was treated as a burn victim with topical antibiotic dressings.
35. This treatment seriously damaged the melanocytes on Mr. Burns's face, resulting in extensive hypopigmentation all over Mr. Burns' face, including scabbing of the burns.
36. The relevant entry in Dr. Miller's "Progress Notes" reports the following: "2-10-06 reek Severe bruising & ulcerations noted to entire face." (Dr. Miller, *Progress Notes*, 02/10/06.)
37. The result is now a spotted hypopigmented face that is very striking.
38. Theresa Prentice, the technician who performed the procedure, was apparently fired at the time of Mr. Burns' third follow-up visit.
39. Dr. Rice, himself, the senior partner, assumed responsibility for the subsequent treatment of Dr. Miller's former patient, Mr. Burns.
40. On August 2, 2006, some six months after the harmful treatment, results of a shave biopsy fragment of Mr. Burns' facial skin evidenced "prominent solar elastosis" as well as "somewhat prominent sebaceous gland lobules." (Dr. Jose Costa, M.D., Surgical Pathology Order, DuBois Regional Medical Center, 08/02/06.)
41. Mr. Burns continues to have sebaceous hyperplasia lesions, which the treatment did not resolve.
42. The relevant entry in Dr. Rice's "Progress Notes" reports the following: "6-02-06 Pt. called asked for Theresa. Told him she's no longer here. ... Pt has non-delineated white spots on face that come out more prominently regardless of temp, sun exposure, whatever." (Dr. Miller, *Progress Notes*, 06-02-06.)
43. On or before September 9, 2006, Mr. Burns consulted with Dr. Susan Obagi, M.D., because she was not satisfied with his progress under Dr. Rice's care.

44. Mr. Burns has what may be described as red-and-white circles over his entire face. (Susan Obagi, M.D., *Cosmetic Consultation*, 11/29/06).
45. On March 1, 2007, Mr. Burns still had moderate to severe telangiectasias (dilated superficial blood vessels) surrounding the white circles on his face, as well as erythema, severe lid ptosis, with mild/moderate brow ptosis, and "significant" sebaceous hyperplasia. (Susan Obagi, M.D., University of Pittsburgh Physicians, Cosmetic Surgery and Skin Health Center, *Cosmetic Consultation*, 03/01/07.)
46. The hypopigmentation ("white spots" that developed post-treatment) is unsightly.
47. When Mr. Burns goes through temperature changes, the hypo/hyperpigmentation spots increase in contrast and thus appearance.
48. Mr. Burns became permanently facially disfigured as a direct and proximate result of Defendants' conduct.

COUNT I
MEDICAL PROFESSIONAL NEGLIGENCE
RANDALL BURNS v. ADAM MILLER, D.D.S., M.D.

Plaintiffs incorporate, by reference, the averments set forth in Paragraphs 1 through 48 of this Complaint, with equal force and effect as though fully set forth herein, and further aver that:

49. This Count implicates medical malpractice by asserting professional negligence arising from substandard medical care on the part of Defendant, Adam C. Miller, D.D.S., M.D.

50. Dr. Miller deviated from the standard of care, *inter alia*, by:

- (1) Failure to safely regulate laser treatment instruments;
- (2) Failure to perform a test exposure prior to laser treatment;
- (3) Failure to supervise medical treatment by nurse/technician;
- (4) Failure to provide proper medical surveillance of laser treatment;
- (5) Failure to exercise due care preparatory to the course of laser treatment;
- (6) Failure to exercise due care during the course of laser treatment;
- (7) Failure to supervise Theresa Prentice in the performance of her photodynamic therapy of Mr. Burns;
- (8) Failure to provide proper directions and clear expectation of how the photodynamic therapy of Mr. Burns was to be performed;
- (9) Failure to monitor Theresa Prentice in her performance of the photodynamic therapy to assure compliance to established standards of practice, policies and procedures;
- (10) Failure to intervene when necessary; and
- (11) Failure to ensure appropriate documentation of the photodynamic therapy.

51. At all relevant times, Defendant, Adam C. Miller, D.D.S., M.D., was acting as an agent, ostensible agent, servant and/or employee of Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C.

52. **Professional Relationship:** During the period of Plaintiff's stay at Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., Randall Burns submitted himself to the care and custody of Defendant, Adam C. Miller, D.D.S., M.D., who undertook to diagnose and treat his condition; thus a professional relationship was established between Dr. Miller and Mr. Burns.
53. **Professional Services:** The injuries caused to the patient, Mr. Burns, occurred during—and as a direct result of—the performance of professional services rendered by Dr. Miller.
54. **Professional Liability:** The requisite proof required for a medical malpractice action is well settled: "In order to establish a prima facie case of malpractice, plaintiff must establish (1) a duty owed by the physician to the patient, (2) a breach of duty from the physician to the patient, (3) that the breach of duty was the proximate cause, or substantial factor in bringing about the harm suffered by the patient, and (4) damages suffered by the patient that were a direct result of the harm." *Mitzelfelt v. Kamrin*, 526 Pa. 54, 62; 584 A.2d 888, 891 (Pa. 1990).
55. **Proving Increased Risk:** "Medical opinion need only demonstrate, with a reasonable degree of medical certainty, that a defendant's conduct *increased the risk* of the harm actually sustained, and the jury then must decide whether that conduct was a substantial factor in bringing about the harm." *Jones v. Montefiore Hospital*, 494 Pa. 410, 417, 431 A.2d 920, 924 (1981) (emphasis in original).
56. Defendant, Dr. Miller, deviated from an acceptable professional standards and was negligent in caring for and treating Mr. Burns, *inter alia*, in the following particulars:

I. FAILURE TO SAFELY REGULATE

57. **Duty—Standard of Care:** As a specialist, the Defendant is held to a national standard for the practice of photodynamic therapy.

58. International guidelines for photodynamic therapy were established in 2007, to wit: Braathen L, Szeimies RM, Basset-Seguin N, et al. *Guidelines on the use of photodynamic therapy for non-melanoma skin cancer: An international consensus*. Journal of the American Academy of Dermatology (2007): 125–143.
59. Guidelines for the use of topical PDT have also been recommended by the British Photodermatology Group: Morton CA, Brown SB, Collins S et al. *Guidelines for topical photodynamic therapy: report of a workshop of the British Photodermatology Group*. British Journal of Dermatology 146 (2002): 552–567.
60. The American National Standard for the Safe Use of Lasers (ANSI Z136.1-1993) serves as the fundamental guide to laser safety in the United States.
61. This standard describes criteria for evaluating the overall hazard potential of a laser system, a laser classification scheme which is based upon hazard potential, and specific control measures for minimizing laser hazards.
62. Treatment success depends on wavelength, fluence and pulse duration.
63. Pulse duration and intensity should be carefully regulated.
64. Physicians should avoid aggressive settings in treating with the pulsed dye because they can cause hypopigmented circles.
65. **Deviation—Standard of Care:** On December 30, 2005, Dr. Adam Miller, D.M.D., a maxillofacial surgeon, treated Mr. Burns with a pulse dye laser “to activate Levulan [cream] 3.4 J/cm², 10 spot size, 0.5 ms [msec], 345 hits. Pt [patient] tolerated well.”
66. On February 7, 2006, Dr. Miller, upon information and belief, treated Mr. Burns, using the same procedure a second time, but with increased laser parameters that more than doubled the intensity of the laser beam.

67. Specifically, Dr. Miller, upon information and belief, treated Mr. Burns "for sebaceous hyperplasia using Kerastick application and a one-hour incubation, followed by activation using the V-Beam long-pulse PDL set at 7 mm. spot size, 7 J/cm² fluence, and a possible 10 msec pulse," although the parameters are not completely certain. (Stuart Marcus to Dr. Adam Miller, e-mail message dated 06/04/06.)
68. The relevant entry in Dr. Miller's "Progress Notes" reports the following:
- 2-7-06 pulse dye laser w [with] levulan cream
- Alcohol prep. Levulan applied. Sat in dark room 1 hour. Washed face. Pulse dye laser to face. 7 spot 7.0 J
- Multiple blistered areas noted, Bruising. (Dr. Miller, *Progress Notes*, 02/07/06.)
69. In Dr. Miller's entry, "7 spot 7.0 J" was struck through with line, over which "ERROR" was written.
70. Pulsed dye lasers belong to Class 4, a Laser Hazard Class that includes all high-power lasers whose primary beam and reflections (both specular and diffuse) pose immediate risks to the skin and eyes.
71. An PDL was used on Mr. Burns at a fluence of 7 J/cm², pulse duration of 10 msec, and 7 mm spot size to deliver a single, non-over-lapping pass to the assigned treatment area.
72. Upon information and belief, this more than doubled the intensity of laser radiation to which Mr. Burns was exposed, thus increasing the risk of hazardous effect or adverse biological change in the facial skin.
73. In the first laser surgery, pulse dye laser to face was performed at 3.4 J/cm² fluence.
74. In the second laser surgery, pulse dye laser to face was performed at 7.0 J/cm² fluence, more than twice the fluence.

75. In the first laser surgery, pulse dye laser to face was performed at a duration of 5 milliseconds.
76. In the second laser surgery, pulse dye laser to face was performed at a duration of 10 milliseconds, more than twice the pulse duration as in the previous treatment.
77. Thus, on February 2, 2006, Mr. Burns was exposed to over twice the laser energy output and to twice the pulse duration compared to his December 30, 2005 laser treatment.
78. Promulgated by the Laser Institute of America, ANSI Z136.1 has established a classification scheme for lasers by hazard potential.
79. Upon information and belief, Dr. Miller and Theresa Prentice treated Mr. Burns with settings far in excess of standards promulgated by the Laser Institute of America.
80. **Laser Hazard Analysis:** Mr. Burns' laser burns were caused by excessive laser settings.
81. Laser parameters for the February 2, 2006 treatment, were: fluence 7.0 J/cm², pulse duration 10 ms, spot size 7.0 mm, dynamic cooling device spray not reported.
82. Treatment for each patient may be optimized by applying the laser parameters deemed best from the initial test treatment.
83. In the initial treatment session on December 30, 2005, the 595-nm V-Beam pulsed dye laser delivered 3.4 J/cm² per pulse, 5 ms per pulse, with a 10-mm-diameter spot size, and an unreported (x-ms) cooling cryospray before each laser pulse.
84. In the follow-up treatment session on February 7, 2006, the 595-nm V-Beam pulsed dye laser delivered 7.0 J/cm² per pulse, 10 ms per pulse, with a 7-mm-diameter spot size, and an unreported (x-ms) cooling cryospray before each laser pulse.
85. Here, the narrowing of the spot size by 30% (from 10 mm down to 7 mm), increasing the pulse duration by 50% (from 5 ms to 10 ms), and increasing the fluence by nearly 52% (from 3.4 J/cm² to 7.0 J/cm²) combined to produce an unreasonable risk of injury on Mr. Burns.

86. On the basis of the laser parameters that Dr. Miller reported, Dr. Stuart opined that the laser parameters that Dr. Miller and/or his technician, Theresa Prentice, administered on the February 7, 2006 treatment session were "at energies sufficient to bruise." (Dr. Stuart Marcus to Dr. Adam Miller, e-mail message dated 06/04/06.)
87. On his progress notes for February 7, 2006, Dr. Miller reported: "Multiple blistered areas noted, Bruising." (Dr. Miller, *Progress Notes*, 02/07/06.)
88. Blister formation (or vesiculation) is due to epidermal thermal damage.
89. Vesiculation, crusting, and hypopigmentation are indicative of excessive laser fluences.
90. Mr. Burns suffered vesiculation, crusting, and hypopigmentation.
91. Therefore excessive laser fluences were used by Defendants.
92. **Damages:** As a direct and proximate result of his negligent treatment by Defendant, Dr. Miller, Mr. Burns suffered an epidermal injury that occurred at one of the V-Beam's pulsed-dye laser settings.
93. As a direct and proximate result of his negligent treatment by Dr. Miller, Mr. Burns suffered permanent pigment changes (white spots) caused by the destruction of melanocytes in those areas of his face that sustained laser burns.
94. Solely as a result of his professionally negligent conduct, which conduct was the direct and proximate cause of Plaintiff Mr. Burns's injuries, Defendant, Dr. Miller, is liable for the damages set forth above.

II. FAILURE TO PERFORM A TEST EXPOSURE

95. These damages were unnecessary; they could and should have been avoided by performing a patch test exposure prior to the full treatment.

96. **Duty—Standard of Care:** A 2007 report strongly recommends that “clinicians should exercise caution and that a test exposure to ALA-PDT may be needed when considering treatment to large areas, patients with skin type I/II, and those with extensive actinic damage, and/or with strong ALA-induced fluorescence.” (A. C. Kerr, J. Ferguson and S. H. Ibbotson, *Acute photo-toxicity with urticarial features during topical 5-aminolaevulinic acid photodynamic therapy*. Clinical and Experimental Dermatology 32 (2007): 201–202.
97. **Deviation—Standard of Care:** By failing to perform a patch test exposure at the February 7, 2006 laser treatment parameters prior to treatment of Mr. Burns on that same day, Dr. Miller deviated from the standard of care.
98. **Degree—Increased Risk:** Failure to perform a patch test exposure at the February 7, 2006 laser treatment parameters prior to treatment of Mr. Burns on that same day increased the risk of negligent and harmful laser treatment “at energies sufficient to bruise.” (Dr. Stuart Marcus to Dr. Adam Miller, e-mail message dated 06/04/06.)
99. **Damages:** As a direct and proximate result of his negligent treatment by Dr. Miller, Mr. Burns suffered permanent pigment changes (white spots) caused by the destruction of melanocytes in those areas of his face that sustained laser burns.

III. FAILURE TO SUPERVISE:

LACK OF PROPER MEDICAL SURVEILLANCE

100. These damages were unnecessary; they could and should have been avoided by the presence of Dr. Miller and his supervision of technician Theresa Prentice during the laser treatment of Mr. Burns on February 7, 2006.

101. **Duty—Standard of Care:** According to the clinical practice guidelines established by the American Academy of Dermatology, the physician needs to be directly involved with each laser procedure and be in the facility at the time the procedure is taking place.
102. Moreover, if the delegator (Dr. Miller) and delegate (Theresa Prentice) accept the accountability for their respective roles in the delegated patient care, then Dr. Miller was under an obligation to: (1) supervise performance of the task(s); (2) provide directions and clear expectation of how the task(s) is to be performed; (3) monitor performance of the task to assure compliance to established standards of practice, policies and procedures; (4) intervene when necessary; and (5) ensure appropriate documentation of the task(s).
103. **Deviation—Standard of Care:** Upon information and belief, Dr. Miller left the laser treatment completely in the hands of the technician, Theresa Prentice.
104. There are said to be “Five Rights of Delegation”:

FIVE RIGHTS OF DELEGATION

1. **Right Task:** One that is delegable for a specific client.
 2. **Right Circumstances:** Appropriate patient setting, available resources, and other relevant factors considered.
 3. **Right Person:** Right person is delegating the right task(s) to the right person to be performed on the right person.
 4. **Right Direction/Communication:** Clear, concise description of the task, including its objective, limits and expectations.
 5. **Right Supervision:** Appropriate monitoring, evaluation, intervention, as needed, and feedback.
105. Of these “Five Rights of Delegation,” Dr. Miller deviated from the “right direction/communication” standard of care in that Theresa Prentice was evidently not given the right instructions for performing proper photodynamic therapy on Mr. Burns.

106. Of these "Five Rights of Delegation," Dr. Miller deviated from the "right supervision" standard of care in that he failed to provide appropriate monitoring of Theresa Prentice's performance.
107. Of these "Five Rights of Delegation," Dr. Miller deviated from the "right supervision" standard of care in that he failed to provide proper intervention, as needed, in the course of Theresa Prentice's performance.
108. Generally, Dr. Miller deviated from the standard of care, *inter alia*, by:
 - (1) failing to supervise Theresa Prentice in the performance of her photodynamic therapy of Mr. Burns;
 - (2) failing to provide proper directions and clear expectation of how the photodynamic therapy of Mr. Burns was to be performed;
 - (3) failing to monitor Theresa Prentice in her performance of the photodynamic therapy to assure compliance to established standards of practice, policies and procedures;
 - (4) failing to intervene when necessary; and
 - (5) failing to ensure appropriate documentation of the photodynamic therapy.
109. Specifically, Dr. Miller deviated from the standard of care in the following particulars:
 - (1) Upon information and belief, by being absent during the procedure, Dr. Miller failed to supervise Theresa Prentice in the performance of her photodynamic therapy of Mr. Burns, since his very absence precludes Dr. Miller's ability to supervise.
 - (2) Due to his absence, Dr. Miller failed to provide proper directions and clear expectation of how the photodynamic therapy of Mr. Burns was to be performed.

- (3) Due to his absence, Dr. Miller's failure to supervise included the failure to monitor Theresa Prentice in her performance of the photodynamic therapy to assure compliance to established standards of practice, policies and procedures;
- (4) Due to his absence, Dr. Miller failed to intervene when necessary; and
- (5) Due to his absence, Dr. Miller failed to ensure appropriate documentation of the photodynamic therapy, as evidenced by the fact that, in Dr. Miller's entry, "7 spot 7.0 J" was struck through with line, over which "ERROR" was written. (Dr. Miller, *Progress Notes*, 02/07/06.)

- 110. **Degree—Increased Risk:** Laser treatments that are performed or supervised properly, by a trained physician, are safe and effective; conversely, laser treatments that are not performed or supervised properly by a trained physician, are likely to be unsafe and ineffective.
- 111. Medical expertise will establish that lack of supervision by Dr. Miller greatly increased the risk that his patient, Mr. Burns, would suffer harmful, painful, and unsightly laser burns in the laser treatment administered by technician, Theresa Prentice, who evidently had either used the wrong settings or applied improper settings dictated by Dr. Miller.
- 112. **Damages:** As a direct and proximate result of negligent treatment by Defendants, Dr. Miller and Theresa Prentice, Mr. Burns suffered permanent pigment changes (white spots) caused by the destruction of melanocytes in those areas of his face that sustained laser burns.

IV. FAILURE TO EXERCISE DUE CARE

- 113. *Due care* is required in *health care* so that a patient receives *proper care* under the relevant professional *standard of care*.

114. **Duty—Standard of Care:** According to the clinical practice guidelines established by the American Academy of Dermatology, the physician needs to be directly involved with each laser procedure and be in the facility at the time the procedure is taking place.
115. Dr. Miller had a duty to exercise due care by ensuring that Theresa Prentice, to whom he had delegated the responsibility, would perform the photodynamic therapy procedure properly.
116. **Deviation—Standard of Care:** Upon information and belief, Dr. Miller left the laser treatment completely in the hands of the technician, Theresa Prentice.
117. **Degree—Increased Risk:** Laser treatments that are performed or supervised properly, by a trained physician, are safe and effective; conversely, laser treatments that are not performed or supervised properly by a trained physician, are likely to be unsafe and ineffective.
118. Medical expertise will establish that lack of supervision by Dr. Miller greatly increased the risk that his patient, Mr. Burns, would suffer harmful, painful, and unsightly laser burns in the laser treatment administered by technician, Theresa Prentice, who evidently had either used the wrong settings or applied improper settings dictated by Dr. Miller.
119. **Damages:** As a direct and proximate result of negligent treatment by Defendants, Dr. Miller and Theresa Prentice, Mr. Burns suffered permanent pigment changes (white spots) caused by the destruction of melanocytes in those areas of his face that sustained laser burns.
120. As a direct and proximate result of the conduct set forth above in this Count, Plaintiff, Mr. Burns, has sustained the following severe and serious injuries and damages:
- (a) Facial disfigurement.
 - (b) Loss of income.

- (c) Loss of some of the ordinary pleasures and enjoyment of life.
- (d) Past, present and future medical expenses as a result of undergoing or needing to undergo subsequent surgical and medical care and treatment to correct and/or repair the injuries suffered.
- (e) Past, present and future pain, suffering, inconvenience, embarrassment, emotional distress and mental anguish.
- (f) Profound depression.

121. Solely as a result of his professionally negligent conduct, which conduct was the direct and proximate cause of Plaintiff Mr. Burns's injuries, Defendant, Dr. Miller, is liable for the damages set forth above.

122. **Further Allegations Revealed by Discovery:** This Count will properly allege such other negligence, carelessness, recklessness or other unreasonable conduct as discovery may reveal.

WHEREFORE, Plaintiff, Mr. Burns, demands judgment against Defendant, Dr. Miller, for damages in an amount in excess of the jurisdiction of the Board of Arbitrators of this Court.

COUNT II
RESPONDEAT SUPERIOR
MEDICAL PROFESSIONAL NEGLIGENCE
RANDALL BURNS v. J. RICE ORAL MAXILLOFACIAL AND AESTHETIC FACIAL SURGERY,
P.C.

Plaintiffs incorporate, by reference, the averments set forth in Paragraphs 1 through 121 of this Complaint, with equal force and effect as though fully set forth herein, and further aver that:

122. This Count implicates medical malpractice by asserting professional negligence arising from substandard medical care on the part of Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., under a theory of *respondeat superior* liability for the professional medical negligence of Defendant, Adam C. Miller, D.D.S., M.D., and Theresa Prentice, R.N.
123. At all relevant times, Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., expressly and implicitly represented to the general public that those who treated Plaintiff, Randall Burns, practiced medicine in a skilled and proper manner and possessed the degree of professional learning, skill and ability ordinarily possessed by other physicians and nurses/laser technicians who are engaged in the practice of medicine in the same or similar communities.
124. At all times mentioned herein and material hereto, Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., was charged with the professional responsibility of rendering proper care and treatment to Mr. Burns, and of assuring that proper medical care and attention were provided during all periods of time during which Mr. Dixon remained under said Defendant's protocol, care and treatment.
125. Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., is a health care provider as defined by Section 503 of the Medical Care Availability and Reduction of Error (Mcare) Act, 40 P. S. § 1303.503.

127. Under *respondeat superior*, the Defendant health care facility is liable for the actions of its employees, here being the defendant physician and the nurse.
128. Under Pennsylvania law, "General agency principles apply to hospitals and physicians. ... In order to establish actual agency, it must be shown that the employer-hospital controlled or had the right to control the physical conduct of the servant-physician in the performance of his work." *Simmons v. St. Clair Memorial Hosp.*, 332 Pa. Super. 444, 451; 481 A.2d 870, 873-874 (Pa. Super. 1984).
129. At all relevant times, Defendant, Dr. Miller, was acting as an agent, ostensible agent, servant and/or employee of Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C.
130. Mr. Burns entered into a physician-patient relationship with Defendant, Dr. Miller, for the purpose of care and treatment during his visits to the J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C. medical facility.
131. **Duty—Standard of Care:** As recounted in detail in Count I, *supra*, Dr. Miller was under a professional standard of care which included, *inter alia*, the following duties owed to his patient, Mr. Burns:
- (1) duty to safely regulate;
 - (2) duty to perform a test exposure;
 - (3) duty to supervise;
 - (4) duty to exercise due care.
132. **Deviation—Standard of Care:** As recounted in detail in Count I, *supra*, Dr. Miller deviated from a professional standard of care in the following particulars:
- (1) Failure to safely regulate laser treatment instruments;

- (2) Failure to perform a test exposure prior to laser treatment;
- (3) Failure to supervise medical treatment by nurse/technician;
- (4) Failure to provide proper medical surveillance of laser treatment;
- (5) Failure to exercise due care preparatory to the course of laser treatment;
- (6) Failure to exercise due care during the course of laser treatment;
- (7) Failure to supervise Theresa Prentice in the performance of her photodynamic therapy of Mr. Burns;
- (8) Failure to provide proper directions and clear expectation of how the photodynamic therapy of Mr. Burns was to be performed;
- (9) Failure to monitor Theresa Prentice in her performance of the photodynamic therapy to assure compliance to established standards of practice, policies and procedures;
- (10) Failure to intervene when necessary; and
- (11) Failure to ensure appropriate documentation of the photodynamic therapy.

133. **Degree-Increased Risk:** Laser treatments that are performed or supervised properly, by a trained physician, are safe and effective; conversely, laser treatments that are not performed or supervised properly by a trained physician, are likely to be unsafe and ineffective.

134. Medical expertise will establish that lack of supervision by Dr. Miller greatly increased the risk that his patient, Mr. Burns, would suffer harmful, painful, and unsightly laser burns in the laser treatment administered by technician, Theresa Prentice, who evidently had either used the wrong settings or applied improper settings dictated by Dr. Miller.

135. **Damages:** As a direct and proximate result of the conduct set forth above in this Count, Plaintiff, Mr. Burns, has sustained the following severe and serious injuries and damages:

- (a) Facial disfigurement.
- (b) Loss of income.
- (c) Loss of some of the ordinary pleasures and enjoyment of life.
- (d) Past, present and future medical expenses as a result of undergoing or needing to undergo subsequent surgical and medical care and treatment to correct and/or repair the injuries suffered.
- (e) Past, present and future pain, suffering, inconvenience, embarrassment, emotional distress and mental anguish.
- (f) Profound depression.

136. Under a theory of *respondeat superior* liability for the professional medical negligence of Defendant, Adam C. Miller, D.D.S., M.D., and Theresa Prentice, R.N., his agent, and solely as a result of their respective professionally negligent conduct, which conduct was the direct and proximate cause of Plaintiff Mr. Burns's injuries, Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., is liable for the damages set forth above.

137. **Further Allegations Revealed by Discovery:** This Count will properly allege such other negligence, carelessness, recklessness or other unreasonable conduct as discovery may reveal.

WHEREFORE, Plaintiff, Mr. Burns, demands judgment against Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., for damages in an amount in excess of the jurisdiction of the Board of Arbitrators of this Court.

COUNT III

LOSS OF CONSORTIUM

SUSAN BURNS v. ADAM C. MILLER, D.D.S., M.D.

Plaintiffs incorporate, by reference, the averments set forth in Paragraphs 1 through 136 of this Complaint, with equal force and effect as though fully set forth herein, and further aver that:

137. As a further direct and proximate result of the professional negligence of Defendant, Adam C. Miller, D.D.S., M.D., Plaintiff, Susan Burns has been denied and will, in the future, continue to be denied much of the society, companionship, benefit, consortium and services of her husband, Plaintiff, Randall Burns, that he formerly enjoyed prior to her injuries.

WHEREFORE, Plaintiff, Susan Burns, demands judgment against Defendant, Adam C. Miller, D.D.S., M.D., for damages in an amount in excess of the jurisdiction of the Board of Arbitrators of this Court.

COUNT IV

LOSS OF CONSORTIUM

SUSAN BURNS v. J. RICE ORAL MAXILLOFACIAL AND AESTHETIC FACIAL SURGERY, P.C.

Plaintiffs incorporate, by reference, the averments set forth in Paragraphs 1 through 137 of this Complaint, with equal force and effect as though fully set forth herein, and further aver that:

138. As a further direct and proximate result of the professional negligence of Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., Plaintiff, Susan Burns has been denied and will, in the future, continue to be denied much of the society, companionship, benefit, consortium and services of her husband, Plaintiff, Randall Burns, that he formerly enjoyed prior to her injuries.

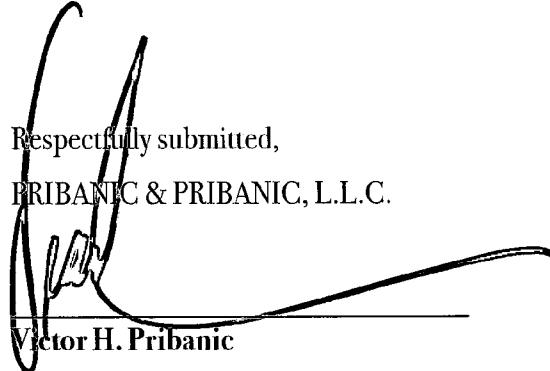
WHEREFORE, Plaintiff, Susan Burns, demands judgment against Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., for damages in an amount in excess of the jurisdiction of the Board of Arbitrators of this Court.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury on all issues so triable, as provided by law with respect to all issues of fact in the above-styled action.

Respectfully submitted,
PRIBANIC & PRIBANIC, L.L.C.

By:



Victor H. Pribanic
1735 Lincoln Way
White Oak, PA 15131
(412) 672-5444
Counsel for Plaintiffs,
Randall Burns and Susan Burns.

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

RANDALL BURNS, and SUSAN BURNS, his wife, *Plaintiffs, v. J. RICE ORAL MAXILLOFACIAL AND AESTHETIC FACIAL SURGERY, P.C., and ADAM C. MILLER, D.D.S., M.D., *Defendants.**

VERIFICATION TO COMPLAINT

Plaintiff verifies that he/she is a Plaintiff in the foregoing action; that the foregoing Complaint is based upon information which he/she has furnished to his/her counsel and information which has been gathered by his/her counsel in the preparation of the lawsuit. The language of the Complaint is that of counsel and not of the Plaintiff. Plaintiff has read the Complaint and to the extent that the Complaint is based upon information which he/she has given to his/her counsel, it is true and correct to the best of his/her knowledge, information and belief. To the extent that the content of the Complaint is that of counsel, Plaintiff has relied upon counsel in making this Affidavit. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

2/13/08

DATE

Randall Burns

RANDALL BURNS

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

RANDALL BURNS, and SUSAN BURNS, his wife, *Plaintiffs, v. J. RICE ORAL MAXILLOFACIAL AND AESTHETIC FACIAL SURGERY, P.C., and ADAM C. MILLER, D.D.S., M.D., Defendants.*

VERIFICATION TO COMPLAINT

Plaintiff verifies that he/she is a Plaintiff in the foregoing action; that the foregoing Complaint is based upon information which he/she has furnished to his/her counsel and information which has been gathered by his/her counsel in the preparation of the lawsuit. The language of the Complaint is that of counsel and not of the Plaintiff. Plaintiff has read the Complaint and to the extent that the Complaint is based upon information which he/she has given to his/her counsel, it is true and correct to the best of his/her knowledge, information and belief. To the extent that the content of the Complaint is that of counsel, Plaintiff has relied upon counsel in making this Affidavit. Plaintiff understands that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

2-13-08

DATE

Susan Burns

SUSAN BURNS

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS, and SUSAN BURNS, his wife, *Plaintiffs*, v. J. RICE ORAL MAXILLOFACIAL
AND AESTHETIC FACIAL SURGERY, P.C., and ADAM C. MILLER, D.D.S., M.D., *Defendants*.

Civil Division, Docket No. 08 - 146

CERTIFICATE OF MERIT

as to

J. RICE ORAL MAXILLOFACIAL AESTHETIC FACIAL SURGERY, P.C.

I, Victor H. Pribanic, 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 (1042.3(a)(1));

AND/OR

- ☐ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this Defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm (1042.3(a)(2));

OR

- ☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this Defendant (1042.3(a)(3));

OR

- ☒ claims are raised under both subdivisions 1042.3(a)(1) and 1042.3(a)(2).

Date:

2-13-08

Victor H. Pribanic

ENTERED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS, and SUSAN BURNS, his wife, *Plaintiffs*, v. J. RICE ORAL MAXILLOFACIAL
AND AESTHETIC FACIAL SURGERY, P.C., and ADAM C. MILLER, D.D.S., M.D., *Defendants*.

Civil Division, Docket No. 08 - 146 - 2008 - CD

CERTIFICATE OF MERIT

as to

ADAM C. MILLER, D.D.S., M.D.

I, Victor H. Pribanic, 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 (1042.3(a)(1));

AND/OR

- ☐ the claim that this Defendant deviated from an acceptable professional standard is based solely on allegations that other licensed professionals for whom this Defendant is responsible deviated from an acceptable professional standard and an appropriate licensed professional has supplied a written statement to the undersigned that there is a basis to conclude that the care, skill or knowledge exercised or exhibited by the other licensed professionals in the treatment, practice or work that is the subject of the Complaint, fell outside acceptable professional standards and that such conduct was a cause in bringing about the harm (1042.3(a)(2));

OR

- ☐ expert testimony of an appropriate licensed professional is unnecessary for prosecution of the claim against this Defendant (1042.3(a)(3));

OR

- ☐ claims are raised under both subdivisions 1042.3(a)(1) and 1042.3(a)(2).

Date: 2-13-08


Victor H. Pribanic

ENTERED

FILED

MAR 03 2008

**TONYA S. ZEIST
PRO. & CLERK of COURTS**

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS and SUSAN BURNS, his
wife,

Plaintiffs,

vs.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C., and
ADAM C. MILLER, D.D.S., M.D.,

Defendants.

CIVIL DIVISION

No. 146-2008 C.D.

ENTRY OF APPEARANCE

Filed on Behalf of Defendants, J. Rice Oral
Maxillofacial and Aesthetic Facial Surgery,
P.C., and Adam C. Miller, D.D.S., M.D.

Counsel of Record for These Parties:

DAVID B. WHITE, ESQ.

Pa. I.D. #36684

BURNS, WHITE & HICKTON, LLC

Firm No. 828

Four Northshore Center

106 Isabella Street

Pittsburgh, PA 15212

(412) 995-3000

(412) 995-3305 (Facsimile)

JURY TRIAL DEMANDED

ENTERED

SCANNED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS and SUSAN BURNS, his
wife,

Plaintiffs,

vs.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C., and
ADAM C. MILLER, D.D.S., M.D.,

Defendants.

CIVIL DIVISION

No. 146-2008 C.D.

FILED

MAR 03 2008

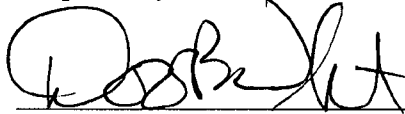
TONYA S. GEIST
PRO. & CLERK OF COURTS

ENTRY OF APPEARANCE

To: Tonya S. Geist, Prothonotary

KINDLY enter the Appearance of undersigned counsel on behalf of Defendants, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., and Adam C. Miller, D.D.S., M.D., as to the above-titled action.

Respectfully submitted,



David B. White

Pa. I.D. #36684

*(Counsel for Defendants, J. Rice Oral Maxillofacial
and Aesthetic Facial Surgery, P.C., and Adam C.
Miller, D.D.S., M.D.)*

BURNS, WHITE & HICKTON, LLC
Four Northshore Center, 106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

ENTERED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Entry of Appearance** has been served upon all counsel of record by U.S. first-class mail, postage prepaid, this 28th day of February 2008, addressed as follows:

Victor H. Pribanic, Esq.
Pribanic & Pribanic
1735 Lincoln Way
White Oak, PA 15131
(*Counsel for Plaintiffs*)

FILED

MAR 03 2008

TONYA G. DEIST
PRO. & CLERK of COURTS

BURNS, WHITE & HICKTON, LLC



DAVID B. WHITE

ENTERED

FILED

2008 APR 14 A 10:42

TONYA S. GEIST
JEFFERSON COUNTY
CLERK OF COURT

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS and SUSAN BURNS, his
wife,

Plaintiffs,

vs.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C., and
ADAM C. MILLER, D.D.S., M.D.,

Defendants.

CIVIL DIVISION

No. 146-2008 C.D.

**PRAECIPE FOR RULE TO FILE
COMPLAINT**

Filed on Behalf of Defendants, J. Rice Oral
Maxillofacial and Aesthetic Facial Surgery,
P.C., and Adam C. Miller, D.D.S., M.D.

Counsel of Record for These Parties:
DAVID B. WHITE, ESQ.
Pa. I.D. #36684

BURNS, WHITE & HICKTON, LLC
Firm No. 828
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000
(412) 995-3305 (Facsimile)

JURY TRIAL DEMANDED

FILED

SCANNED

1511 517
IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS and SUSAN BURNS, his
wife,

Plaintiffs,

vs.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C., and
ADAM C. MILLER, D.D.S., M.D.,

Defendants.

CIVIL DIVISION

No. 146-2008 C.D.

2008 APR 14 A 10:42

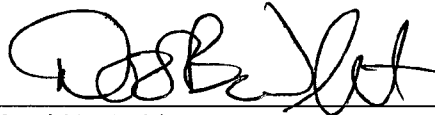
TONYA S. GEIST
JEFFERSON COUNTY
PROTHONOTARY AND
CLERK OF ORPHANS

PRAECIPE FOR RULE TO FILE COMPLAINT

To: Tonya S. Geist, Prothonotary

KINDLY enter a Rule to File Complaint upon Plaintiffs, Randall Burns and Susan Burns,
his wife, in the above-referenced matter.

Respectfully submitted,



David B. White
Pa. I.D. #36684

*(Counsel for Defendants, J. Rice Oral Maxillofacial
and Aesthetic Facial Surgery, P.C., and Adam C.
Miller, D.D.S., M.D.)*

BURNS, WHITE & HICKTON, LLC
Four Northshore Center, 106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000

ENTERED

CERTIFICATE OF SERVICE

FILED

2008 APR 14 A 10:42

I hereby certify that a true and correct copy of the within **Praeipue for Rule to File**
Complaint has been served upon all counsel of record by U.S. first-class mail, postage prepaid,
this 11th day of April 2008, addressed as follows:

Victor H. Pribanic, Esq.
Pribanic & Pribanic
1735 Lincoln Way
White Oak, PA 15131
(*Counsel for Plaintiffs*)

BURNS, WHITE & HICKTON, LLC



DAVID B. WHITE

ENTERED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

BURNS RANDALL
BURNS SUSAN

VERSUS

J RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY PC
MILLER ADAM C DDS MD

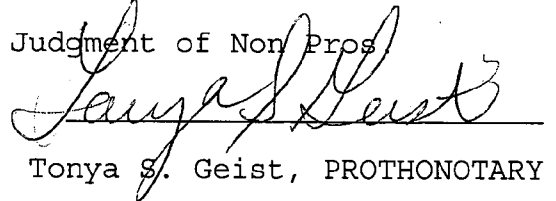
CIVIL ACTION

No. 2008-00146

RULE TO FILE COMPLAINT

To:
BURNS RANDALL

You are ruled to file Complaint within 20
days after Service of Rule or suffer the
entry of the Judgment of Non Pros


Tonya S. Geist, PROTHONOTARY

COPY

, DEPUTY

Date: 4/14/2008

Plaintiff Attorney PRIBANIC, VICTOR H.

ENTERED

SCANNED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

BURNS RANDALL
BURNS SUSAN

VERSUS

J RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY PC
MILLER ADAM C DDS MD

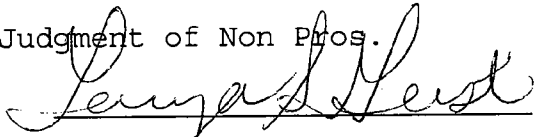
CIVIL ACTION

No. 2008-00146

RULE TO FILE COMPLAINT

To:
BURNS SUSAN

You are ruled to file Complaint within 20
days after Service of Rule or suffer the
entry of the Judgment of Non Pros.



Tonya S. Geist, PROTHONOTARY

COPY

, DEPUTY

Date: 4/14/2008

Plaintiff Attorney PRIBANIC, VICTOR H.

ENTERED

FILED

2008 JUN 11 P 4: 06

No. 146 C.D. 2008

Now, February 7, 2008 after due and diligent search, could not find the within named J. RICE ORAL MAXILLOFACIAL AND AESTHETIC FACIAL SURGERY, P.C. and ADAM C. MILLER, D.D.S., M.D., Defendants, in my bailwick, viz; County of Jefferson, State of Pennsylvania. Therefore, I deputized the Sheriff of Clearfield County to serve the Writ of Summons, whose Return of Service is attached hereto and hereby made a part of this Return.

My Costs:	\$54.00	Paid
Clearfield Co. Costs		
Pd. Directly by Atty:	43.60	
Total Costs:	\$97.60	

So Answers,

Carl J. Gotwald Sr. Sheriff
JEFFERSON COUNTY, PENNSYLVANIA

ENTERED

SCANNED

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103735
NO: 14-2008-CD
SERVICE # 1 OF 2
WRIT OF SUMMONS

PLAINTIFF: RANDALL & SUSAN BURNS

vs.

DEFENDANT: J. RICE ORAL MAXILLOFACIAL & AESTHETIC FACIAL SURGERY, P.C. and ADAM C. MILLER, D.D.S.,
M.D.

SHERIFF RETURN

NOW, February 13, 2008 AT 12:17 PM SERVED THE WITHIN WRIT OF SUMMONS ON J. RICE ORAL
MAXILLOFACIAL & AESTHETIC DEFENDANT AT 90 BEAVER DRIVE, SUITE 101 A, DUBOIS, CLEARFIELD COUNTY,
PENNSYLVANIA, BY HANDING TO ADAM C. MILLER, DDS, M.D., PERSON IN CHARGE A TRUE AND ATTESTED
COPY OF THE ORIGINAL WRIT OF SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103735
NO: 14-2008-CD
SERVICE # 2 OF 2
WRIT OF SUMMONS

PLAINTIFF: RANDALL & SUSAN BURNS

vs.

DEFENDANT: J. RICE ORAL MAXILLOFACIAL & AESTHETIC FACIAL SURGERY, P.C. and ADAM C. MILLER, D.D.S.,
M.D.

SHERIFF RETURN

NOW, February 13, 2008 AT 12:17 PM SERVED THE WITHIN WRIT OF SUMMONS ON ADAM C. MILLER, D.D.S. & M.D. DEFENDANT AT 90 BEAVER DRIVE, SUITE 101 A, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO ADAM C. MILLER, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL WRIT OF SUMMONS AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

FILED

RANDALL BURNS and SUSAN BURNS, his
wife,

Plaintiffs,

vs.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C., and
ADAM C. MILLER, D.D.S., M.D.,

Defendants.

CIVIL DIVISION

No. 146-2008 C.D.

OCT 24 2008

ANSWER AND NEW MATTER

**TONYA S. GEIST
PRO. & CLERK of COURTS**

Filed on Behalf of Defendants, J. Rice Oral
Maxillofacial and Aesthetic Facial Surgery,
P.C., and Adam C. Miller, D.D.S., M.D.

Counsel of Record for These Parties:

DAVID B. WHITE, ESQ.

Pa. I.D. #36684

BURNS, WHITE & HICKTON, LLC

Firm No. 828

Four Northshore Center

106 Isabella Street

Pittsburgh, PA 15212

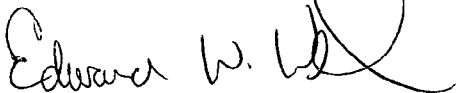
(412) 995-3000

(412) 995-3305 (Facsimile)

JURY TRIAL DEMANDED

NOTICE TO PLEAD

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



Edward W. Wertman, Esquire
Counsel for Defendants

ENTERED

SCANNED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS and SUSAN BURNS, his
wife,

Plaintiffs,

vs.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C., and
ADAM C. MILLER, D.D.S., M.D.,

Defendants.

CIVIL DIVISION

No. 146-2008 C.D.

FILED

OCT 24 2008

**TONYAS. GEIST
PRO. & CLERK of COURTS**

ANSWER AND NEW MATTER

AND NOW, come Defendants' J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C., and Adam C. Miller, D.D.S., M.D. and files their Answer and New Matter to Plaintiffs' Complaint, averring as follows:

1. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 1 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

2. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 2 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

3. Admitted.

4. Admitted.

5. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 5

of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial. By way of further answer, the averments set forth in Paragraph 5 are admitted only insofar as they are consistent with Plaintiffs' medical records, which as writings speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial.

6. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 6 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial. By way of further answer, the averments set forth in Paragraph 6 are admitted only insofar as they are consistent with Plaintiffs' medical records, which as writings speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial.

7. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 7 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

8. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 8 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

9. The averments set forth in Paragraph 9 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is

demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. The averments contained in Paragraph 15 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 15 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

16. The averments set forth in Paragraph 16 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

17. The averments set forth in Paragraph 17 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

18. The averments set forth in Paragraph 18 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak

for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

19. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 19 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

20. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 20 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

21. The averments set forth in Paragraph 21 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

22. The averments set forth in Paragraph 22 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

23. The averments set forth in Paragraph 23 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak

for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

24. The averments set forth in Paragraph 24 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

25. The averments set forth in Paragraph 25 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

26. The averments set forth in Paragraph 26 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

27. The averments contained in Paragraph 27 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 27 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

28. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 28 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

29. The averments set forth in Paragraph 29 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

30. The averments set forth in Paragraph 30 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

31. The averments set forth in Paragraph 31 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

32. The averments set forth in Paragraph 32 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is

demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

33. The averments set forth in Paragraph 33 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e). By way of further answer, at all times material hereto Teresa Prentice rendered appropriate care and treatment within the applicable standard.

34. The averments set forth in Paragraph 34 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

35. The averments set forth in Paragraph 35 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

36. The averments set forth in Paragraph 36 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is

demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

37. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 37 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

38. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

39. The averments set forth in Paragraph 39 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

40. The averments set forth in Paragraph 40 of Plaintiff's Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

41. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 41 of Plaintiff's Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

42. The averments set forth in Paragraph 42 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

43. The averments set forth in Paragraph 43 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

44. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 44 of Plaintiff's Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial. By way of further answer, the averments set forth in Paragraph 44 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

45. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 45 of Plaintiff's Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial. The averments set forth in Paragraph 45 of the Plaintiffs' Complaint are

admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

46. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 46 of Plaintiff's Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

47. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 47 of Plaintiff's Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

48. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 48 of Plaintiff's Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial. By way of further answer, the averments set forth in Paragraph 48 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

COUNT I

MEDICAL PROFESSIONAL NEGLIGENCE

RANDALL BURNS v. ADAM MILLER, D.D.S., M.D.

Defendants hereby incorporate paragraphs 1-48 of their Answer and New Matter by reference as if same were more fully set forth at length herein.

49. Denied. The averments contained in Paragraph 49 constitute conclusions of law to which no response is deemed necessary. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pa. R. Civ. 1029 and strict proof is demanded thereof. By way of further answer, at all times material hereto, Defendant rendered appropriate care and treatment within the applicable standard of care.

50. The averments contained in Paragraph 50 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 50 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

51. The averments contained in Paragraph 51 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 51 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

52. The averments contained in Paragraph 52 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 52 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. By way of further answer, to the extent that a response may be deemed

necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

53. The averments contained in Paragraph 53 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 53 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. By way of further answer, to the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

54. The averments contained in Paragraph 54 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 54 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

55. The averments contained in Paragraph 55 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 55 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

56. The averments contained in Paragraph 56 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 56 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

57. The averments contained in Paragraph 57 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 57 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

58. Stricken by agreement.

59. The averments contained in Paragraph 59 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 59 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

60. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 60 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

61. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 61 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

62. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 62 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

63. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 63 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

64. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 64 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

65. The averments contained in Paragraph 65 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 65 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. The averments set forth in Paragraph 65 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

66. The averments set forth in Paragraph 66 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

67. The averments set forth in Paragraph 67 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak

for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

68. The averments set forth in Paragraph 68 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

69. The averments set forth in Paragraph 69 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

70. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 70 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

71. The averments set forth in Paragraph 71 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

72. The averments set forth in Paragraph 72 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

73. The averments set forth in Paragraph 73 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

74. The averments set forth in Paragraph 74 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

75. The averments set forth in Paragraph 75 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

76. The averments set forth in Paragraph 76 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is

demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

77. The averments set forth in Paragraph 77 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

78. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 78 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

79. The averments set forth in Paragraph 79 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e). By way of further answer, at all times material hereto, the Defendant Dr. Miller and Teresa Prentice rendered appropriate care and treatment within the applicable standard of care.

80. The averments set forth in Paragraph 80 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e). By way of further answer,

at all times material hereto, the Defendant Dr. Miller and Teresa Prentice rendered appropriate care and treatment within the applicable standard of care.

81. The averments set forth in Paragraph 81 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

82. After reasonable investigation, Defendants lack sufficient knowledge or information to form a belief as to the truth or veracity of the averments set forth in Paragraph 82 of Plaintiffs' Complaint. The averments are therefore denied and strict proof is demanded thereof at time of trial.

83. The averments set forth in Paragraph 83 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

84. The averments set forth in Paragraph 84 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

85. The averments set forth in Paragraph 85 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak

for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

86. The averments set forth in Paragraph 86 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

87. The averments set forth in Paragraph 87 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

88. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e).

89. Denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e).

90. The averments set forth in Paragraph 90 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

91. The averments set forth in Paragraph 91 of the Plaintiffs' Complaint are admitted only insofar as they are consistent with Plaintiff's medical records, which at this writing speak for themselves. Any deviation from Plaintiffs' medical records is denied and strict proof is

demanded thereof at time of trial. By way of further answer any and all remaining allegations are denied pursuant to Pennsylvania Rule of Civil Procedure 1029(e).

92. The averments contained in Paragraph 92 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 92 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

93. The averments contained in Paragraph 93 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 93 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

94. The averments contained in Paragraph 94 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 94 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict

proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

II. FAILURE TO PERFORM A TEST EXPOSURE

95. The averments contained in Paragraph 95 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 95 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

96. Stricken by agreement.

97. The averments contained in Paragraph 97 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 97 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

98. The averments contained in Paragraph 98 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained

in Paragraph 98 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

99. The averments contained in Paragraph 99 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 99 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

III. FAILURE TO SUPERVISE:

LACK OF PROPER MEDICAL SURVEILLANCE

100. The averments contained in Paragraph 100 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 100 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto

Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

101. The averments contained in Paragraph 101 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 101 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

102. The averments contained in Paragraph 102 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 102 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

103. The averments contained in Paragraph 103 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 103 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict

proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

104. The averments contained in Paragraph 104 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 104 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

105. The averments contained in Paragraph 105 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 105 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

106. The averments contained in Paragraph 106 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 106 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations

are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

107. The averments contained in Paragraph 107 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 107 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

108. The averments contained in Paragraph 108 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 108 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

109. The averments contained in Paragraph 109 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 109 is deemed necessary, then same are denied and strict proof is demanded thereof

at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

110. The averments contained in Paragraph 110 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 110 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

111. The averments contained in Paragraph 111 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 111 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

112. The averments contained in Paragraph 112 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained

in Paragraph 112 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

113. The averments contained in Paragraph 113 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 113 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

114. The averments contained in Paragraph 114 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 114 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

115. The averments contained in Paragraph 115 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 115 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

116. The averments contained in Paragraph 116 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 116 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

117. The averments contained in Paragraph 117 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 117 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto

Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

118. The averments contained in Paragraph 118 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 118 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

119. The averments contained in Paragraph 119 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 119 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

120. The averments contained in Paragraph 120 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 120 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict

proof is demanded thereof at time of trial. By way of further answer, at all times material hereto Defendants rendered appropriate care and treatment within the applicable standard of care and did not cause any alleged injuries to Plaintiff.

121. Stricken by agreement.

WHEREFORE, Defendants demand judgment in their favor and against the Plaintiff.

COUNT II

RESPONDEAT SUPERIOR

MEDICAL PROFESSIONAL NEGLIGENCE

RANDALL BURNS, J. RICE ORAL MAXILLOFACIAL AND AESTHETIC FACIAL

SURGERY, P.C.

Defendants hereby incorporate paragraphs 1 - 121 of their Answer and New Matter by reference as if same were more fully set forth at length herein.

122. The averments contained in Paragraph 122 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 122 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

123. The averments contained in Paragraph 123 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 123 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

124. The averments contained in Paragraph 124 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 124 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

125. The averments contained in Paragraph 125 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 125 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

126. The averments contained in Paragraph 126 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 126 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

127. The averments contained in Paragraph 127 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 127 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

128. The averments contained in Paragraph 128 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 128 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

129. The averments contained in Paragraph 129 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained

in Paragraph 129 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

130. The averments contained in Paragraph 130 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 130 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

131. The averments contained in Paragraph 131 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 131 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

132. The averments contained in Paragraph 132 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 132 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

133. The averments contained in Paragraph 133 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 133 is deemed necessary, then same are denied and strict proof is demanded thereof

at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

134. The averments contained in Paragraph 134 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 134 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

135. The averments contained in Paragraph 135 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 135 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial. To the extent that a response may be deemed necessary, any and all allegations are specifically denied pursuant to Pennsylvania Rule of Civil Procedure 1029 (e) and strict proof is demanded thereof at time of trial.

136. Stricken by agreement.

WHEREFORE, Defendants demand judgment in their favor and against the Plaintiff.

COUNT III

LOSS OF CONSORTIUM

SUSAN BURNS v. ADAM C. MILLER, D.D.S., M.D.

Defendants hereby incorporate paragraphs 1 - 136 of their Answer and New Matter by reference as if same were more fully set forth at length herein.

137. The averments contained in Paragraph 137 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 137 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

WHEREFORE, Defendants demand judgment in their favor and against the Plaintiff.

COUNT IV

LOSS OF CONSORTIUM

SUSAN BURNS v. J. RICE ORAL MAXILLOFACIAL AND AESTHETIC FACIAL SURGERY, P.C..

Defendants hereby incorporate paragraphs 1 - 137 of their Answer and New Matter by reference as if same were more fully set forth at length herein.

138. The averments contained in Paragraph 138 of Plaintiff's Complaint represent conclusions of law to which no response is necessary. If a response to the averments contained in Paragraph 138 is deemed necessary, then same are denied and strict proof is demanded thereof at time of trial.

WHEREFORE, Defendants demand judgment in their favor and against the Plaintiff.

NEW MATTER

1. Paragraphs 1 through 138 of Defendants' Answer are incorporated herein as is more fully set forth herein at length.

2. Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations.

3. Plaintiff is precluded from pursuing the present action against the Defendant pursuant to terms of a binding arbitration agreement.

4. Plaintiff's Complaint fails to state claims upon relief may be granted under Pennsylvania law.

5. Plaintiff's claims are barred/reduced by Plaintiff's contributory/comparative negligence and/or assumption of risks as of their actions or inaction including, but not limited to, failure to follow up on instructions and/or advice of Plaintiff's healthcare providers, failure to promptly and accurately report the healthcare provider's information pertaining to Plaintiff's health status, failure to participate in care plan meetings, and in such other manner which may be revealed during discovery in this case.

6. Defendant, at no time, negligently or otherwise caused or contributed to any of the injuries or damages reportedly suffered by the Plaintiff.

7. Plaintiff's injuries, if any, were the result of occurrences unrelated to and not caused by Defendants' care and treatment.

8. Any injury and/or illness suffered by Plaintiff was caused by persons other than the Defendants or its agents, employees, or servants and/or by those whom Defendants had no control or responsibility to control.

9. To the extent evidence may show that other persons, partnerships, corporations or other legal entities caused or contributed to Plaintiff's injuries, the conduct of Defendants and/or their agents, servants or employees was not the proximate cause of those employees.

10. Any acts or omissions by Defendants or its agents, servants or employees alleged to constitute negligence were not substantial contributing factors to the injuries and damages alleged in Plaintiff's Complaint.

11. The acts or omissions of others relating to the care and treating of Plaintiff constitute intervening and/or superseding causes of the injuries and/or damages alleged to have been sustained by Plaintiff.

12. The sole responsibility for any damages sustained by Plaintiff rest with the Plaintiff, Plaintiff's family or third parties over whom Defendant had no control, no duty to control, no reason to control or individuals acting outside the scope and course of their employment.

13. To the extent that any averments set forth Plaintiff's Complaint purport to set forth a basis for recovery pursuant to a corporate theory of liability, no such duty exists as a matter of law to individuals or long-term care facilities.

14. Defendant incorporates the provisions of the Healthcare Services Malpractice Act/MCare Act to the extent that they are applicable to the facts and circumstances of this case.

15. This Court does not have proper jurisdiction over this matter.

Respectfully submitted,

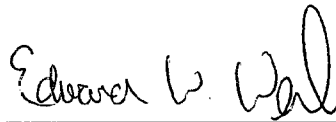
BURNS, WHITE & HICKTON

By: 

David B. White, Esquire
Pa. I.D. No. 36684
Edward W. Wertman, Esquire
Pa. I.D. No. 72427
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212
(412) 995-3000
(412) 995-3300 (fax)
dbwhite@bwhllc.com
ewwertman@bwhllc.com

ATTORNEY VERIFICATION

I, Edward W. Wertman, Attorney for Defendants, am duly authorized to make this Verification on behalf of Defendants. I have read the foregoing Defendants' Answer and New Matter to Plaintiffs' First Amended Complaint and state the averments of fact contained therein are true and correct to the best of my knowledge, information and belief. This verification is made subject to 18 Pa. Cons. State § 4904 relating to unsworn falsification to authorities.

A handwritten signature in cursive script, reading "Edward W. Wertman", positioned above a horizontal line.

Edward W. Wertman, Esquire

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Stipulation has been served upon all counsel of record by U.S. first-class mail, postage prepaid, this 22nd day of October 2008, addressed as follows:

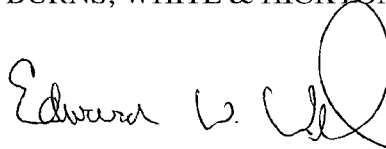
Victor H. Pribanic, Esq.
Pribanic & Pribanic
1735 Lincoln Way
White Oak, PA 15131
(Counsel for Plaintiffs)

FILED

OCT 24 2008

**TONYA S. GEIST
PRO. & CLERK of COURTS**

BURNS, WHITE & HICKTON, LLC



David B. White
Edward W. Wertman

FILED

OCT 29 2008

TONYA S. GEIST
PRO. & CLERK of COURTS

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS and SUSAN BURNS,
his wife,

Plaintiffs,

v.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C. and
ADAM C. MILLER, D.D.S., M.D.,

Defendants.

CIVIL DIVISION

CASE NO.: 146 – 2008 C.D.

**PLAINTIFFS' REPLY TO NEW MATTER
OF DEFENDANTS**

Code: 007

Filed on behalf of Plaintiffs:

Counsel of Record for this Party:

Victor H. Pribanic, Esquire
Pa. I.D. No.: 30785

PRIBANIC & PRIBANIC, L.L.C.
1735 Lincoln Way
White Oak, PA 15131

(412) 672-5444

ENTERED

SCANNED

FILED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS and SUSAN BURNS,
his wife,

Plaintiffs,

v.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C. and
ADAM C. MILLER, D.D.S., M.D.,

Defendants.

CIVIL DIVISION

OCT 29 2008

CASE NO.: 146 - 2008 C.D. PRO. & CLERK of COURTS
TONYAS. GEIST

PLAINTIFFS' REPLY TO NEW MATTER OF DEFENDANTS

AND NOW, come the Plaintiffs, Randall Burns and Susan Burns, his wife, by their counsel, Victor H. Pribanic and the law firm of Pribanic & Pribanic, L.L.C., and file the within Reply to New Matter asserted on behalf of Defendants, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, P.C. and Adam C. Miller, D.D.S., M.D., and in support thereof aver as follows:

1. The averments of Defendants' New Matter are denied.
2. The application of the current joint and several liability legislation in the Commonwealth of Pennsylvania is unconstitutional.

WHEREFORE, Plaintiffs, Randall Burns and Susan Burns, his wife, respectfully request that they be afforded the relief sought in the Complaint filed in the captioned action.

Respectfully submitted,

PRIBANIC & PRIBANIC, L.L.C.

By:

Victor H. Pribanic
Counsel for Plaintiffs, Randall Burns
and Susan Burns, his wife

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing has been served this 27th day of October, 2008, via first class United States mail, postage prepaid, upon the following counsel of record:

FILED

OCT 29 2008

David B. White, Esquire
Burns White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212

**TONYA S. GEIST
PRO. & CLERK of COURTS**



Victor H. Pribanic

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS and SUSAN BURNS, his
wife,

Plaintiffs,

vs.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C., and
ADAM C. MILLER, D.D.S., M.D.,

Defendants.

CIVIL DIVISION

No. 146-2008 C.D.

**PRAECIPE FOR SUBSTITUTION OF
VERIFICATION OF ANSWER AND NEW
MATTER**

Filed on Behalf of Defendants, J. Rice Oral
Maxillofacial and Aesthetic Facial Surgery,
P.C., and Adam C. Miller, D.D.S., M.D.

Counsel of Record for These Parties:

DAVID B. WHITE, ESQ.

Pa. I.D. #36684

BURNS, WHITE & HICKTON, LLC

Firm No. 828

Four Northshore Center

106 Isabella Street

Pittsburgh, PA 15212

(412) 995-3000

(412) 995-3305 (Facsimile)

JURY TRIAL DEMANDED

FILED

NOV 26 2008

**TONYA S. GERT
PRO. & CLERK of COURTS**

ENTERED

SCANNED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

RANDALL BURNS and SUSAN BURNS, his
wife,

Plaintiffs,

vs.

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C., and
ADAM C. MILLER, D.D.S., M.D.,

Defendants.

CIVIL DIVISION

No. 146-2008 C.D.

FILED

NOV 26 2008

TONYA S. GOST
PRO. & CLERK of COURTS

PRAECIPE FOR SUBSTITUTION OF VERIFICATION

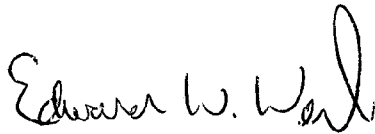
TO: Prothonotary

Please substitute the attached Verification of Adam C. Miller, D.D.S., M.D., for
Verification of Defendants' counsel contained in the Answer and New Matter Plaintiff's
Complaint in the above-captioned matter.

Respectfully submitted,

BURNS, WHITE & HICKTON, LLC

By:



Edward W. Wertman, Esquire

VERIFICATION

I, ADAM C. MILLER, D.D.S., M.D , state that I have read the foregoing ANSWER AND NEW MATTER TO which has been drafted with the assistance of counsel. The factual statements contained therein are true and correct to the best of my information, knowledge, and belief, with respect Defendants although the language is that of counsel and, to the extent that the content of the foregoing document is that of counsel, I have relied upon counsel in making this Verification. This statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false statements, I may be subject to criminal penalties.

11/17/06
Date


ADAM C. MILLER, D.D.S., M.D

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Praeipe for Substitution of Verification has been served upon all counsel of record by U.S. first-class mail, postage prepaid, this 24th day of Nov. 2008, addressed as follows:

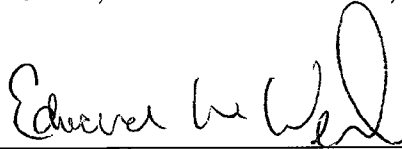
Victor H. Pribanic, Esq.
Pribanic & Pribanic
1735 Lincoln Way
White Oak, PA 15131
(*Counsel for Plaintiffs*)

FILED

NOV 26 2008

**TONYA S. GIBST
PRO. & CLERK of COURTS**

BURNS, WHITE & HICKTON, LLC



David B. White
Edward W. Wertman

FILED

DEC 08 2008

IN THE COURT OF COMMON PLEAS
OF JEFFERSON COUNTY, PENNSYLVANIA

**THOMAS S. GIBST
PRO. & CLERK OF COURTS**

RANDALL BURNS,
and
SUSAN BURNS, his wife,
Plaintiffs,

v.

**J. RICE ORAL MAXILLOFACIAL
AND AESTHETIC FACIAL
SURGERY, P.C.,**

and

ADAM C. MILLER, D.D.S., M.D.,
Defendants.

CIVIL DIVISION

CIVIL ACTION

**CONSENT ORDER:
AGREEMENT TO TRANSFER OF
VENUE**

Docket No. 08-146-2008-CD

CB

CONSENT ORDER:

AGREEMENT TO TRANSFER OF VENUE

NOW COME the Parties—by and through their respective counsel—who presently consent to the issuance of the following Order, subject to the approval of the Court:

1. Plaintiffs filed this medical malpractice action Defendants in the Court of Common Pleas of Jefferson County.
2. Plaintiff, Randall Burns ("Mr. Burns"), is an adult individual and resident of Jefferson County at 13054 Route 36, Brookville, Pennsylvania 15825.
3. Plaintiff, Susan Burns, is an adult individual and resident of Jefferson County at 13054 Route 36, Brookville, Pennsylvania 15825, and is the wife of Plaintiff, Randall Burns.

ENTERED

SCANNED

4. Defendant, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, is a licensed medical professional corporation in Jefferson County engaged in the operation of a medical facility, with its principal place of business, as of December 6, 2006, located in Clearfield County at 90 Beaver Drive, Suite 101, Du Bois, Pennsylvania 15801.
5. Defendant, Adam C. Miller, D.D.S., M.D., is a licensed practicing physician in the Commonwealth of Pennsylvania, who maintains an office at, *inter alia*, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery (also called PA Oral and Facial Center), located in Clearfield County at 90 Beaver Drive, Suite 101, Du Bois, Pennsylvania 15801.
6. The rules for venue for a medical negligence action are found at Pa.R.C.P. 1006(a.1) which provide that, except as otherwise provided by subdivision (c), a medical professional liability action may be brought against a health care provider for a medical professional liability claim *only* in a county in which the cause of action arose.
7. In the case at bar, since venue in Clearfield County is proper as to either Defendant, then venue in Clearfield County is proper as to both defendants.
8. No preliminary objections to venue were submitted by Defendants to date.
9. Although no question of venue was previously raised and properly preserved in the record, the Parties concur that Jefferson County is the wrong and thus impermissible venue.
10. Where a case is filed in the wrong venue, the case should be transferred to the proper venue in order to avoid the possibility of a miscarriage of justice.
11. To cure this improper venue, transfer of venue to Clearfield County is proper.

12. Pursuant to Pa.R.C.P. 1006(d)(3), the Prothonotary of Jefferson County will forward the docket to the Prothonotary of Clearfield County.
13. The Parties will be bound by the terms of this Consent Order.

Respectfully,

By: 

Victor H. Pribanic

PRIBANIC & PRIBANIC, L.L.C.

1735 Lincoln Way

White Oak, PA 15131

(412) 672-5444

Counsel for Plaintiffs, Randall and Susan Burns.

By: 

David B. White, Esquire

BURNS, WHITE & HICKTON, LLC

Four Northshore Center

106 Isabella Street

Pittsburgh, PA 15212

(412) 995-3210 (Direct)

(412) 995-3305 (Fax)

E-mail: dbwhite@bwhllc.com

Counsel for Defendants, J. Rice Oral Maxillofacial and Aesthetic Facial Surgery, and Adam C. Miller, D.D.S., M.D.

COURT OF COMMON PLEAS OF
JEFFERSON COUNTY, PENNSYLVANIA

CIVIL DIVISION

FILED

DEC 09 2008

TONYAS GOS
PRO & CLERK OF COURTS

RANDALL BURNS,
and
SUSAN BURNS, his wife

Plaintiffs,

vs.

NO: 146-2008 C.D.

J. RICE ORAL MAXILLOFACIAL
AND AESTHETIC FACIAL SURGERY
P.C.,

and
ADAM C. MILLER, D.D.S., MD.,

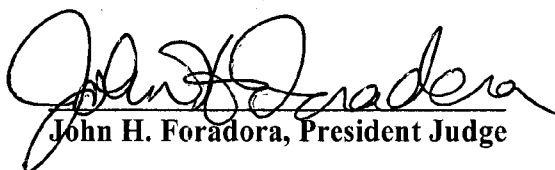
Defendants,

ORDER OF COURT

AND NOW, this 9th day of December 2008, upon agreement of the parties,

IT IS HEREBY ORDERED AND DECREED that the above captioned case is transferred to Clearfield County. The prothonotary of Jefferson County is directed to forward to the Prothonotary of Clearfield County, certified copies of the docket entries, process, pleadings and other papers filed in this action, pursuant to Pennsylvania Rule of Civil Procedure 1006 (d)(3).

BY THE COURT:


John H. Foradora, President Judge

ENTERED

SCANNED

FILED

DEC 23 2008

WILLIAM A. SHAW
PROTHONOTARY/CLERK OF COURTS

FILED

DEC 23 2008

William A. Shaw
Prothonotary/Clerk of Courts

FILED

FILED 1cc & 1cc to disc
m 2:46pm issued to Atty
MAR - 8 2010 Pribanic
William A. Shaw
Prothonotary/Clerk of Courts Bill of Costs

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

RANDALL BURNS and SUSAN BURNS,
his wife,

CIVIL DIVISION

Plaintiffs,

CASE NO.: 2442 of 2008

v.

**PRAECIPE TO SETTLE AND
DISCONTINUE**

J. RICE ORAL MAXILLOFACIAL AND
AESTHETIC FACIAL SURGERY, P.C. and
ADAM C. MILLER, D.D.S., M.D.,

Code: 007

Defendants.

Filed on behalf of Plaintiffs:

Counsel of Record for this Party:

Victor H. Pribanic, Esquire
Pa. I.D. No.: 30785

PRIBANIC & PRIBANIC, L.L.C.
1735 Lincoln Way
White Oak, PA 15131

(412) 672-5444

Defendants.

CIVIL DIVISION

CASE NO.: 2442 of 2008.

PRAECIPE TO SETTLE AND DISCONTINUE

TO: Prothonotary,

Kindly mark the docket in the captioned matter settled and discontinued of record.

Respectfully submitted,

PRIBANIC & PRIBANIC, L.L.C.

By:

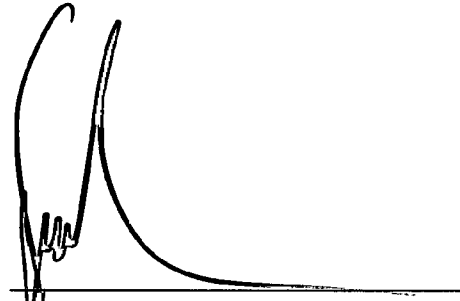
Victor H. Pribanic

**Counsel for Plaintiffs, Randall Burns
and Susan Burns, his wife**

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing has been served this 2nd day of March, 2010, via first class United States mail, postage prepaid, upon the following counsel of record:

David B. White, Esquire
Burns White & Hickton
Four Northshore Center
106 Isabella Street
Pittsburgh, PA 15212



Victor H. Pribanic

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

COPY

Randall Burns and Susan Burns

Vs.

No. 2008-02442-CD

J. Rice Oral Maxillofacial and Aesthetic Facial
Surgery, P.C. and Adam C. Miller, D.D.S., M.D.

CERTIFICATE OF DISCONTINUATION

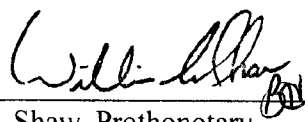
Commonwealth of PA
County of Clearfield

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 March 8,
2010, marked:

Settled and Discontinued

Record costs in the sum of \$75.00 have been paid in full by Victor H. Pribanic, Esq.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at
Clearfield, Clearfield County, Pennsylvania this 10th day of March A.D. 2010.



William A. Shaw, Prothonotary