

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge
Case No. 2010-CP-26-5146

Jane "AP" Doe,

Respondent,

v.

Omar Jaraki, Halla Jaraki, Cardiology
& Arrhythmia Consultants, Cardiology
and Arrhythmias Consultant, Institute
of Electrophysiology, P.C.,

Defendants

Of Whom

Omar Jaraki and Halla Jaraki, are

Appellants

RECORD ON APPEAL

William Isaac Diggs
LAW OFFICES OF WILLIAM ISAAC DIGGS
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
(843)-626-4243
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ATTORNEY FOR APPELLANTS

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RECEIVED
APR 15 2013
SC Court of Appeals

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ATTORNEYS FOR RESPONDENT

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) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2010-CP-26-5146

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CLARENCE HUGGINS-WARD
JULY 20 AM 10:26
CLARENCE HUGGINS-WARD

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FACTS

The evidence showed when Plaintiff's attorney failed to receive any response from either of the Defendants or their attorney, he wrote them a letter on March 24, 2010, a copy of which is attached to this Order as Plaintiff's Exhibit 1, by certified mail, return receipt requested, advising them of the provisions of S.C. Code Ann. §15-79-125, and advising them that he has scheduled a telephone mediation with Judge John Breeden, retired Circuit Court Judge, and gave them the numbers to call for the Pre-Suit Mediation. The Defendants admitted they received the letter and there was a certified mail receipt showing delivery on March 26, 2010. The Mediation was held on April 27, 2010 and neither of the Defendants nor their attorney participated. Judge Breeden filed his Report with the Clerk showing that the Pre-Suit Mediation was held by telephone at 10:00 a.m. on April 27, 2010 and neither the Defendants nor their attorney were present. His Report was admitted as Plaintiff's Exhibit 3.

On February 22, 2010, Dr. Omar Jaraki filed with the Clerk of Court a letter indicating, "There is nothing in my records to show that I had a patient by the name of Jane Doe. If Mr. Furr can provide me a real name that I can look up, then I can look up the data and answer the Plaintiff's questions and allegations." Mr. Furr advised the Court that he had not received a copy of that letter. On April 10, 2010, Halla Jaraki filed with the Clerk of Court a letter addressed to Mr. Furr, asking him to correctly identify the patient's name. Again, Mr. Furr said he never received a copy of that letter. He did check the Clerk's records, as a matter of routine, and found those two letters that had been filed with the Clerk. As a result, Mr. Furr mailed a letter to Dr. and Mrs. Jaraki on May 3, 2010, advising them that the patient's name was Amanda Peele. This letter, Exhibit 2, was mailed to their address at 4400 Randall Road, Conway, SC 29526, the same address that the certified letter had been mailed to the Defendants advising them of the Mediation. Mr. Furr assured the Court that the letter never came back as being undelivered.

2
mtc

Thereafter, Counsel for the Plaintiff filed a Summons and Complaint against all of the same Defendants on July 11, 2010. The Summons and Complaints were served on all the Defendants on June 28, 2010, except the one for Halla Jaraki and it was served on her on June 29, 2010. The pleadings were served by Christopher Graham, Deputy Sherriff, and the Affidavits of Service were filed with the Clerk of Court on July 20, 2010.

On July 9, 2010, Mr. and Mrs. Jaraki filed two letters, with the Clerk of Court, both of which are attached to their affidavit filed with their Motion to be Relieved from the Default, again Requesting the name of the Plaintiff. Again, Mr. Furr indicated he never received these letters, but found them when he routinely checked the Court file. Mr. Furr responded by letter of July 20, 2010, giving the full name of the Plaintiff, her date of birth, and her medical record number. This letter was marked as Exhibit 4. No other pleadings or other information was ever filed by the Defendants until their Motion to be Relieved from Default was filed on November 22, 2010.

Plaintiffs filed a Motion for Entry of Default on October 12, 2010 and the Defendants, through their attorney, William Isaac Diggs, filed their Motion to be Relieved from Default on November 22, 2010.

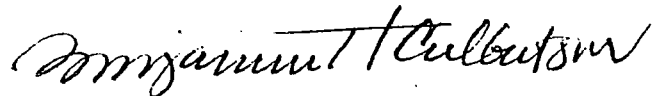
OPINION

It is the finding of the Court that the Defendants has ample notice of who the Plaintiff was and ample opportunity to take action to protect their rights. The letters filed by the Defendants with the Clerk of Court were not responsive pleadings and therefore the Defendants are in default. Furthermore, this Court has inherent authority to enforce the Provision of S.C. Code Ann. §15-79-125, which requires Pre-Suit Mediation and the Defendants failure to attend the Mediation deprived them of one more opportunity to discover the identity of the Plaintiff, and the Court hereby enforces the requirements of S.C. Code Ann. §15-79-125 by prohibiting the filing of responsive pleadings.

3
mtc

I find based upon the exhibits, that they had notice of the identity of the Plaintiff and they willingly failed to attend the Pre-Suit Mediation and therefore the responsive pleading filed with the Motion to be Relieved from Default is stricken.

I further find that both the Defendants are in default and a hearing will be scheduled pursuant to Rule 55 to determine damages.



Presiding Judge
Fifteenth Judicial Circuit
Court of Common Pleas for Horry

Conway, South Carolina

May 16, 2011

FHO
FURR, HENSHAW & OHANESIAN
ATTORNEYS AT LAW

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*Board Certified Civil Trial Advocate
by the National Board of Trial Advocacy
Also Board Certified by American Board
of Professional Liability Attorneys*

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Charles L. Henshaw, Jr.

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Columbia, SC 29201
Telephone: (803) 252-4050
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E-mail: charles.henshaw@fholaw.com

March 24, 2010

Reply To: Myrtle Beach

*****VIA CERTIFIED MAIL/RETURN RECEIPT**

Mr. Omar Jaraki
Mrs. Halla Jaraki
4400 Randall Road
Conway, SC 29526

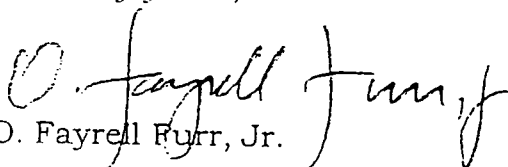
Re: Jane AP Doe vs. Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia
Consultants, Cardiology & Arrhythmias Consultant and Institute of
Electrophysiology, P.C.
Civil Action No.: 2010-CP-26-395

Dear Mr. and Mrs. Jaraki:

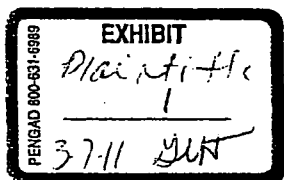
Pursuant to S.C. Code Ann. §15-79-125, within 120 days of service of the Notice of Intent, the parties shall participate in a mediation conference. As such, please be advised that a telephone mediation has been scheduled in the above-referenced matter on April 27, 2010 at 10:00 a.m. with Judge John Breeden. If you are represented by counsel in this matter, please have them contact me immediately. If not, you are required to participate in this mediation. The telephone number to be connected to the parties for this mediation is 877-544-8688. When prompted to enter an ID code, please enter 3480864.

With kindest regards, I am

Sincerely yours,


O. Fayrell Furr, Jr.

OFF/tmn



5/mtc

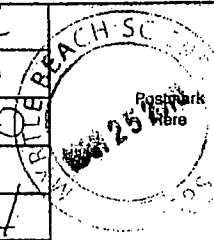
U.S. Postal Service
CERTIFIED MAILTM RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

7009 1680 0002 1579 0595

Postage	\$ 1.44
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.54



Sent to
 Omar's Halla Jarakli
 Street, Apt. No.,
 or PO Box No. 4400 Randall Rd
 City, State, ZIP+4 Conway, SC 29526

PS Form 3800, August 2006

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Omar's Halla Jarakli
 4400 Randall Rd
 Conway, SC
 29526

2. Article Number

(Transfer from service label)

7009 1680 0002 1579 0595

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X [Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3/26/10

D. Is delivery address different from item 1?

☐ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-26-5146

Jane AP Doe
PLAINTIFF(S)

Omar Jaraki, et al.
DEFENDANT(S)

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.**
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

Defendant's Motion to Reconsider Order Entered May 20, 2011, is DENIED.

****This motion was decided on briefs and without oral arguments.**

Dated at Georgetown, South Carolina, this 16th day of August, 2011.

Benjamin H. Culbertson
Benjamin H. Culbertson
PRESIDING JUDGE

Form 4
This judgment was entered on the 17th day of August, 2011, and a copy mailed first class this 18th day of August, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

O. Fayrell Furr, Jr.
ATTORNEY(S) FOR THE PLAINTIFF(S)

William I. Diggs
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Debbie Higgins Ward

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

FILED

12 APR 10 PM 4:28

CASE NO. 2010-CP-26-5146

Jane "AP" Doe
PLAINTIFF(S)

Omar Jaraki, M.D., et al.

MELANE HUSCINS-WARD
CLERK OF COURT
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Pursuant to the damages hearing held in this case, the plaintiff is granted judgment against the defendants for \$179,090.00.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Judgment is joint and severable.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Jane "AP" Doe	Omar Jaraki, M.D.	\$179,090.00
Jane "AP" Doe	Halla Jaraki	\$179,090.00
Jane "AP" Doe	Cardiology & Arrhythmia Consultants	\$179,090.00
Jane "AP" Doe	Cardiology & Arrhythmias Consultant	\$179,090.00
Jane "AP" Doe	Institute of Electrophysiology, P.C.	\$179,090.00

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

April 9, 2012
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

O. Fayrell Furr, Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

William I. Diggs

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: **Grace Hurley**

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NUMBER: 2010-CP-26-5146

June AP Doe,)
Plaintiff,)
vs.)
Omar Jaraki, *et al.*,)
Defendants.)

ORDER OF CLARIFICATION

Before the court is the defendants' "Motion for Clarification of Order on Damages." In response thereto¹ it is hereby

ORDERED, that the judgment rendered in this case in favor of the plaintiff against the defendants in the amount of \$179,090.00 is for actual damages sustained by the plaintiff.

AND IT IS SO ORDERED.


Benjamin H. Culbertson
Presiding Judge

July 26, 2012
Georgetown, SC

¹ This motion is decided without oral arguments.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
JANE AP DOE,)
Plaintiff,)
v.)
OMAR JARAKI, M.D., HALLA)
JARAKI, CARDIOLOGY &)
ARRHYTHMIA CONSULTANTS,)
CARDIOLOGY & ARRHYTHMIAS)
CONSULTANT, INSTITUTE OF)
ELECTROPHYSIOLOGY, P.C.)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.

**NOTICE OF INTENT
TO FILE SUIT**

FILED
HORRY COUNTY
2010 JAN 15 PM 2:55
MICHAEL HUGHES-WARD
CLERK OF COURT

Pursuant to S.C. Code Ann. §15-79-125 (A), the above-named Plaintiff files this Notice of Intent to File Suit. Attached as Exhibit A and incorporated by reference herein is a document that lays out the factual allegations and legal claims which qualifies as Plaintiff's "short and plain statement of the facts showing the party is entitled to relief". Pursuant to S.C. Code Ann. §15-36-100 (C)(1), the contemporaneous filing requirement of the expert affidavit listed in subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant. Attached as Exhibit C are the Answers to the standard Interrogatories as set forth in Rule 33(b) of the South Carolina Rules of Civil Procedure.

Within 90 days and no later than 120 days from the service of the Notice of Intent to File Suit, the parties shall participate in a mediation conference pursuant to S.C. Code Ann. §15-79-125(C) and ADR Rule 5(f).

Pursuant to ADR Rule 4(c), in the event the parties are unable to agree upon a mediator, the Court hereby appoints Diane R. Bagnal 7n to serve as mediator.

In the event the aforementioned mediator has a conflict of interest or is unable to serve, the alternative mediator is James E. Baine

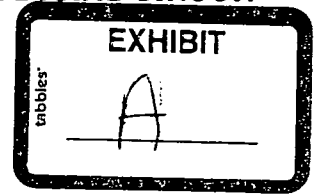
O. Fayrell Furr, Jr.
Attorney for the Plaintiff
FURR HENSHAW & OHANESIAN
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Myrtle Beach, SC 29578
(843) 626-7621

Jeffrey C. Chandler
Attorney for the Plaintiff
2501 Oak Street, P.O. Drawer 1889
Myrtle Beach, SC 29578
(843)448-4357

Jan 15, 2010
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
JANE AP DOE,)
)
Plaintiff,)
)
v.)
)
OMAR JARAKI, M.D., HALLA)
JARAKI, CARDIOLOGY &)
ARRHYTHMIA CONSULTANTS,)
CARDIOLOGY & ARRHYTHMIAS)
CONSULTANT, INSTITUTE OF)
ELECTROPHYSIOLOGY, P.C.)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.



STATEMENT OF FACTS

The Plaintiff would respectfully show unto this Court that:

1. The Plaintiff is a citizen and resident of the State of South Carolina, County of Marlboro and she brings this action under a pseudonym because of the private and sensitive nature of her injuries; her real name is available to the parties and the Court upon request to Plaintiff's counsel.
2. The Defendant, Omar Jaraki is a resident of the State of South Carolina, County of Horry.
3. The Defendant, Halla Jaraki is a resident of the State of South Carolina, County of Horry.
4. Upon information and belief, Defendant Cardiology & Arrhythmia Consultants (hereinafter referred to as "Defendant Cardiology") at all times relevant herein, was organized and existing under the laws of the State of South Carolina, and doing business in the County of Horry by and through its agents, servants, or employees.
5. Upon information and belief, Defendant Cardiology & Arrhythmias Consultant (hereinafter referred to as "Defendant Consultant") at all times relevant herein, was organized and existing under the laws of the State of South Carolina, and doing business in the County of Horry by and through its agents, servants, or employees.

6. Upon information and belief, Defendant Institute of Electrophysiology, P.C. (hereinafter referred to as "Defendant Institute") at all times relevant herein, was a professional corporation organized and existing under the laws of the State of South Carolina, and doing business in the County of Horry by and through its agents, servants, or employees.

7. Upon information and belief, Defendants Omar Jaraki and Halla Jaraki were agents, contractors or employees of Defendants Cardiology, Consultant and Institute, and at all times relevant herein, were acting within the scope of their employment as agents, contractors or employees of Defendants Cardiology, Consultant and Institute and therefore Defendants Cardiology, Consultant and Institute are liable for the acts and omissions of Defendants Omar Jaraki and Halla Jaraki and its other agents, contractors and employees.

8. That at all times mentioned herein, Defendants' conduct was under the guise of and in the course of medical treatment and, thus, constitutes negligent and reckless professional services. Plaintiff's damages resulted over a period of time and would not have occurred but for the professional services rendered during that time, when other services should have been rendered and were not. This tortious sexual misconduct was intertwined with and inseparable from the professional services provided by the Defendant.

9. Plaintiff presented to Defendants for injuries sustained in a motor vehicle accident beginning January 17, 2007.

10. Upon information and belief, Defendants performed an EKG, echocardiogram and ultrasound on Plaintiff on January 17, 2007 even though Plaintiff did not have any cardiac complaints.

11. Upon information and belief, Defendant Omar Jaraki billed Plaintiff's insurance company for cardiac services performed on Plaintiff on February 2, 2007, February 20, 2007, February 28, 2007, April 27, 2007, August 9, 2007, August 16, 2007, and August 31, 2007 although Plaintiff had not complained of any cardiac problems and no cardiac services were performed.

12. Upon information and belief, the Plaintiff believes Defendant Omar Jaraki medicated her with Diazepam and Midazolam during an office visit on August 9, 2007 and kept her under heavy sedation for hours for no apparent reason. Upon

information and belief, Defendants billed Plaintiff and her insurance company for "surgery".

13. At no time did Defendant Omar Jaraki perform any type of surgeries on Plaintiff that she is aware of.

14. Upon information and belief, Defendants falsified Plaintiff's medical records and improperly billed the Plaintiff and her insurance company for services not performed.

15. On or about January 17, 2008, Defendant Omar Jaraki advised Plaintiff that he wished to measure her progress in weight loss. Defendant Omar Jaraki held one end of the tape measure at her navel and with his bare hands held the other end of the tape measure at the entrance of her vagina at which time he inserted his finger into her vagina.

16. The Plaintiff resisted and moved away. Defendant Omar Jaraki then offered to give Plaintiff a tummy tuck free of charge and proceeded to pull her underwear down while commenting on her anatomy and asking the Plaintiff if her husband ever kissed her in her genital area.

17. Upon information and belief, during this visit, Defendant Halla Jaraki tried to enter the examination room, but the door was locked. After this office visit, Plaintiff refused to be in the same room alone with Defendant Omar Jaraki.

18. Throughout the treatment by Defendant Omar Jaraki, Plaintiff continued to request a referral to a neurologist or an orthopaedic surgeon or some other specialist who could help her with the injuries sustained in her motor vehicle accident, but Defendant Omar Jaraki refused to give her any referrals.

19. When the Plaintiff questioned Defendant Halla Jaraki, who worked in the offices of the Defendants about Defendant Omar Jaraki's treatment, she was informed by Defendant Halla Jaraki that Defendant Omar Jaraki was competent to render such treatment to her.

20. Plaintiff requested her medical records from the Defendants so that she could obtain another medical doctor, but Defendant Omar Jaraki refused to give her medical records to the Plaintiff or her attorney.

21. After the Plaintiff reported Defendant Omar Jaraki's activities to the police and the South Carolina Medical Board, Plaintiff is informed and believes that Defendant Omar Jaraki falsified her records.

22. At all times, Defendant Omar Jaraki acted as if the inappropriate touching against Plaintiff was a necessary and proper part of medical diagnosis and treatment.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

23. Defendants, jointly and severally, were negligent, grossly negligent, willful, wanton, reckless, and careless in the following particulars:

- a. In inappropriately touching Plaintiff;
- b. In failing to provide Plaintiff with proper treatment;
- c. In failing to follow the proper medical standards of care;
- d. In falsifying Plaintiff's medical records;
- e. In filing improper insurance documentation;
- f. In performing unnecessary tests and procedures on Plaintiff; and
- g. In failing to refer Plaintiff to a neurologist or an orthopaedic physician that could help her injuries.
- h. In failing to take a full and complete patient history, for, among other things, the purpose of evaluating and assessing the Plaintiff's physical ability to undergo the treatment administered;
- i. In failing to obtain the Plaintiff's consent before initiating the procedures alleged above;
- j. By improperly touching the Plaintiff for the apparent purpose of diagnosing and treating medical problems, when in fact this achieved no medical purpose;
- k. By performing an examination and negligently or intentionally inappropriately touching Plaintiff; and
- l. In performing improper examinations instead of the proper tests resulting in negligent and unnecessary treatment for her condition all of which aggravated her condition and prolonged her disability, pain and suffering.

24. The injuries and damages suffered by Plaintiff were directly and proximately caused by the above negligent acts of the Defendants, jointly and severally.

**FOR A SECOND CAUSE OF ACTION
(Assault)**

25. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

26. That Defendant Omar Jaraki engaged in inappropriate sexual touching and inappropriate sexual comments without the consent of Plaintiff;

27. That the conduct of the Defendants, jointly and severally, put the Plaintiff in reasonable apprehension of being touched in a sexual and offensive manner;

28. That Defendant Omar Jaraki intended to commit this sexual and offensive touching.

29. That the injuries and damages suffered by the Plaintiff were directly and proximately caused by the above acts of the Defendants.

**FOR A THIRD CAUSE OF ACTION
(Battery)**

30. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

31. The fondling of Plaintiff's vagina was harmful and offensive touching without Plaintiff's consent.

32. That these acts were done intentionally, recklessly, willfully, and wantonly and Defendant Jaraki should have known that such conduct was harmful and offensive to the Plaintiff.

33. That the injuries and damages suffered by Plaintiff were directly and proximately caused by the battery committed upon her person by Defendant Omar Jaraki and condoned by Defendant Halla Jaraki.

FOR A FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

34. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

35. The Defendants intentionally, recklessly, willfully inflicted severe emotional distress and was certain or substantially certain that such distress would result from their treatment of Plaintiff.

36. The sexual misconduct was so extreme and outrageous that it exceeds all possible bounds of decency and is regarded as atrocious and utterly intolerable in today's society.

37. That the actions of the Defendants were the sole and proximate cause of the Plaintiff's emotional distress.

38. That the emotional distress suffered by the Plaintiff as a result of Defendants actions was so severe that no reasonable person could be expected to endure it.

39. Plaintiff is entitled to actual and punitive damages as a result of Defendants conduct.

FOR A FIFTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

40. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

41. The Defendants negligently, wantonly, recklessly, and carelessly inflicted severe emotional distress upon Plaintiff by their negligent conduct towards her, manifested by offensive physical contact, thus causing her serious injury.

42. That this emotional distress has manifested itself by physical symptoms capable of objective diagnosis.

43. That the actions of the Defendants were the sole and proximate cause of the Plaintiff's emotional distress.

44. Plaintiff is entitled to actual and punitive damages as a result of Defendant's conduct.

FOR A SIXTH CAUSE OF ACTION
(Invasion of Privacy)

45. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

46. That Defendants conduct invaded the privacy of the Plaintiff and, such conduct would be embarrassing or humiliating to a person of ordinary sensibilities.

47. That Defendants conduct was intentional and of such a nature that would cause mental harm to persons of ordinary feeling and intelligence in the same circumstances; and said conduct was in blatant and shocking disregard of Plaintiff's rights.

48. Plaintiff has been seriously injured and humiliated as a result of this breach of privacy and is entitled to damages therefrom.

FOR A SEVENTH CAUSE OF ACTION
(Unfair Trade Practices Act)

49. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

50. That Defendants' committed unfair and deceptive acts or practices by informing Plaintiff he was treating her injuries with proper medical procedures, when in fact he was not.

51. That Defendant's committed unfair and deceptive acts or practices in the distribution of his medical services by charging for medical treatment never rendered to Plaintiff.

52. That Defendants' committed unfair and deceptive acts or practices by charging Plaintiff and her insurance company for medical treatment when he was not rendering the services he charged.

53. That said unfair and deceptive acts or practices of the Defendants' have an impact upon the public interest and such acts or practices have the potential for repetition and, in fact, have been repeated with others.

FOR A EIGHTH CAUSE OF ACTION
(Negligent Supervision)

54. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

55. That Defendant Halla Jaraki, Defendant Cardiology, Defendant Consultant and Defendant Institute were aware of the improper, negligent, reckless, and intentional acts of Defendant Omar Jaraki and failed to take action to prevent further such actions and its resulting damage to Plaintiff.

**FOR AN NINTH CAUSE OF ACTION
(Spoliation of Evidence)**

56. That Defendants failed to properly guard and maintain Plaintiff's medical records.

AS TO ALL CAUSES OF ACTION

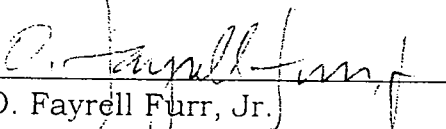
As a direct result of the acts of the Defendants, jointly and severally, Plaintiff suffered greatly, resulting in improper medical bills and severe emotional distress and will continue to suffer emotional distress as a result of the acts of the Defendants. The Plaintiff also failed to get proper treatment for her injuries which caused her a prolonged recovery time for the injuries received in the motor vehicle accident.

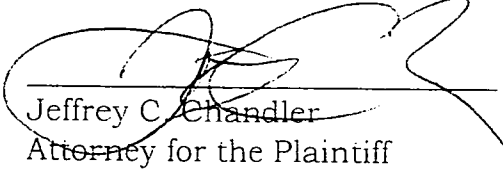
As a direct and proximate result of the negligent and careless acts and omissions of the Defendants, jointly and severally, Plaintiff suffered severe and permanent bodily injuries; medical and other expenses; physical pain and suffering; mental anguish; loss of enjoyment of life; lost wages; disability; loss of earning capacity; an alteration of lifestyle; embarrassment and humiliation; all of which she will continue to suffer from in the future.

The Plaintiff is informed and believes that she is entitled to judgment against the Defendants, jointly and severally, in a sum sufficient to adequately compensate her for actual damages and since such conduct was willful and reckless, she is entitled to punitive damages and three times the actual damages sustained, attorneys fees and costs, and other relief the Court deems just and proper.

The Plaintiff demands a jury trial.

WHEREFORE, the Plaintiff demands a jury trial and prays for judgment against the Defendants, jointly and severally, for damages in an amount in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), for such punitive damages as may be assessed by the jury, for the costs of this action, and for such other and further relief as the Court and jury may deem just and proper.


O. Fayrell Furr, Jr.
Attorney for the Plaintiff
FURR HENSHAW & OHANESIAN
1900 Oak Street, P.O. Box 2909
Myrtle Beach, SC 29578
(843)448-4357


Jeffrey C. Chandler
Attorney for the Plaintiff
2501 Oak Street, P.O. Drawer 1889
Myrtle Beach, SC 29578
(843) 626-7621

Myrtle Beach, South Carolina
Jan 15, 2010
JURY TRIAL DEMANDED

)IN THE COURT OF COMMON PLEAS
)FOR THE FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.

JANE AP DOE,

Plaintiff,

v.

OMAR JARAKI, M.D., HALLA
JARAKI, CARDIOLOGY &
ARRHYTHMIA CONSULTANTS,
CARDIOLOGY & ARRHYTHMIAS
CONSULTANT, INSTITUTE OF
ELECTROPHYSIOLOGY, P.C.

Defendants.

PLAINTIFF'S ANSWERS TO RULE 33(b)
STANDARD INTERROGATORIES

FILED
HOLLY COUNTY
JAN 15 PM 2:55
2010
CLERK OF COURT
JAMIE HUGGINS-WARD
336
LE 336
RUE

TO: THE ABOVE-NAMED DEFENDANT:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Jane AP Doe

Plaintiff in this action. Her expected testimony is in accordance with the facts known and damages sustained.

Omar Jaraki, MD
4400 Randall Road
Conway, SC 29526

Mr. Jaraki is a Defendant in this action. His testimony is unknown at this time.

Halla Jaraki

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

JANE AP DOE,)

Plaintiff,)

v.)

OMAR JARAKI, M.D., HALLA)
JARAKI, CARDIOLOGY &)
ARRHYTHMIA CONSULTANTS,)
CARDIOLOGY & ARRHYTHMIAS)
CONSULTANT, INSTITUTE OF)
ELECTROPHYSIOLOGY, P.C.)

Defendants.)

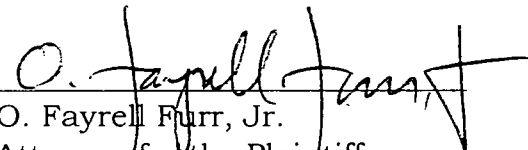
IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.

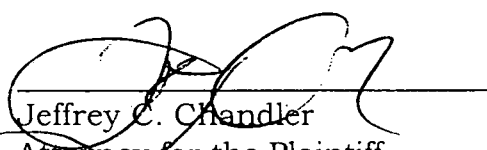
**SUMMONS
MEDICAL NEGLIGENCE
(JURY TRIAL)**

FILED
HORRY COUNTY
2010 JUN 11 AM 8:11
MELANIE HUGGINS-WARD
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his office at 1900 Oak Street, P.O. Box 2909, Myrtle Beach, South Carolina 29578 within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to appear and defend by filing an Answer to the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


O. Fayrell Furr, Jr.
Attorney for the Plaintiff
FURR HENSHAW & OHANESIAN
1900 Oak Street, P.O. Box 2909
Myrtle Beach, SC 29578
(843)448-4357


Jeffrey C. Chandler
Attorney for the Plaintiff
2501 Oak Street, P.O. Drawer 1889
Myrtle Beach, SC 29578
(843) 626-7621

Myrtle Beach, South Carolina
6/8, 2010
JURY TRIAL DEMANDED

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

JANE AP DOE,)

Plaintiff,)

v.)

OMAR JARAKI, M.D., HALLA
JARAKI, CARDIOLOGY &
ARRHYTHMIA CONSULTANTS,
CARDIOLOGY & ARRHYTHMIAS
CONSULTANT, INSTITUTE OF
ELECTROPHYSIOLOGY, P.C.)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.

**COMPLAINT
MEDICAL NEGLIGENCE
(Jury Trial)**

FILED
HORRY COUNTY
2010 JUN 11 AM 8:12
JELANIE HUGGINS-WARD
CLERK OF COURT

The Plaintiff would respectfully show unto this Court that:

1. The Plaintiff is a citizen and resident of the State of South Carolina, County of Marlboro and she brings this action under a pseudonym because of the private and sensitive nature of her injuries; her real name is available to the parties and the Court upon request to Plaintiff's counsel.

2. The Defendant, Omar Jaraki is a resident of the State of South Carolina, County of Horry.

3. The Defendant, Halla Jaraki is a resident of the State of South Carolina, County of Horry.

4. Upon information and belief, Defendant Cardiology & Arrhythmia Consultants (hereinafter referred to as "Defendant Cardiology") at all times relevant herein, was organized and existing under the laws of the State of South Carolina, and doing business in the County of Horry by and through its agents, servants, or employees.

5. Upon information and belief, Defendant Cardiology & Arrhythmias Consultant (hereinafter referred to as "Defendant Consultant") at all times relevant herein, was organized and existing under the laws of the State of South Carolina, and doing business in the County of Horry by and through its agents, servants, or employees.

6. Upon information and belief, Defendant Institute of Electrophysiology, P.C. (hereinafter referred to as "Defendant Institute") at all times relevant herein, was a professional corporation organized and existing under the laws of the State of South Carolina, and doing business in the County of Horry by and through its agents, servants, or employees.

7. Upon information and belief, Defendants Omar Jaraki and Halla Jaraki were agents, contractors or employees of Defendants Cardiology, Consultant and Institute, and at all times relevant herein, were acting within the scope of their employment as agents, contractors or employees of Defendants Cardiology, Consultant and Institute and therefore Defendants Cardiology, Consultant and Institute are liable for the acts and omissions of Defendants Omar Jaraki and Halla Jaraki and its other agents, contractors and employees.

8. That at all times mentioned herein, Defendants' conduct was under the guise of and in the course of medical treatment and, thus, constitutes negligent and reckless professional services. Plaintiff's damages resulted over a period of time and would not have occurred but for the professional services rendered during that time, when other services should have been rendered and were not. This tortious sexual misconduct was intertwined with and inseparable from the professional services provided by the Defendant.

9. Plaintiff presented to Defendants for injuries sustained in a motor vehicle accident beginning January 17, 2007.

10. Upon information and belief, Defendants performed an EKG, echocardiogram and ultrasound on Plaintiff on January 17, 2007 even though Plaintiff did not have any cardiac complaints.

11. Upon information and belief, Defendant Omar Jaraki billed Plaintiff's insurance company for cardiac services performed on Plaintiff on February 2, 2007, February 20, 2007, February 28, 2007, April 27, 2007, August 9, 2007, August 16, 2007, and August 31, 2007 although Plaintiff had not complained of any cardiac problems and no cardiac services were performed.

12. Upon information and belief, the Plaintiff believes Defendant Omar Jaraki medicated her with Diazepam and Midazolam during an office visit on August 9, 2007 and kept her under heavy sedation for hours for no apparent reason. Upon

information and belief, Defendants billed Plaintiff and her insurance company for "surgery".

13. At no time did Defendant Omar Jaraki perform any type of surgeries on Plaintiff that she is aware of.

14. Upon information and belief, Defendants falsified Plaintiff's medical records and improperly billed the Plaintiff and her insurance company for services not performed.

15. On or about January 17, 2008, Defendant Omar Jaraki advised Plaintiff that he wished to measure her progress in weight loss. Defendant Omar Jaraki held one end of the tape measure at her navel and with his bare hands held the other end of the tape measure at the entrance of her vagina at which time he inserted his finger into her vagina.

16. The Plaintiff resisted and moved away. Defendant Omar Jaraki then offered to give Plaintiff a tummy tuck free of charge and proceeded to pull her underwear down while commenting on her anatomy and asking the Plaintiff if her husband ever kissed her in her genital area.

17. Upon information and belief, during this visit, Defendant Halla Jaraki tried to enter the examination room, but the door was locked. After this office visit, Plaintiff refused to be in the same room alone with Defendant Omar Jaraki.

18. Throughout the treatment by Defendant Omar Jaraki, Plaintiff continued to request a referral to a neurologist or an orthopaedic surgeon or some other specialist who could help her with the injuries sustained in her motor vehicle accident, but Defendant Omar Jaraki refused to give her any referrals.

19. When the Plaintiff questioned Defendant Halla Jaraki, who worked in the offices of the Defendants about Defendant Omar Jaraki's treatment, she was informed by Defendant Halla Jaraki that Defendant Omar Jaraki was competent to render such treatment to her.

20. Plaintiff requested her medical records from the Defendants so that she could obtain another medical doctor, but Defendant Omar Jaraki refused to give her medical records to the Plaintiff or her attorney.

21. After the Plaintiff reported Defendant Omar Jaraki's activities to the police and the South Carolina Medical Board, Plaintiff is informed and believes that Defendant Omar Jaraki falsified her records.

22. At all times, Defendant Omar Jaraki acted as if the inappropriate touching against Plaintiff was a necessary and proper part of medical diagnosis and treatment.

**FOR A FIRST CAUSE OF ACTION
(Negligence)**

23. Defendants, jointly and severally, were negligent, grossly negligent, willful, wanton, reckless, and careless in the following particulars:

- a. In inappropriately touching Plaintiff;
- b. In failing to provide Plaintiff with proper treatment;
- c. In failing to follow the proper medical standards of care;
- d. In falsifying Plaintiff's medical records;
- e. In filing improper insurance documentation;
- f. In performing unnecessary tests and procedures on Plaintiff; and
- g. In failing to refer Plaintiff to a neurologist or an orthopaedic physician that could help her injuries.
- h. In failing to take a full and complete patient history, for, among other things, the purpose of evaluating and assessing the Plaintiff's physical ability to undergo the treatment administered;
- i. In failing to obtain the Plaintiff's consent before initiating the procedures alleged above;
- j. By improperly touching the Plaintiff for the apparent purpose of diagnosing and treating medical problems, when in fact this achieved no medical purpose;
- k. By performing an examination and negligently or intentionally inappropriately touching Plaintiff; and
- l. In performing improper examinations instead of the proper tests resulting in negligent and unnecessary treatment for her condition all of which aggravated her condition and prolonged her disability, pain and suffering.

24. The injuries and damages suffered by Plaintiff were directly and proximately caused by the above negligent acts of the Defendants, jointly and severally.

**FOR A SECOND CAUSE OF ACTION
(Assault)**

25. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

26. That Defendant Omar Jaraki engaged in inappropriate sexual touching and inappropriate sexual comments without the consent of Plaintiff;

27. That the conduct of the Defendants, jointly and severally, put the Plaintiff in reasonable apprehension of being touched in a sexual and offensive manner;

28. That Defendant Omar Jaraki intended to commit this sexual and offensive touching.

29. That the injuries and damages suffered by the Plaintiff were directly and proximately caused by the above acts of the Defendants.

**FOR A THIRD CAUSE OF ACTION
(Battery)**

30. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

31. The fondling of Plaintiff's vagina was harmful and offensive touching without Plaintiff's consent.

32. That these acts were done intentionally, recklessly, willfully, and wantonly and Defendant Jaraki should have known that such conduct was harmful and offensive to the Plaintiff.

33. That the injuries and damages suffered by Plaintiff were directly and proximately caused by the battery committed upon her person by Defendant Omar Jaraki and condoned by Defendant Halla Jaraki.

FOR A FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

34. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

35. The Defendants intentionally, recklessly, willfully inflicted severe emotional distress and was certain or substantially certain that such distress would result from their treatment of Plaintiff.

36. The sexual misconduct was so extreme and outrageous that it exceeds all possible bounds of decency and is regarded as atrocious and utterly intolerable in today's society.

37. That the actions of the Defendants were the sole and proximate cause of the Plaintiff's emotional distress.

38. That the emotional distress suffered by the Plaintiff as a result of Defendants actions was so severe that no reasonable person could be expected to endure it.

39. Plaintiff is entitled to actual and punitive damages as a result of Defendants conduct.

FOR A FIFTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

40. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

41. The Defendants negligently, wantonly, recklessly, and carelessly inflicted severe emotional distress upon Plaintiff by their negligent conduct towards her, manifested by offensive physical contact, thus causing her serious injury.

42. That this emotional distress has manifested itself by physical symptoms capable of objective diagnosis.

43. That the actions of the Defendants were the sole and proximate cause of the Plaintiff's emotional distress.

44. Plaintiff is entitled to actual and punitive damages as a result of Defendant's conduct.

FOR A SIXTH CAUSE OF ACTION
(Invasion of Privacy)

45. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

46. That Defendants conduct invaded the privacy of the Plaintiff and, such conduct would be embarrassing or humiliating to a person of ordinary sensibilities.

47. That Defendants conduct was intentional and of such a nature that would cause mental harm to persons of ordinary feeling and intelligence in the same circumstances; and said conduct was in blatant and shocking disregard of Plaintiff's rights.

48. Plaintiff has been seriously injured and humiliated as a result of this breach of privacy and is entitled to damages therefrom.

FOR A SEVENTH CAUSE OF ACTION
(Unfair Trade Practices Act)

49. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

50. That Defendants' committed unfair and deceptive acts or practices by informing Plaintiff he was treating her injuries with proper medical procedures, when in fact he was not.

51. That Defendant's committed unfair and deceptive acts or practices in the distribution of his medical services by charging for medical treatment never rendered to Plaintiff.

52. That Defendants' committed unfair and deceptive acts or practices by charging Plaintiff and her insurance company for medical treatment when he was not rendering the services he charged.

53. That said unfair and deceptive acts or practices of the Defendants' have an impact upon the public interest and such acts or practices have the potential for repetition and, in fact, have been repeated with others.

FOR A EIGHTH CAUSE OF ACTION
(Negligent Supervision)

54. All of the preceding allegations are reiterated and realleged as though set forth verbatim.

55. That Defendant Halla Jaraki, Defendant Cardiology, Defendant Consultant and Defendant Institute were aware of the improper, negligent, reckless, and intentional acts of Defendant Omar Jaraki and failed to take action to prevent further such actions and its resulting damage to Plaintiff.

**FOR AN NINTH CAUSE OF ACTION
(Spoliation of Evidence)**

56. That Defendants failed to properly guard and maintain Plaintiff's medical records.

AS TO ALL CAUSES OF ACTION

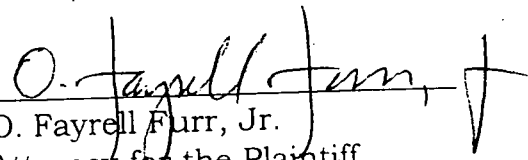
As a direct result of the acts of the Defendants, jointly and severally, Plaintiff suffered greatly, resulting in improper medical bills and severe emotional distress and will continue to suffer emotional distress as a result of the acts of the Defendants. The Plaintiff also failed to get proper treatment for her injuries which caused her a prolonged recovery time for the injuries received in the motor vehicle accident.

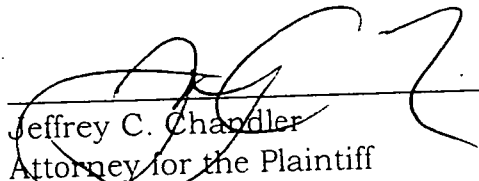
As a direct and proximate result of the negligent and careless acts and omissions of the Defendants, jointly and severally, Plaintiff suffered severe and permanent bodily injuries; medical and other expenses; physical pain and suffering; mental anguish; loss of enjoyment of life; lost wages; disability; loss of earning capacity; an alteration of lifestyle; embarrassment and humiliation; all of which she will continue to suffer from in the future.

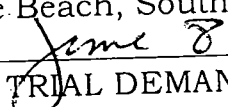
The Plaintiff is informed and believes that she is entitled to judgment against the Defendants, jointly and severally, in a sum sufficient to adequately compensate her for actual damages and since such conduct was willful and reckless, she is entitled to punitive damages and three times the actual damages sustained, attorneys fees and costs, and other relief the Court deems just and proper.

The Plaintiff demands a jury trial.

WHEREFORE, the Plaintiff demands a jury trial and prays for judgment against the Defendants, jointly and severally, for damages in an amount in excess of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), for such punitive damages as may be assessed by the jury, for the costs of this action, and for such other and further relief as the Court and jury may deem just and proper.


O. Fayrell Furr, Jr.
Attorney for the Plaintiff
FURR HENSHAW & OHANESIAN
1900 Oak Street, P.O. Box 2909
Myrtle Beach, SC 29578
(843)448-4357


Jeffrey C. Chandler
Attorney for the Plaintiff
2501 Oak Street, P.O. Drawer 1889
Myrtle Beach, SC 29578
(843) 626-7621

Myrtle Beach, South Carolina
, 2010
JURY TRIAL DEMANDED

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-26-5146

JANE AP DOE,

Plaintiff,

v.

OMAR JARAKI, HALLA JARAKI,
CARDIOLOGY & ARRHYTHMIA
CONSULTANTS, CARDIOLOGY &
ARRHYTHMIAS CONSULTANT,
INSTITUTE OF
ELECTROPHYSIOLOGY, P.C.

Defendants.

PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR DEFAULT
JUDGMENT

HORRY COUNTY
10 OCT 12 AM 11:03
MELANIE HUGGINS-WARD
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned attorney, will move before the Presiding Judge at Chambers of the Court of Common Pleas for Horry County, ten (10) days after service hereof, or as soon thereafter as counsel may be heard, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure, for an Order entering Default Judgment against the Defendants and, as grounds therefore, states as follows:

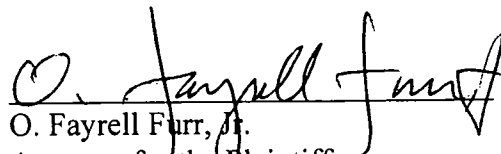
1. That these actions were commenced in the Court of Common Pleas for Horry County on or about June 11, 2010 (see Exhibit A attached);
2. That Omar Jaraki personally and as, registered agent for Cardiology & Arrhythmia Consultants, Cardiology & Arrhythmias Consultant and Institute of Electrophysiology, PC, was served personally with the Summonses and Complaints in this action by Deputy Christopher Graham, of the Horry County Sheriff's Department, on June 28, 2010, (see Exhibits B, C, D, and E attached);
3. That Halla Jaraki was served personally with the Summonses and Complaints in this action by Deputy Christopher Graham, of the Horry County Sheriff's Department, on June 28, 2010, (see Exhibits F attached);
4. That the Plaintiff received the above-mentioned Affidavit of Personal Service from the Horry County Sheriff's Department and filed same with the Clerk of Court of Horry County on March 8,

2010 and March 15, 2010.

5. That an Answer was due to be filed by the Defendant on or before July 28, 2010, and that as of September 28, 2010, there had not been Answer filed by the Defendants; and

6. That said Summonses and Complaints pray for judgment against the Defendant for damages in an amount in excess of \$100,000.00, and for the costs of this action.

WHEREFORE, the Plaintiff respectfully prays for an Order granting this Motion for Default Judgment, for the reasons above-stated.


O. Fayrell Furr, Jr.
Attorney for the Plaintiff
FURR HENSHAW & OHANESIAN
1900 Oak Street
P.O. Box 2909
Myrtle Beach, South Carolina 29578
(843) 626-7621

Oct 6, 2010
Myrtle Beach, South Carolina

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-26-5146

Plaintiff,

v.

OMAR JARAKI, HALLA JARAKI,
CARDIOLOGY & ARRHYTHMIA
CONSULTANTS, CARDIOLOGY &
ARRHYTHMIAS CONSULTANT,
INSTITUTE OF
ELECTROPHYSIOLOGY, P.C.

Defendants.

AFFIDAVIT OF DEFAULT

HORRY COUNTY
10 OCT 12 AM 11:03
MELANIE HUGHES-WARD
CLERK OF COURT

1) That he is the attorney for the Plaintiff in the above-captioned action.

3) That more than thirty (30) days have elapsed since the service of said Summonses and Complaints and that no Answer, Motion or Notice of Appearance has been made therein; and that said Defendants are now in default;

4) Upon information and belief, that said Defendants are not a member of the armed services of the United States, as in contemplated under the Soldiers' and Sailors' Relief Act, as amended;

5) That said Defendants are not minors nor incompetent persons.

And further this affiant sayeth naught.

O. Fayrell Furr, Jr.
Attorney for the Plaintiff
FURR HENSHAW & OHANESIAN
1900 Oak Street
P.O. Box 2909
Myrtle Beach, South Carolina 29578
(843) 626-7621

SWORN to before me this 10th day
of October, 2010
Betty R. Day
Notary Public for South Carolina

My Commission Expires 3-21-11

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE 15TH JUDICIAL CIRCUIT
) Case No.: 2010-CP-26-5146

Jane AP Doe,

Plaintiff,

v.

Omar Jaraki, Halla Jaraki, Cardiology &
Arrhythmia Consultants, Cardiology and
Arrhythmias Consultant, Institute of
Electrophysiology, P.C.

Defendants.

**MOTION TO BE RELIEVED FROM
DEFAULT**

CLERK OF COURT
10 NOV 30 PM 2:05
HORRY COUNTY

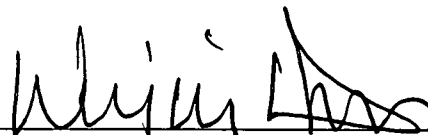
TO: O. FAYRELL FURR, JR., ATTORNEY FOR THE PLAINTIFF AND THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE, that ten (10) days hence or as soon thereafter as counsel may be heard, defendants will move before the presiding judge for the Fifteenth Judicial Circuit for relief from default judgment in this matter. Said motion is based on the grounds enumerated in S.C.R.C.P. 55, including good cause.

BE SO NOTIFIED!

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
843-626-4243

Tele: 843-626-4243

Fax: 843-626-5123

ATTORNEYS FOR THE DEFENDANTS

This 30th day of November, 2010
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No.: 2010-CP-26-5146

Jane AP Doe,)
Plaintiff,)
v.)

**OMAR JARAKI'S AFFIDAVIT
IN SUPPORT OF MOTION FOR
RELIEF FROM DEFAULT**

Omar Jaraki, Halla Jaraki,)
Cardiology & Arrhythmia)
Consultants, Cardiology and)
Arrhythmias Consultant, Institute)
of Electrophysiology, P.C.)
Defendants.)

HORRY COUNTY
10 NOV 30 PM 2:05
MELANIE HUGHES-WARD
CLERK OF COURT

COMES NOW THE UNDERSIGNED, who, upon being duly sworn, deposes
and says as follows:

1 My name is Omar Jaraki, M.D. I am a named defendant in the above
captioned action.

2. I was served with a copy of the summons and complaint in this action on
or about June 28, 2010.

3. I wrote a letter to plaintiff's counsel on July 9, 2010 which was within the
30 day period of time following my receipt of the summons and complaint. A copy of
that letter is attached to this affidavit as Exhibit A. I filed a copy of the letter with the
clerk of court on July 9, 2010 at 12:20 p.m.

7. In that letter I stated that I did not know of any patient by the name of the
plaintiff "Jane AP Doe" and that I needed additional information about that person. I was
concerned about the patient's potential privacy under federal law.

8. Plaintiff's counsel did not respond to that letter. I mailed the letter to him

at the following address: O Faryl Furr, Jr., P.O. Box 2909, 1900 Oak Street, Myrtle Beach, SC 25977. This mailing was made on July 9, 2010.

9. Mr. Furr states that he never received the letter, but I state under oath that the letter to him was mailed at the foregoing address on July 9, 2010. My wife and I both placed our names on the letter and mailed it to him at the above stated address on the above stated date.

10. After Mr. Furr claimed that I had failed to respond to the complaint, I checked the case file in the courthouse in Horry County, South Carolina.

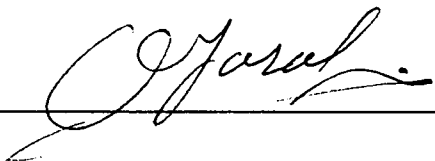
11. In Mr. Furr's affidavit which he filed with the Court on October 6, 2010, he states, "[N]o Answer, Motion or Notice of Appearance has been made therein; and that said defendants are now in default." However, Mr. Furr admits in a letter to me dated July 20, 2010, that he had seen my letter in the Court file. Never the less, he states in his affidavit and I had made "no answer, motion or notice of appearance." I believe his affidavit is erroneous.

12. Further, contrary to Mr. Furr's statement, I did mail "Exhibit A" to him on July 9, 2010, and I filed a copy of the letter with the Court on that date. I believe that my letter should be treated as both an answer and notice of appearance. The letter generally denies that I treated "Jane AP Doe" and therefore denies the allegations made in the complaint.

13. Even now, knowing of the true identity of the plaintiff, I deny that I committed any inappropriate conduct and I deny all of the allegations contained within the complaint which allege misconduct or errors on my part, or on the part of any of the defendants.

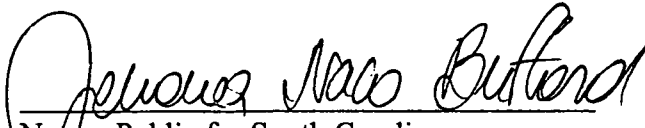
14. The named defendants *Cardiology & Arrhythmia Consultants* and *Cardiology and Arrhythmias Consultant*, are not legal entities and lack the capacity to sue or be sued.

FURTHER I SAITH NOT!



Omar Jaraki

Sworn to before me this 29th day of
November, 2010



Notary Public for South Carolina
My Commission Expires
April 7, 2015

Omar Jaraki MD

P O Box 810

North Myrtle Beach, SC 29597

July 09, 2010

This is in response to the civil action: 2010-26-5146

FILED
JUL - 9 PM 12:20
CLERK OF COURT
JANIE HUGGINS-WARD

O Faryl Furr Jr.

P O Box 2909

1900 Oak Street

Myrtle Beach, SC 29577

Mr. Furr;

This is the second request regarding the above case. So far I have not received any any response from you for proper identifications of your alleged client. I have to have the following to identify your plaintiff correctly if he or she existed in our records. I do not find anybody by name Jane AP Doe. I need the following and every item of the following:

Name

Address

Date of Birth

Social security Number

A copy of the driver license

To positively identify your plaintiff due to the sensitive nature of medical records. Until I receive all the above information about this matter I cannot answer any further question.


Omar Jaraki MD

843-602-6262

EXHIBIT A

2010 CP-26-5146

-44-

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No.: 2010-CP-26-5146

Jane AP Doe,)
Plaintiff,)
v.)

Omar Jaraki, Halla Jaraki,)
Cardiology & Arrhythmia)
Consultants, Cardiology and)
Arrhythmias Consultant, Institute)
of Electrophysiology, P.C.)
Defendants.)

**HALLA JARAKI'S
AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM
DEFAULT JUDGMENT**

HORRY COUNTY
10 NOV 30 PM 2:05
CLERK OF COURT

COMES NOW THE UNDERSIGNED, who, upon being duly sworn, deposes
and says as follows:

1 My name is Halla Jaraki. I am a named defendant in the above captioned
action.

2 I was served with a copy of the summons and complaint in this action on
or about June 29, 2010.

3 I wrote a letter to plaintiff's counsel on July 9, 2010, within the 30 day
period of time following my receipt of the summons and complaint. A copy of that letter
is attached to this affidavit as Exhibit A.

4 In that letter I stated that I needed to know the identity of the plaintiff so
that I could search our records. I did not know of any patient by the name of Jane AP
Doe. The plaintiff's failure to properly name the plaintiff confused me and interfered with
my ability to answer this suit properly.

5 I mailed the letter to Mr. Furr at the following address: O Faryl Furr, Jr.,

P.O. Box 2909, 1900 Oak Street, Myrtle Beach, SC 25977. This mailing was made on July 9, 2010.

6. Mr. Furr states that he never received the letter, but I state under oath that the letter to him was mailed at the foregoing address on July 9, 2010.

7. On July 20, 2010, Mr. Furr wrote a letter to me stating that he had reviewed the Court file and had seen my letter from July 9, 2010. He stated that he had never received the letter at his office. However, he had seen my letter in the Court file before he executed his affidavit of default on October 6, 2010.

8. In Mr. Furr's affidavit which he filed with the Court on October 6, 2010, he states, "[N]o Answer, Motion or Notice of Appearance has been made therein; and that said defendants are now in default."

9. Contrary to Mr. Furr's statement, however, my husband and I did mail "Exhibit A" to him on July 9, 2010, and we filed a copy of the letter with the Clerk's office on that same date. I believe that my letter should be treated as both an answer and notice of appearance. The letter generally denies that my husband treated "Jane AP Doe" and therefore denies the allegations made in the complaint.

10. Even now, knowing of the true identity of the plaintiff, I deny that I committed any inappropriate conduct and I deny all of the allegations contained within the complaint which allege misconduct or errors on my part, or on the part of any of the defendants.

11. The named defendants *Cardiology & Arrhythmia Consultants* and *Cardiology and Arrhythmias Consultant*, are not legal entities and lack the capacity to sue or be sued.

FURTHER I SAITH NOT!

Halla Jaraki
Halla Jaraki

Sworn to before me this 29th day of
November, 2010

Janeus W. Buford
Notary Public for South Carolina
My Commission Expires
April 7, 2015

Halla Jaraki

4400 Randal Road

Conway, SC 29526

JULY

JULY 09, 2010

This is in response to the civil action: 2010-26-5146

FILED
JULY 09 2010
CLERK OF COURT
JULY 09 2010
CLERK OF COURT
JULY 09 2010
CLERK OF COURT

O Faryl Furr Jr.

P O Box 2909

1900 Oak Street

Myrtle Beach, SC 29577

Mr. Furr;

I have to have the following to identify your plaintiff correctly if he or she existed in our records. I do not find anybody by name Jane AP Doe. I need the following and every item of the following:

Name

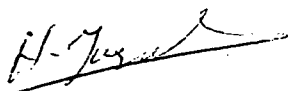
Address

Date of Birth

Social security Number

A copy of the driver license

To positively identify your plaintiff due to the sensitive nature of medical records. Until I receive all the above information about this matter I cannot answer any further question.



Halla Jaraki

843-602-6262

EXHIBIT A

2010 CP-26-5146
-48-

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No.: 2010-CP-26-5146

Jane AP Doe,)

Plaintiff,)

v.)

Omar Jaraki, Halla Jaraki,)
Cardiology & Arrhythmia)
Consultants, Cardiology and)
Arrhythmias Consultant,)
Institute of)
Electrophysiology, P.C.)

Defendants.)

ANSWER TO COMPLAINT

HORRY COUNTY
10 NOV 30 PM 2:01
MELANIE HUGGINS-WARD
CLERK OF COURT

COMES NOW THE DEFENDANTS, Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia Consultants, Cardiology and Arrhythmias Consultant, Institute of Electrophysiology, P.C., by and through their undersigned counsel, who would responding to the Plaintiff's complaint, show unto this Court as follows:

FOR A FIRST DEFENSE

Plaintiff's complaint violates S.C.R.C.P 17 as it fails to state the name of the real party in interest. Plaintiff was prejudiced by this failure because failure to comply with Rule 17 caused confusion on the part of the plaintiff as to the identity of the plaintiff

FOR A SECOND DEFENSE

1. Each and every allegation of the Plaintiff's complaint which is not hereinafter specifically admitted, qualified or otherwise explained is denied and strict proof demanded thereof.

2 Defendants do not have sufficient information to form a response to the allegations contained in Paragraph 1, and therefore deny same and demand strict proof thereof

3. The defendants admit paragraph 2 and 3.

4. Denied.

5. Denied.

6. Denied.

7. Denied.

8. Denied.

9. Defendants lack sufficient information to for a response to this paragraph and would therefore deny the same.

10. Denied

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied

18. Denied.

19. Denied.

20. Denied.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Defendants repeat the foregoing answers as if the same were set out herein verbatim.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Defendants repeat the foregoing answers as if the same were set out herein verbatim.

31. Denied.

32. Denied.

33. Denied.

34. Defendants repeat the foregoing answers as if the same were set out herein verbatim.

35. Denied. Defendants would further show that Defendants caused on amount of harm to plaintiff to any extent or degree.

36. Denied.

37. Denied. Defendants would further show that Defendants caused on amount of harm to plaintiff to any extent or degree.

38. Denied. Defendants would further show that Defendants caused on amount of harm to plaintiff to any extent or degree.

39. Denied.

40. Defendants repeat the foregoing answers as if the same were set out herein verbatim.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Defendants repeat the foregoing answers as if the same were set out herein verbatim.

46. Denied.

47. Denied.

48. Denied.

49. Defendants repeat the foregoing answers as if the same were set out herein verbatim.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Defendants repeat the foregoing answers as if the same were set out herein verbatim.

55. Denied.

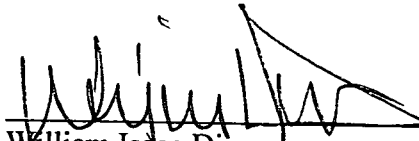
56. Denied

WHEREFORE, having fully responded to plaintiff's complaint defendants would request that

- a. the complaint be dismissed in its entirety and plaintiff take nothing;
- b. defendants be awarded attorneys fees in accordance with the plaintiff's cause of action alleging unfair trade practice
- c. defendants be given trial by jury; and
- d. Any other and further relief deemed just and proper by this Court.

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
Tele: 843-626-4243
Fax: 843-626-5123

ATTORNEY FOR THE DEFENDANTS

This 29th day of November, 2010
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

JANE AP DOE,

Plaintiff,

v.

OMAR JARAKI, HALLA JARAKI
CARDIOLOGY & ARRHYTHMIA
CONSULTANTS, CARDIOLOGY &
ARRHYTHMIAS CONSULTANT,
INSTITUTE OF
ELECTROPHYSIOLOGY, P.C.

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2010-CP-26-5146
)
)
)
)

) PLAINTIFF'S MEMORANDUM IN
) OPPOSITION TO DEFENDANT'S
) MOTION TO BE RELIEVED FROM
) DEFAULT JUDGMENT

FILED
HORRY COUNTY
2011 MAR -2 AM 8:03
HELANIE HUGGINS-WARD
CLERK OF COURT

STATEMENT OF THE CASE

This is an assault case brought by Jane AP Doe for damages that occurred while she was a patient of Defendants over a period of time and would not have occurred but for the professional services rendered during that time, when other services should have been rendered and were not. This tortious sexual misconduct was intertwined and inseparable from the professional services provided by the Defendant. Entry of Default has not been entered by the Clerk of Court. On October 12, 2010, Plaintiff filed a Notice of Motion and Motion for Default Judgment. We are before the Court today on Defendant's Motion to Be Relieved from Default Judgment although no Default Judgment has been entered. The Plaintiff is asking for an Entry of Default and then if granted, to then grant Plaintiff's Motion for a Default Judgment.

LEGAL ARGUMENTS

Defendants pray for relief from the Default Judgment entered against them relying on S.C.R.C.P. 55 which allows the court to set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). Defendants claim to have responded to the

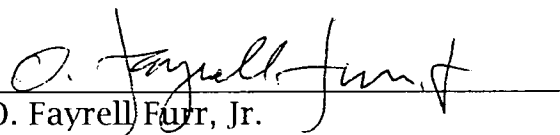
complaint by letter on July 9, 2010 and has included a copy of said letter with their affidavit. However, no such letter was ever served on or received by Plaintiff's counsel. It was not until search of the Court file revealed these letters at which time a written response was sent identifying the name of the patient in my letter dated July 20, 2010. In defendant's letter he requests the identity of his patient further stating that he cannot answer any further question without this information. Even after this information was provided to the Defendant's they failed to file an answer in the time allowed by law.

Defendants admit to receiving a copy of the summons and complaint on or about June 28, 2010. (Jaraki Aff. ¶2) After the expiration of the 30 day time period given to a defendant to respond to a complaint which would have been July 28, 2010, no such response had been received by Plaintiff's counsel and no record of such a response had been filed with the court. Plaintiff filed a motion for entry of Default on October 12, 2010 and no answer to the Complaint was filed until November 30, 2010, well after the 30 day time period had expired

CONCLUSION

For the above reasons, the Plaintiff respectfully requests that the Court grant Plaintiff's Motion for Entry of Default and Default Judgment and deny Defendants' Motion to Be Relieved from Default Judgment and Strike Defendant's Answer to the Complaint.

Respectfully Submitted,


O. Fayrell Furr, Jr.
Attorney for the Plaintiffs
FURR & HENSHAW
1900 Oak Street, P.O. Box 2909
Myrtle Beach, SC 29578
(843) 626-7621

March 1, 2011
Myrtle Beach, South Carolina

FHO
FURR, HENSHAW & OHANESIAN
ATTORNEYS AT LAW

O. Fayrell Furr, Jr.
*Board Certified Civil Trial Advocate
by the National Board of Trial Advocacy
Also Board Certified by American Board
of Professional Liability Attorneys*
Karolan F. Ohanesian
Pamela M. Secrest

A Partnership of Professional Corporations
www.scmedicalmalpractice.com

Charles L. Henshaw, Jr.

--
1534 Blanding Street
Columbia, SC 29201
Telephone: (803) 252-4050
Fax: (803) 254-7513
E-mail: charles.henshaw@fhoilaw.com

P.O. Box 2909
Myrtle Beach, SC 29578
Telephone: (843) 626-7621
Fax: (843) 448-6445
E-mail: fho@sc.rr.com

July 20, 2010

Reply To: Myrtle Beach

Mr. Omar Jaraki
Mrs. Halla Jaraki
4400 Randal Road
Conway, SC 29526

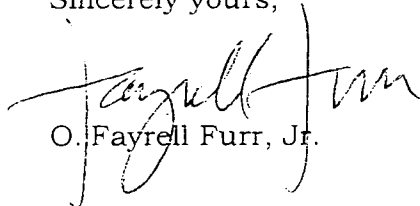
Re: Jane AP Doe vs. Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia
Consultants, Cardiology & Arrhythmias Consultant and Institute of
Electrophysiology, P.C.
Civil Action No.: 2010-CP-26-5146

Dear Mr. and Mrs. Jaraki:

Review of the Court file shows that you filed two letters on July 9, 2010 in the above case requesting identification of the patient. These letters were never received and/or served on me at either my physical address or post office box. On May 3, 2010 I sent you a letter disclosing the identity of the patient as Amanda Peele. This letter was addressed to you at the Randal Road address in Conway and it was not returned as being undelivered by the post office. For clarification purposes, my client's date of birth is 8/2/66 and your medical record number for her according to your records is 0000362. Any additional information requested on my client will need to be made through formal discovery requests. If you have retained legal counsel to represent you in this matter, please let me know their name or have them contact me directly.

With kindest regards, I am

Sincerely yours,


O. Fayrell Furr, Jr.

OFF/bb

Halla Jaraki

4400 Randal Road

Conway, SC 29526

JULY

JULY 09, 2010

This is in response to the civil action: 2010-26-5146

FILED
CLERK OF COURT
JULY 09 2010
MELANIE HUGGINS-WARD
PH 12:20

O Faryl Furr Jr.

P O Box 2909

1900 Oak Street

Myrtle Beach, SC 29577

Mr. Furr;

I have to have the following to identify your plaintiff correctly if he or she existed in our records. I do not find anybody by name Jane AP Doe. I need the following and every item of the following:

Name

Address

Date of Birth

Social security Number

A copy of the driver license

To positively identify your plaintiff due to the sensitive nature of medical records. Until I receive all the above information about this matter I cannot answer any further question.



Halla Jaraki

843-602-6262

-57-

Omar Jaraki MD

P O Box 810

North Myrtle Beach, SC 29597

July 09, 2010

This is in response to the civil action: 2010-26-5146

FILED
2010 JUL -9 PM 12:20
JELANIE HUGGINS-WARD
CLERK OF COURT

O Faryl Furr Jr.

P O Box 2909

1900 Oak Street

Myrtle Beach, SC 29577

Mr. Furr;

This is the second request regarding the above case. So far I have not received any any response from you for proper identifications of your alleged client. I have to have the following to identify your plaintiff correctly if he or she existed in our records. I do not find anybody by name Jane AP Doe. I need the following and every item of the following:

Name

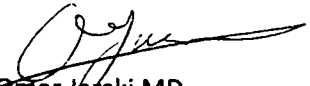
Address

Date of Birth

Social security Number

A copy of the driver license

To positively identify your plaintiff due to the sensitive nature of medical records. Until I receive all the above information about this matter I cannot answer any further question.


Omar Jaraki MD

843-602-6262

-58-

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-26-5146

JANE AP DOE,

Plaintiff,

v.

ENTRY OF DEFAULT

OMAR JARAKI, HALLA JARAKI,
CARDIOLOGY & ARRHYTHMIA
CONSULTANTS, CARDIOLOGY &
ARRHYTHMIAS CONSULTANT,
INSTITUTE OF
ELECTROPHYSIOLOGY, P.C.

Defendants.

This matter, having come before the Court this _____ day of _____, 2010, on a Motion for Entry of Default Judgment, pursuant to Rule 55 of the South Carolina Rules of Civil Procedure, as filed by the Plaintiff herein, and the Court, having reviewed said Motion, the Affidavit of Service and the Court file, and being otherwise fully advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that default is hereby entered against the Defendants and that a hearing to assess damages will be held to determine the amount of damages against said defendants.

Melanie Huggins-Ward, Clerk of Court
Fifteenth Judicial Circuit

Dated at Horry County, South Carolina,
this _____ day of _____, 2010.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) 2010-CP-26-5146

Jane AP Doe,)
)
Plaintiff,) Transcript of Record
)
vs.) Hearing
)
Omar Jaraki, et al.,) March 7, 2011
)
Defendants.)

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

O. Fayrell Furr, Jr., Esquire
Attorney for Plaintiff

William Isaac Diggs, Esquire
Attorney for Defendants

Grace L. Hurley, CVR-CM
Circuit Court Reporter

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E X H I B I T S

EVD

P-1	3-24-10 Letter from Furr to Jaraki	9
P-2	5-2-10 Letter from Furr to Jaraki	10
P-3	Order Terminating Pre-Litigation Mediation	11
P-4	7-20-10 Letter from Furr to Jaraki	12

1 (On the record, March 7, 2011.)

2 THE COURT: All right, I've got this is case number
3 2010-CP-26-5146, Jane AP Doe versus Omar Jaraki, Halla Jaraki,
4 Cardiology and Arrhythmia Consultants, Cardiology and
5 Arrhythmia Consultants Institute, Electrophysiology PC. Now,
6 according to my roster I've got a motion to be relieved from
7 default judgment and then a motion for relief both by the
8 Defendant Jaraki; is that correct?

9 MR. FURR: That's correct.

10 THE COURT: All right, Mr. Furr, you're here
11 representing the Plaintiff?

12 MR. FURR: Yes, sir.

13 THE COURT: All right, and Mr. Diggs, you're here
14 representing?

15 MR. DIGGS: The Defendants.

16 THE COURT: All Defendants, okay. All right, now, are
17 these two separate motions or what?

18 MR. FURR: Let me kind of, if I can just kind of
19 summarize where we are with this, Judge.

20 THE COURT: All right.

21 MR. FURR: We filed the lawsuit - I'm sorry, we filed
22 a notice of intent to file suit against the Defendants on
23 January 15th, 2010, over a year ago. We served that on the
24 Defendant on January 25th, 2010. The wife was served on March
25 5th, 2010, by the Sheriff's Office. We heard back from the

1 Defendant. He did not know who the Plaintiff, who the
2 Plaintiff was by the name, by the caption.

3 THE COURT: Right.

4 MR. FURR: And we sent him a letter on March 24th,
5 2010, telling him who the parties were identifying Ms. Peel
6 [spelled phonetically]. On May 3rd, 2010, we sent him a
7 letter advising him that Judge Breeden was going to hold the
8 pre-suit mediation.

9 THE COURT: Okay, all right.

10 MR. FURR: Okay, and he didn't show up for that.

11 THE COURT: All right.

12 MR. FURR: Judge Breeden filed his order terminating
13 the pretrial mediation on May 14th, 2010. On June 11th, 2010,
14 we filed a summons and complaint against the Defendants.

15 THE COURT: That's in this case number?

16 MR. FURR: Yes, sir.

17 THE COURT: Okay, all right.

18 MR. FURR: And then we served him on June 28th, 2010.
19 On - the wife was served on June 29th, 2010, by the Sheriff's
20 Office, a day, day later. We searched - we didn't hear from
21 him, but we searched the court files every week to see what's
22 going on in these kind of cases and he filed a letter with the
23 clerk's office on July 9th saying he did not know who the
24 client was again. So, we then sent him a letter on July 20th,
25 2010, again telling him who the Plaintiff was by name, did not

1 get a response back from him. Even if you give him 20 days,
2 the 30 days to answer from the time we sent him that letter on
3 July 20th, 2010, his answer would've been due, would have been
4 due August 20th, 2010. We've never heard anything from him
5 until we filed our motion for default, took that to the
6 clerk's office, and because of the letter he had filed with
7 the clerk saying he did not who he was - who this patient was
8 the clerk refused to sign the entry of default. She said, "I
9 just don't feel comfortable doing this. This is something a
10 judge should do." So, we then filed our motion for entry of
11 default and for a default judgment. That's where we are
12 today, and then Mr. Diggs came in and filed his motion to be
13 relieved.

14 THE COURT: Okay, all right, so, there has not been an
15 order of default issued?

16 MR. FURR: That's right, no entry of default.

17 THE COURT: No entry, okay, all right, I understand.
18 All right, Mr. Diggs, let me hear from you.

19 MR. DIGGS: Your Honor, if you look at the affidavit
20 that was next to our motion for relief from the default or -
21 that motion carries with it a letter that Mr. and Mrs. Jaraki
22 both signed and the issue in this case boils down to the
23 letter that Your Honor would have in the file dated July the
24 9th, 2010 and clocked in the clerk's office July the 9th, 2010.
25 In that letter and we refer here to case 5146 which I think

1 generally is the one that Mr. Furr is referring to, but we
2 have a letter that's clearly within the 30 days required to
3 respond, and the letter states and I would ask Your Honor if
4 you have that.

5 THE COURT: I've got it right here in front of me,
6 yeah.

7 MR. DIGGS: All right, "I have to have the following
8 to identify your Plaintiff correctly if he or she existed in
9 our records." So, if you look at that letter I would argue it
10 constitutes a response to the complaint, generally a denial
11 saying, "Look, as identified at this point we don't have
12 information in our database to show that we treated such a
13 person."

14 THE COURT: Yeah, but isn't, isn't one of the reasons
15 they have the requirements in these cases of a notice of
16 intent to file suit is so that you can get these issues
17 straightened out.

18 MR. DIGGS: Well ---

19 THE COURT: And he notified him back in March as to
20 who the Plaintiff was and they required the mediation. That's
21 why you have this notice of intent to file suit so that
22 because of the natures of these cases so they can identify and
23 know who the parties are, get the case mediated and see if
24 they can avoid a lawsuit.

25 MR. DIGGS: Well, what we have is a letter - I can't

1 speak to that. That generally would be a correct statement,
2 Your Honor, I'm not arguing with that but what we are saying,
3 on the basis of the record that we have in this case at this
4 point, you've got a general denial that was filed with the
5 clerk's office on July the 9th. Now, the issue, if you look
6 at the affidavit, the evidence in the record shows that that
7 letter was sent to Mr. Furr's office. Mr. Furr, I believe,
8 indicates that he didn't receive it but certainly knowing who
9 the Plaintiff is doesn't alleviate or doesn't undermine one's
10 right to generally deny the allegations with respect to a
11 complaint frames the issues sufficiently, I would submit,
12 under our rules to avoid being held in default under Rule 55.
13 So, that's, I think that's the issue that Your Honor has to
14 decide today whether the letter on July the 9th constitutes
15 sufficiently an answer to avoid being placed in default in the
16 action, and I would submit that it does, identifies the case,
17 has the case number, says, "We don't know who this person is
18 at this point, and additionally, we need some information to
19 ensure that we can proceed with taking into account the
20 considerations of privacy that are extended to each of the
21 patients being treated in the office. Certainly it's a
22 question of fact whether the letter was mailed. As Your Honor
23 can see on the letter it shows not the clerk's mailing address
24 but Mr. Furr's and I would submit that it is reasonable, the
25 reasonable inference, the most reasonable inference from the

1 evidence in the record is that letter was mailed by regular
2 post to Mr. Furr's office. Otherwise, it seems to be
3 unreasonable to just draft a letter to opposing counsel and
4 file it in the clerk's office and never mail it to the address
5 that's indicated on the letter itself. So, our position would
6 be if you look at the affidavit that was signed and, Your
7 Honor, certainly Mr. Furr's statement doesn't itself
8 constitute facts, I'm not willing to concede all this
9 knowledge, etcetera, that Mr. Furr imputes to the Jarakis. I
10 am saying that as of July the 9th they did not understand the
11 identity, didn't know the identity of this particular
12 Plaintiff and were asking generally for information about
13 that. I don't know, I don't know why people didn't attend
14 mediation and that kind of thing. I can't address it, but I
15 would argue that the letter is sufficient to constitute or to
16 avoid being placed in default under Rule 55.

17 THE COURT: All right, Mr. Furr.

18 MR. FURR: I think I need to make a record on some of
19 these things.

20 THE COURT: All right.

21 MR. FURR: I'm going to ask the Court to take into
22 consideration the letter that I wrote to Dr. and Mrs. Jaraki.
23 I'm going to make this an exhibit.

24 THE COURT: All right, and that's ---

25 MR. FURR: This is a letter with return ---

1 THE COURT: --- Plaintiff's Exhibit -

2 MR. FURR: One.

3 THE COURT: One. Mr. Diggs, any objection?

4 MR. DIGGS: We don't have any objection to it, Your
5 Honor.

6 THE COURT: All right, Plaintiff's Exhibit One
7 admitted without objection.

8 (Plaintiff's Exhibit Number One [Letter from Furr to
9 Jaraki dated March 24, 2010] admitted into evidence and
10 appropriately marked.)

11 MR. FURR: This letter with return receipt requested
12 signed by Dr. Jaraki advising him of the pre-suit mediation.

13 THE COURT: All right, sir.

14 MR. FURR: Exhibit Number Two, Exhibit Number Two,
15 Your Honor, is a letter that I sent Dr. Jaraki, notified us he
16 did not know who the Plaintiff was and on May 3rd, 2010, we
17 sent him a letter saying, "Pursuant to your request the
18 patient in the above case is Amanda Peel." This is a letter
19 he sent - that he filed with the clerk's office on February
20 22nd - on February 10th saying he did not know who it was. So,
21 I sent him a letter on May 3rd advising him who it was.

22 THE COURT: Any objection?

23 MR. DIGGS: Your Honor, for the purposes of the record
24 I don't object to the admission of the letter into evidence.
25 We deny, however, it was ever received by Dr. Jaraki.

1 THE COURT: Okay, all right, Plaintiff's Exhibit
2 Number Two admitted into evidence.

3 (Plaintiff's Exhibit Number Two [5-3-10 Letter from
4 Furr to Jaraki] admitted into evidence and appropriately
5 marked.)

6 MR. FURR: This is the letter, it has been marked
7 Exhibit Number Two, Your Honor, that was in response to his
8 letter he filed with the court.

9 THE COURT: All right, thank you.

10 MR. FURR: Those were mailed to his home address and
11 they were not returned to me.

12 MR. DIGGS: Your Honor, the Jarakis deny that that
13 was received.

14 THE COURT: All right.

15 MR. DIGGS: Again, we don't object to the admission
16 of the evidence, into evidence but we deny that it was
17 received.

18 THE COURT: All right, that's Exhibit Three or is
19 that ---

20 MR. FURR: The one I just gave you.

21 THE COURT: Oh, the one I gave - Two, all right, the
22 Two's already in, all right.

23 MR. FURR: And Number Three, Your Honor, is an order
24 terminating the pre-suit litigation which should be part of
25 the file already.

1 THE COURT: All right, any objection?

2 MR. DIGGS: No.

3 THE COURT: All right, Plaintiff's Exhibit Three
4 admitted without objection.

5 (Plaintiff's Exhibit Number Three [Order Terminating Pre-
6 Litigation Mediation] admitted into evidence and appropriately
7 marked.)

8 MR. FURR: And then a letter that we've marked
9 Exhibit Number Four is my letter to them dated July 20th, 2010,
10 saying, "Review of the court file shows you filed two letters
11 in July 9th, 2010, in the above captioned case requesting
12 identification of the patient. These letters were never
13 received and/or served on me at either my physical address or
14 post office box. On May 3rd, 2010, I sent you a letter
15 disclosing the identity of the patient as Amanda Peel."
16 That's the one I've already marked. "This letter was
17 addressed to you at the Randall Road address in Conway and it
18 was not returned as being undelivered by the post office. For
19 clarification purposes my client's date of birth is 8-2-66.
20 Your medical record number for her according to your records
21 is 0000362. Any additional information requested on my client
22 will need to be made through formal discovery requests. If
23 you have retained legal counsel to represent you in this
24 matter please let me know their name rather than contact me
25 directly. With kindest regards, I am, Fayrell Furr."

1 THE COURT: All right, this is Four. Any objection?

2 MR. DIGGS: No objection.

3 THE COURT: All right, Plaintiff's Exhibit Four
4 admitted without objection.

5 (Plaintiff's Exhibit Number Four [7-20-10 Letter from
6 Furr to Jaraki] admitted into evidence and appropriately
7 marked.)

8 MR. FURR: Now, Judge, with those - that amount of
9 notification to the Defendant going back to March of who this
10 patient was, even if you take the letter, the letter he filed
11 in July as being an answer, he was supposed to file an answer
12 at least 30 days from that, within that period of time or some
13 response within that period of time and he never did until
14 November when Mr. Diggs filed his motion to be relieved. It's
15 strange, it's strange that he says he did not receive any
16 letters. Those letters never came back from the post office,
17 you know, to me, to show they were not, they were not served
18 on him. He had ample time. I notified him back in March who
19 this person was and who - what he needed to do, if he had a
20 lawyer please have him contact me. Dr. Jaraki has just made a
21 mockery of this court in failing to respond to - he's been -
22 he's a - he's been in litigation before. He knows the rules.
23 He's got plenty of money to hire a lawyer and for him just to
24 ignore the rules is not, is not appropriate.

25 THE COURT: All right, anything in reply?

1 MR. DIGGS: Your Honor, I would ask the Court not to
2 consider the remarks of counsel about being in litigation
3 before. It's not relevant to this issue. The point is that
4 Mr. Jaraki was served with a summons and complaint and he
5 filed a response within 30 days of the service of that summons
6 and complaint which generally denied the allegations, at least
7 saying he couldn't respond further because he didn't know the
8 identity of the Plaintiff. Now, he wasn't required to file a
9 response to any documentation letters, orders or whatever
10 regarding mediation, none of that alters the requirement that
11 he respond to the summons and complaint that was filed in this
12 particular action. He did, he did respond and he did
13 generally deny, at least based on the information that he had
14 that was contained in the complaint that he was responding to;
15 and so, I would submit that letter is sufficient to constitute
16 a response to avoid default under the Rules of Civil
17 Procedure.

18 THE COURT: All right.

19 MR. FURR: May I just read into the record ---

20 THE COURT: No, that's all right, I've already -- I've
21 got it.

22 MR. FURR: All right.

23 THE COURT: Thank you. All right, Mr. Furr, if I
24 could get you to prepare me an order that denies the motion to
25 be relieved from default and the motion for relief filed by

1 the defense. It grants the motion for default by the
2 Plaintiff. Put in there specifically that the letter is not
3 responsive, number one. Number two, also this Court has the
4 inherent authority to enforce the provisions of 15-79-125
5 which requires the pre-suit mediation and due to Dr. Jaraki's
6 failure to attend the pre-suit mediation one way we can
7 enforce it is by prohibiting responsive pleadings because he
8 didn't comply with the statute in that regard. So, I want to
9 make sure that both of those are in there, number one, that
10 his letter does not constitute an answer, and then number two,
11 that I find based upon the exhibits he knew the identity of
12 the Plaintiff, he willfully failed to attend the pre-suit
13 mediation and because the Court has the inherent authority to
14 enforce that statute I'm going to enforce it by not allowing
15 responsive pleadings in this action.

16 MR. FURR: Yes, sir.

17 THE COURT: All right, thank you very much.

18 MR. FURR: Thank you, sir.

19 THE COURT: Make sure Mr. Diggs reviews the order
20 before you send it to me.

21 MR. FURR: I will, and I assume you'll have a hearing
22 later on about damages?

23 THE COURT: Well, just put in the order of default
24 that he's held in default and that a hearing is to be
25 scheduled pursuant to Rule 55 on the issue of damages.

1 MR. FURR: Yes, sir, thank you, sir.

2 THE COURT: All right.

3 MR. DIGGS: Your Honor, we had filed another motion.
4 I just want to state for the record it wasn't included on the
5 court's roster for today.

6 THE COURT: Okay.

7 MR. DIGGS: I think that was an oversight,
8 unintentional oversight on the part of the people that put
9 together that roster because they were filed at the same time;
10 but even so, I was discussing it with Mr. Furr this morning.
11 He indicated because it's not on the roster he wasn't prepared
12 to proceed on that particular motion and I understand that
13 position. I just want to make it clear that we're not in any
14 way ---

15 THE COURT: What was that motion?

16 MR. DIGGS: It had to do with civil action ---

17 MR. FURR: That was the previous case that you
18 heard.

19 MR. DIGGS: 659, Your Honor, where Your Honor entered
20 that \$200,000 verdict.

21 THE COURT: But it's not a motion in this case?

22 MR. DIGGS: Well, there is one filed. I just want to
23 make sure on the record that it's understood we're not waiving
24 pursuit of that motion simply because I didn't bring it up
25 today, but I think because it's not on the roster it's proper

1 that it not be heard at this point.

2 THE COURT: Okay, all right, but that's in another
3 case heading?

4 MR. DIGGS: In ---

5 MR. FURR: Yes, sir.

6 MR. DIGGS: Yes, sir.

7 THE COURT: I mean, another case file?

8 MR. FURR: Yes, sir.

9 THE COURT: Okay, all right, well, then I guess it's
10 still preserved because this doesn't even appear on my roster.
11 So, I'm not disposing of that in any way.

12 MR. DIGGS: All right, thank you.

13 THE COURT: Okay?

14 MR. FURR: Thank you, Your Honor.

15 THE COURT: Thank you.

16 MR. FURR: I'll get the order prepared for you.

17 THE COURT: Thank you very much.

18 (Adjourned.)

19

20

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Jane AP Doe v. Omar Jaraki, et al., held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on March 7, 2011.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

Grace L. Hurley

Grace L. Hurley, CVR-CM

Official Reporter

July 13, 2011.

FHO
FURR, HENSHAW & OHANESIAN
ATTORNEYS AT LAW

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*Board Certified Civil Trial Advocate
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Also Board Certified by American Board
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Myrtle Beach, SC 29578
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Fax: (843) 448-6445
E-mail: fho@sc.rr.com

March 24, 2010

Reply To: Myrtle Beach

*****VIA CERTIFIED MAIL/RETURN RECEIPT**

Mr. Omar Jaraki
Mrs. Halla Jaraki
4400 Randall Road
Conway, SC 29526

Re: Jane AP Doe vs. Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia
Consultants, Cardiology & Arrhythmias Consultant and Institute of
Electrophysiology, P.C.
Civil Action No.: 2010-CP-26-395

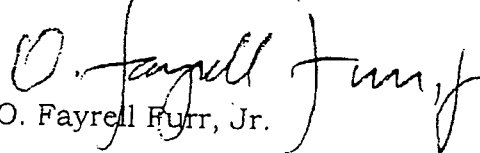
Dear Mr. and Mrs. Jaraki:

Pursuant to S.C. Code Ann. §15-79-125, within 120 days of service of the Notice of Intent, the parties shall participate in a mediation conference. As such, please be advised that a telephone mediation has been scheduled in the above-referenced matter on April 27, 2010 at 10:00 a.m. with Judge John Breeden. If you are represented by counsel in this matter, please have them contact me immediately. If not, you are required to participate in this mediation. The telephone number to be connected to the parties for this mediation is 877-544-8688. When prompted to enter an ID code, please enter 3480864.

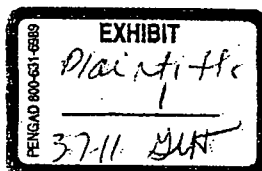
With kindest regards, I am

Sincerely yours,

O. Fayrell Furr, Jr.



OFF/tmn



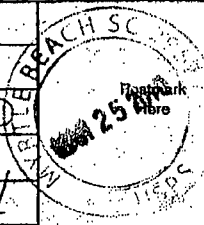
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Postage	\$ 1.44
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.54



Sent to
 Omar's Halla Jarahi
 Street, Apt. No. or PO Box No. 4400 Randall Rd
 City, State, ZIP+4 Conway, SC 29526

PS Form 3800, August 2006

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Omar's Halla Jarahi
 4400 Randall Rd
 Conway, SC
 29526

2. Article Number

(Transfer from service label)

7009 1680 0002 1579 0595

PS Form 3811, February 2004

Domestic Return Receipt

102505-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

3/26/10

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☒ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

-78-

FHO

FURR, HENSHAW & OHANESIAN
ATTORNEYS AT LAW

O. Fayrell Furr, Jr.
*Board Certified Civil Trial Advocate
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Also Board Certified by American Board
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Pamela M. Secrest

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Charles L. Henshaw, Jr.

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Columbia, SC 29201
Telephone: (803) 252-4050
Fax: (803) 254-7513
E-mail: charles.henshaw@fholaw.com

May 3, 2010

Reply To: Myrtle Beach

Mr. Omar Jaraki
Mrs. Halla Jaraki
4400 Randall Road
Conway, SC 29526

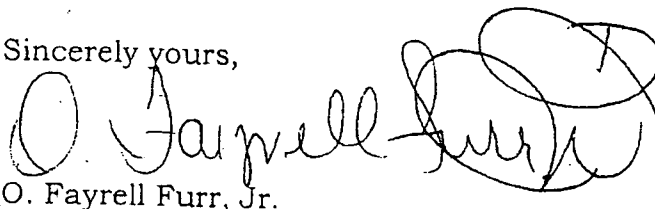
Re: Jane AP Doe vs. Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia
Consultants, Cardiology & Arrhythmias Consultant and Institute of
Electrophysiology, P.C.
Civil Action No.: 2010-CP-26-395

Dear Mr. and Mrs. Jaraki:

Pursuant to your request, the patient in the above case is Amanda Peele.

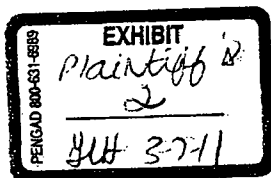
With kindest regards, I am

Sincerely yours,



O. Fayrell Furr, Jr.

OFF/bb



FHO
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July 20, 2010

Reply To: Myrtle Beach

Mr. Omar Jaraki
Mrs. Halla Jaraki
PO Box 810
North Myrtle Beach, SC 29597

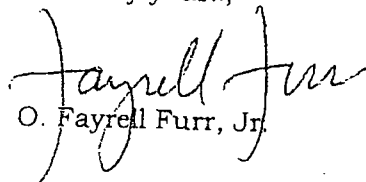
Re: Jane AP Doe vs. Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia
Consultants, Cardiology & Arrhythmias Consultant and Institute of
Electrophysiology, P.C.
Civil Action No.: 2010-CP-26-5146

Dear Mr. and Mrs. Jaraki:

Review of the Court file shows that you filed two letters on July 9, 2010 in the above case requesting identification of the patient. These letters were never received and/or served on me at either my physical address or post office box. On May 3, 2010 I sent you a letter disclosing the identity of the patient as Amanda Peele. This letter was addressed to you at the Randal Road address in Conway and it was not returned as being undelivered by the post office. For clarification purposes, my client's date of birth is 8/2/66 and your medical record number for her according to your records is 0000362. Any additional information requested on my client will need to be made through formal discovery requests. If you have retained legal counsel to represent you in this matter, please let me know their name or have them contact me directly.

With kindest regards, I am

Sincerely yours,


O. Fayrell Furr, Jr.

OFF/bb



-81-

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
Jane AP Doe,)
)
)
Plaintiff,)
)
v.)
)
Omar Jaraki, Halla Jaraki, Cardiology)
& Arrhythmia Consultants, Cardiol-)
ogy and Arrhythmias Consultant,)
Institute of Electrophysiology, P.C.)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No.: 2010-CP-26-5146

DEFENDANTS'
MOTION TO RECONSIDER ORDER
ENTERED MAY 20, 2011

HORRY COUNTY
CLERK OF COURT
MELANIE J. JENNINGS-WARD
11 JUN -2 PM 2:18

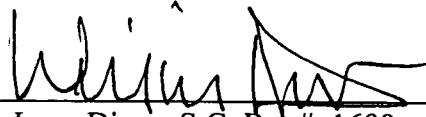
COME NOW THE DEFENDANTS, Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia Consultants, Cardiology and Arrhythmias Consultant, Institute of Electrophysiology, P.C., by and through their undersigned counsel, who would request of the Court that it Reconsider the order signed on May 16, 2011 and filed on May 20, 2011, mailed to counsel for defendants on May 24, 2011, and received on May 25, 2011, denying defendants' motion for relief from default made pursuant to S.C.R.C.P. 55. Said motion is based on the following grounds:

- (1) the letters filed by the defendants with the Clerk of Court were legally sufficient to avoid default;
- (2) defendants failure to follow the pre-suit mediation process set out at, inter alia, 15-79-125 may not constitute a basis for the Court to prohibit the filing of a responsive pleading; and
- (3) notice of the identity of the plaintiff and a willing failure to attend the pre-suit mediation may not constitute a basis for holding the defendants in default under the facts of this case because the Court has (a) interjected a weighing of credibility of the affiants in their respective affidavits in the final order (b) without permitting them to testify in person before the Court at the hearing on relief from default or (c) allowing counsel or the defendants to be heard on the issue of credibility and (d) without notice to the defendants that the Court was going to do so in this instance.

-82-

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs, S.C. Bar #: 1689
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
Tele: 843-626-4243
Fax: 843-626-5123

ATTORNEY FOR THE DEFENDANTS

This 1st day of June, 2011
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No.: 2010-CP-26-5146

Jane AP Doe,

Plaintiff,

v.

Omar Jaraki, Halla Jaraki, Cardiology &
Arrhythmia Consultants, Cardiology and
Arrhythmias Consultant, and Institute of
Electrophysiology, P.C.,

Defendants.

**DEFENDANTS'
MEMORANDUM IN SUPPORT
OF MOTION TO RECONSIDER**

COME NOW THE DEFENDANTS, Omar Jaraki and Halla Jaraki, who would submit the following Memorandum in support of their motion for reconsideration of the Court's order entered May 20, 2011.

Background

Defendant Omar Jaraki is a licensed physician practicing medicine in Horry County, South Carolina.¹ Defendant Halla Jaraki is Dr. Jaraki's wife and assisted him in his medical practice in Conway, South Carolina in a support staff role. Plaintiff is a past patient of Dr. Jaraki and has filed this action which includes numerous causes of action based on the same conduct which alleges that he improperly sexually penetrated her with his fingers during an office visit.

On January 15, 2010, plaintiff filed a notice of intent to file suit. The filing was given case number **2010-CP-26-395**. With that filing, plaintiff filed answers to rule 33(b) standard interrogatories. However, plaintiff's counsel listed **Jane AP Doe** as the plaintiff.

¹ Defendant's license to practice medicine has been temporarily suspended pending resolution of allegations which have been made against him of a nature such as those made in this litigation.

He does not use her real name. This filing bears a different case number from the civil action which is actually filed on June 11, 2010.² On March 24, 2010, plaintiff's counsel sent defendants a letter stating that a mediation conference had been scheduled pursuant to S.C. Code Ann 15-79-125. The date of the scheduled mediation was April 27, 2010.

In the Court's file, there is a letter addressed to plaintiff's counsel dated March 31, 2010, which counsel has stated he did not receive. The letter was filed and made part of the court's record on April 1, 2010. The letter informed counsel that defendants needed to identify the plaintiff correctly. To do so they stated that they needed the patient's name; address; date of birth; social security number; and a copy of the plaintiff's driver's license. The defendants stated that they needed the information because of the, "[S]ensitive nature of medical records." Thereafter, on May 3, 2010, plaintiff's counsel sent defendants a letter providing the name of the plaintiff.³ However, this was after the scheduled date of the mediation. On May 14, 2010, Judge Breeden executed his "Order Terminating Pre-litigation Mediation," indicating that the defendants did not attend the April 27, 2010, mediation conference. It was sent referencing case filing **2010-CP-26-395**.

On June 11, 2010, the civil action was filed in the case of *Jane AP Doe v. Omar Jaraki, Halla Jaraki*, et al. ***This filing contained a new case number, 2010-CP-26-5146.*** Halla Jaraki and Dr. Jaraki were served with this new action on June 28, 2010 and June 29, 2010, respectively. On July 9, 2010, eleven (11) days later, a letter was sent from Dr.

² As noted infra, the first filing bore case number 2010-CP-26-395 and the second filing in June, 2010, was assigned case number 2010-CP-26-5146.

³ It is this counsel's belief that at the hearing on defendants' motion, Dr. Jaraki denied having received this letter. Although, counsel does not have a transcript of this hearing and it is not known whether the transcript would show his denial.

Jaraki to plaintiff's counsel again requesting the identification of Jane AP Doe. The letter states that he needs the plaintiff's name; address; date of birth; social security number and a copy of the patient's driver's license. The letter also indicates that it is in response to civil action "2010-26-5146." On July 20, 2010, a letter was sent from plaintiff's counsel to the defendants denying that he received the letters sent by the Jarakis to him in this case. On September 20, 2010, a letter from defendant, Halla Jaraki, to plaintiff's counsel was sent asking for notarized permission from Amada Peele to discuss her medical record with her "counselors" and any agency or person necessary.⁴ A similar letter was sent from Dr. Jaraki to plaintiff's counsel about confidentiality.

On October 12, 2010, an affidavit of default was filed by plaintiff's counsel. On November 22, 2010, defendants filed a motion for relief from default. A hearing was held on March 7, 2011, on defendants' motion. This Court denied the motion by order entered May 20, 2011. Defendants timely filed a motion to reconsider the order and by letter dated June 17, 2011, this Court requested a brief from defendants on the issues raised in the motion to reconsider. The Motion to Reconsider is based on the following grounds:

- (1) the letters filed by the defendants with the Clerk of Court were legally sufficient to avoid default;
- (2) defendants failure to follow the pre-suit mediation process set out at, inter alia, 15-79-125 may not constitute a basis for the Court to prohibit the filing of a responsive pleading; and
- (3) notice of the identity of the plaintiff and a willing failure to attend the pre-suit mediation may not constitute a basis for holding the defendants in default under the facts of this case because the Court has (a) interjected a weighing of credibility of the affiants in their respective affidavits in the final order (b) without permitting them to testify in person before the Court at the hearing on relief from default or (c) allowing

⁴ This raises the question of HIPPA application to medical malpractice cases and confidentiality requirements which must be maintained even in malpractice litigation.

counsel or the defendants to be heard on the issue of credibility and (d) without notice to the defendants that the Court was going to do so in this instance.

ARGUMENT

- (1) The letters filed by the defendants with the Clerk of Court were legally sufficient to avoid default.

Plaintiff failed to tell the Jarakis that *Jane AP Doe* was not the real name of the plaintiff in this action, and thus not the real name of Dr. Jaraki's patient. Counsel neglected to tell the defendants that the caption contained a *pseudonym or anagram*. The letter of correspondence filed by Dr. Jaraki on July 9, 2010, and which he mailed to plaintiff's counsel according to defendant's affidavit, contains a denial. The letter states referring to his patients' records, in part, "I do not find anybody by name *Jane AP Doe*." We submit this statement by Dr. Jaraki constitutes a denial under S.C.R.C.P. 8. Both Dr. Jaraki and his wife, Halla, are from Syria. They reasonably did not understand plaintiff's use of a pseudonym or anagram to conceal the identity of the plaintiff.

S.C.R.C.P. 8 states in part, "If he [the defendant] is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial."⁵ Both letters sent by the Jarakis, that of Dr. Jaraki and that

⁵ Rule 8(b) is entitled "Defenses; Form of Denials." It reads as follows:

A party shall state in short and plain terms the facts constituting his defenses to each cause of action asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments,

of his wife, state that they cannot find such a patient as "Jane AP Doe" in their records. Clearly, we submit, each defendant is stating that he and she lack sufficient knowledge to respond, and this equates with a general denial according to Rule 8. It was error for counsel to file the affidavit of default we respectfully submit. We respectfully request that the Court reconsider this issue and hold that the letters of July 9, 2010, stated in effect, that defendants lacked sufficient knowledge to answer the complaint and thus, a general denial was pled.

(2) Defendants failure to follow the pre-suit mediation process set out at, inter alia, S.C. Code Ann. § 15-79-125 may not constitute a basis for the Court to prohibit the filing of a responsive pleading.

In the order denying defendants' motion for relief from default, this Court stated at page 3 of the Order,

Furthermore, this Court has inherent authority to enforce the Provision of S.C. Code Ann. § 15-79-125, which requires Pre-Suit Mediation and the Defendants' failure to attend the Mediation deprived them of one more opportunity to discover the identity of the Plaintiff, and the Court hereby enforces the requirements of S.C. Code Ann 15-79-125 by prohibiting the filing of responsive pleadings.

Order at page 3, last paragraph. Defendants respectfully ask this Court to reconsider this holding. This Court sanctioned defendants for failing to follow the prelitigation process by striking defendants' right to file a responsive pleading in this matter, thereby placing defendants in default. We respectfully submit that failure to follow the mediation

including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

procedure contained within S.C. Code Ann. § 15-79-125 does not justify placing a defendant in default or striking a defendant's responsive pleading.

When the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly. *See Orlando v. Boyd*, 320 S.C. 509, 466 S.E.2d 353 (1996). Therefore, the sanction should be aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a decision on the merits of a case. *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct.App. 1990). Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction. *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991). *Griffin Grading v. Tire Service Equipment*, 334 S.C. 193, 198-99, 511 S.E.2d 716 (Ct.App. 1999). In the instant case, plaintiff's counsel wrote a letter advising defendants of the scheduled mediation. There was no court order in effect at that time. We submit that no bad faith, willful disobedience or gross indifference to a party's rights has been shown in this instance. Sub-section "F" of the statute reads

(F) Participation in the pre-litigation mediation pursuant to this section does not alter or eliminate any obligation of the parties to participate in alternative dispute resolution after the civil action is initiated. However, there is no requirement for participation in more than one alternative dispute resolution forum following the filing of a summons and complaint to initiate a civil action in the matter.

The proper sanction to be imposed in this instance we submit is to allow the plaintiff to file her lawsuit and then compel use of the one alternative dispute resolution forums contemplated by the statute, we respectfully submit.

Defendants assert that the pre-litigation process was intended to reduce frivolous law suits. It was not intended to eliminate the right of a party to defend against liability. The Court's sanctions, respectfully, is in opposition to the purpose of the legislations and with all due respect, it is too harsh. We respectfully ask this Court to reconsider this aspect of the Court's Order.

(3) Notice of the identity of the plaintiff and a willing failure to attend the pre-suit mediation may not constitute a basis for holding the defendants in default under the facts of this case because the Court has (a) interjected a weighing of credibility of the affiants in their respective affidavits in the final order (b) without permitting them to testify in person before the Court at the hearing on relief from default or (c) allowing counsel or the defendants to be heard on the issue of credibility and (d) without notice to the defendants that the Court was going to do so in this instance.

Initially, this Court uses the wrong date as to when the action was filed in this matter. At page 3 of the Court's order, this Court states that the summons and complaint were filed on July 11, 2010. We respectfully submit that the action was filed on June 11, 2010. As noted above, eleven days thereafter the Jarakis filed letters with the Court which were addressed to the plaintiff's counsel. Defendants state that they sent those letters to plaintiff's counsel.

At the hearing on defendants' motion for relief, the Court allowed plaintiff's counsel to state that he never received the letters of July 9, 2010, which were filed by the Defendants. However, the defendants were not given an opportunity to *testify*. In effect, this Court makes credibility determinations from affidavits. We submit that this was

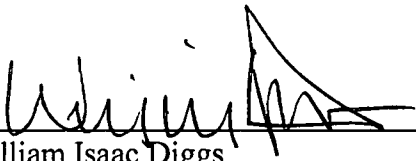
improper. Defendants were not given notice that credibility determinations were at issue in this matter and were not permitted to be heard on the issues in dispute. There was a denial from Dr. Jaraki as to his receipt of a letter said by plaintiff's counsel to have been mailed. We respectfully submit the Court should reconsider this matter and hold an evidentiary hearing.

CONCLUSION

For the foregoing reasons, defendants would respectfully request this Court to reconsider the Order denying defendants relief from default.

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243 Tele
843-626-5123 Fax

ATTORNEY FOR THE DEFENDANTS

This 1st day of July, 2011
Myrtle Beach, South Carolina

Answer on November 22, 2010. This matter was heard before you on March 7, 2011 and an Order striking Defendant's Motion to Be Relieved from Default and responsive pleadings was signed by you on May 16, 2011 and filed on May 20, 2011.

LEGAL ARGUMENTS

Defendants pray for relief from the Default Judgment entered against them relying on S.C.R.C.P. 55 which allows the court to set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). Defendants claim to have responded to the complaint by letter on July 9, 2010 and has included a copy of said letter with their affidavit. However, no such letter was ever served on or received by Plaintiff's counsel. It was not until search of the Court file revealed these letters at which time a written response was sent identifying the name of the patient in my letter dated July 20, 2010. In defendant's letter he requests the identity of his patient further stating that he cannot answer any further question without this information. Even after this information was provided to the Defendant's they failed to file an answer in the time allowed by law.

Defendants admit to receiving a copy of the summons and complaint on or about June 28, 2010. After the expiration of the 30 day time period given to a defendant to respond to a complaint which would have been July 28, 2010, no such response had been received by Plaintiff's counsel and no record of such a response had been filed with the court. Plaintiff filed a motion for entry of Default on October 12, 2010 and no answer to the Complaint was filed until November 30, 2010, well after the 30 day time period had expired.

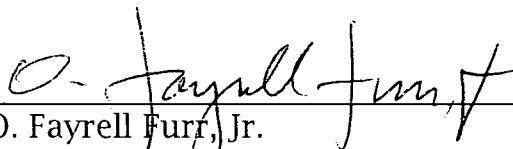
Defendants further state that failure to follow the pre-suit mediation process as set out in S.C. Code Ann. §15-79-125 does not constitute a basis for the Court to Prohibit the filing of a responsive pleading. Plaintiff argues that the circuit court has jurisdiction to enforce the provisions of S.C. Code Ann. §15-79-125 as set forth in section (D). The Plaintiff has shown through the

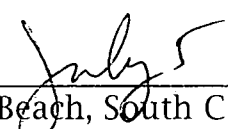
evidence that Defendant's willfully failed to attend the pre-suit mediation and continually failed to file a responsive pleading until well after the time for such filing had expired. Defendant's have maintained throughout this action that they needed the identity of the Plaintiff in order to respond. Even though this was provided to them on numerous occasions, Plaintiff believes that had the Defendant's participated in the pre-suit mediation on April 27, 2010, any questions or doubt as to the identity of the Plaintiff would have been disclosed. The evidence shows that the Plaintiff's identity had been disclosed to the Defendants. The Plaintiff believes that the Defendant's willful failure to participate in pre-suit mediation is yet another attempt to circumvent the law.

CONCLUSION

For the above reasons, the Plaintiff respectfully requests that the Court deny Defendants' Motion for Reconsideration.

Respectfully Submitted,


O. Fayrell Furr, Jr.
Attorney for the Plaintiffs
FURR & HENSHAW
1900 Oak Street, P.O. Box 2909
Myrtle Beach, SC 29578
(843) 626-7621


_____, 2011
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

2010-CP-26-5146

Jane AP Doe,)

Plaintiff,)

Transcript of Record

vs.)

Hearing

Omar Jaraki, et al.,)

April 9, 2012

Defendants.)

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

O. Fayrell Furr, Esquire
Attorney for Plaintiff

William Isaac Diggs, Esquire
Attorney for Defendants

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 Three is admitted into evidence without objection.

2 (Whereupon, Plaintiff's Exhibit Number Three [Statement]
3 admitted into evidence and appropriately marked.)

4 MR. FURR: I have no further questions, Your Honor.

5 THE COURT: All right, you may step down. Call your
6 next witness.

7 MR. FURR: That's, that's the Plaintiff's case, Your
8 Honor.

9 THE COURT: All right. Mr. Furr, do you have a tally
10 of Plaintiff's Exhibit One what the total, anything?

11 MR. FURR: I don't have it with me right now. I do -
12 I'm sorry. I do have it, excuse me. He billed the insurance
13 company from January 17th, '07 through August 31st, '07 a total
14 of \$29,090, \$7,000 of which was for office surgery which he
15 never, he never did on her.

16 THE COURT: All right, I'm going to grant the
17 Plaintiff judgment against the Defendants for \$179,090.

18 MR. FURR: Thank you, Your Honor.

19 THE COURT: All right.

20 MR. DIGGS: Your Honor, is he going to prepare an
21 order or is that going to be like a Form ---

22 THE COURT: Do you want an order or is a Form 4
23 sufficient?

24 MR. FURR: A Form's fine.

25 THE COURT: All right, I'll just do a Form 4.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No.: 2010-CP-26-5146

Jane AP Doe,)
Plaintiff,)
v.)

**DEFENDANTS' MOTION
FOR CLARIFICATION OF ORDER ON
DAMAGES**

Omar Jaraki, Halla Jaraki, Cardiology)
& Arrhythmia Consultants, Cardiol-)
ogy and Arrhythmias Consultant,)
Institute of Electrophysiology, P.C.)
Defendants.)

FILED
HORRY COUNTY
2012 APR 19 AM 11:29
MELANIE HUGGINS-WARDS
CLERK OF COURT

COME NOW THE DEFENDANTS, Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia Consultants, Cardiology and Arrhythmias Consultant, Institute of Electrophysiology, P.C. who would request of this Court its proper order clarifying the order entered on damages in this matter. Said motion is based on the following grounds: From the bench following the damages hearing in this matter, the Court ordered damages in favor of the plaintiff in the amount of \$179,090.00. The Court did not specify at the time of the damages hearing whether the damages were *actual* damages or *punitive* damages.

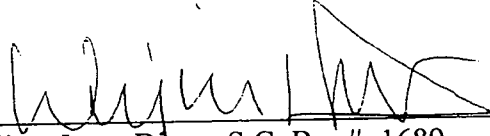
Defendants would show that (1) if the damages were intended to be for actual damages, the evidence offered by plaintiff failed to support such a large award; and (2) if the damages were intended to be punitive damages, such award is in violation of the Gamble factors¹ which have been set forth for use in such circumstances by appellate Courts of this State, certainly with respect to individual particular defendants.

¹ See Gamble v. Stevenson, 305 S.C. 104, 111-12, 406 S.E.2d 350, 354 (1991). In the Gamble opinion the Court held, "Hereafter, to ensure that a punitive damage award is proper, the trial

BE SO NOTIFIED!

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs, S.C. Bar #: 1689
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
Tele: 843-626-4243
Fax: 843-626-5123

ATTORNEY FOR THE DEFENDANTS

This 19th day of April, 2012
Myrtle Beach, South Carolina

court shall conduct a post-trial review and may consider the following: (1) defendant's degree of culpability; **Page 112** (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) as noted in [Pacific Mutual Life Insurance Company v.]Haslip, [499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991)], "other factors" deemed appropriate.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-26-5146

12 APR 10 PM 4:28

Jane "AP" Doe

PLAINTIFF(S)

Omar Jaraki, M.D., et al.

DEFENDANT(S)

MELANIE HUBBINS-WARD
CLERK OF COURT

Submitted by: Benjamin H. Culbertson, Presiding Judge

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Pursuant to the damages hearing held in this case, the plaintiff is granted judgment against the defendants for \$179,090.00.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Judgment is joint and severable.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Jane "AP" Doe	Omar Jaraki, M.D.	\$179,090.00
Jane "AP" Doe	Halla Jaraki	\$179,090.00
Jane "AP" Doe	Cardiology & Arrhythmia Consultants	\$179,090.00
Jane "AP" Doe	Cardiology & Arrhythmias Consultant	\$179,090.00
Jane "AP" Doe	Institute of Electrophysiology, P.C.	\$179,090.00

If applicable, describe the property, including tax map information and address, referenced in the order:

99

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson

Benjamin H. Culbertson, Circuit Court Judge

2148

Judge Code

April 9, 2012

Date

For Clerk of Court Office Use Only

This judgment was entered on the 10th day of April, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 10th day of April, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

O. Fayrell Furr, Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

William I. Diggs

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie Diggs Ward
CLERK OF COURT

Court Reporter: Grace Hurley

b

COUNTY OF HORRY

ED
COUNTY

7710 JUL 20 AM 10:10

FLANIE HUGGINS-WARD
CLERK OF COURT

Plaintiff

VS.

OMAR JARAKI, HALLA JARAKI, CARDIOLOGY &
ARRHYTHMIA CONSULTANTS, CARDIOLOGY
& ARRHYTHMIAS CONSULTANT, INSTITUTE
OF ELECTROPHYSIOLOGY, PC
Defendant

AFFIDAVIT OF

PERSONAL SERVICE

TIME OF SERVICE: 2;15 PM

CASE # 2010CP265146

CHRISTOPHER GRAHAM, DEPUTY being duly sworn says that he served
SUMMONS, COMPLAINT, COVERSHEET in the above stated
action, on the Defendant by delivering to him/her personally, and
leaving with him/her copies of the same IN Horry County
South Carolina, on the 28th day of JUNE 2010; and that he knows
the person so served to be the one mentioned and described in the
document served as: OMAR JARAKI, MD
CORNER OF MAIN STREET AND
THIRD AVENUE-ROADSIDE
CONWAY, S.C.

defendant therein; and the deponent is not a party to the action.

Sworn to before me this 29th day of JUNE 2010

Ann M. Lambert L.S.
Notary Public for South Carolina.

My Commission Expires: 9-15-2016


CHRISTOPHER GRAHAM
Deputy Sheriff

EXHIBIT

F

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

IN THE COMMON PLEAS COURT

LED
COUNTY

JUL 20 AM 10:10

FLANIE HUGGINS-WARD
CLERK OF COURT

JANE AP DOE

Plaintiff

vs.

OMAR JARAKI, HALLA JARAKI, CARDIOLOGY &
ARRHYTHMIA CONSULTANTS, CARDIOLOGY
& ARRHYTHMIAS CONSULTANT, INSTITUTE
OF ELECTROPHYSIOLOGY, PC

Defendant

AFFIDAVIT OF

PERSONAL SERVICE

TIME OF SERVICE: 2:28 PM

CASE # 2010CP265146

CHRISTOPHER GRAHAM, DEPUTY being duly sworn says that he served
 SUMMONS AND COMPLAINT AND COVERSHEET in the above stated
 action, on the Defendant by delivering to him/her personally, and
 leaving with him/her copies of the same IN HORRY COUNTY
 South Carolina, on the 29th day of JUNE 2010; and that he knows
 the person so served to be the one mentioned and described in the
 document served as: HALLA JARAKI, MD
 CORNER OF WRIGHT BLVD AND
 CHURCH STREET-ROADSIDE
 CONWAY, S.C.

defendant therein; and the deponent is not a party to the action.

Sworn to before me this 2nd day of JULY 2010

Jane M. Lambert
 Notary Public for South Carolina.

My Commission Expires: 9-15-2016

Christopher Graham
 CHRISTOPHER GRAHAM
 Deputy Sheriff

Halla Jaraki
4400 Randal Road
Conway, SC 29526

March 31, 2010

This is in response to the civil action: 2010-26-395

O Faryl Furr Jr.
P O Box 2909
1900 Oak Street
Myrtle Beach, SC 29577

HORRY COUNTY
10 APR - 1 PM 4:00
MELANIE HUGGINS-WARD
CLERK OF COURT

Mr. Furr;

I have to have the following to identify your plaintiff correctly if he or she existed in our records. I do not find anybody by name Jane AP Doe. I need the following and every item of the following:

Name

Address

Date of Birth

Social security Number

A copy of the driver license

To positively identify your plaintiff due to the sensitive nature of medical records. Until I receive all the above information about this matter I cannot answer any further question.

Halla Jaraki

- 103-

Omar Jaraki MD

P O Box 810

North Myrtle Beach, SC 29597

March 24, 2010

This is in response to the civil action: 2010-26-395

O Faryl Furr Jr.

P O Box 2909

1900 Oak Street

Myrtle Beach, SC 29577

HORRY COUNTY
10 APR - 1 PM 4:00
MELANIE HUGGINS-WARD
CLERK OF COURT

Mr. Furr;

This is the second request regarding the above case. So far I have not received any any response from you for proper identifications of your alleged client. I have to have the following to identify your plaintiff correctly if he or she existed in our records. I do not find anybody by name Jane AP Doe. I need the following and every item of the following:

Name

Address

Date of Birth

Social security Number

A copy of the driver license

To positively identify your plaintiff due to the sensitive nature of medical records. Until I receive all the above information about this matter I cannot answer any further question.

Omar Jaraki MD

-104-

FHO
FURR, HENSHAW & OHANESIAN
ATTORNEYS AT LAW

O. Fayrell Furr, Jr.
*Board Certified Civil Trial Advocate
by the National Board of Trial Advocacy
Also Board Certified by American Board
of Professional Liability Attorneys*
Karolan F. Ohanesian
Pamela M. Secrest

A Partnership of Professional Corporations
www.scmlegalmalpractice.com

Charles L. Henshaw, Jr.

P.O. Box 2909
Myrtle Beach, SC 29578
Telephone: (843) 626-7621
Fax: (843) 448-6445
E-mail: fho@sc.rr.com

1534 Blanding Street
Columbia, SC 29201
Telephone: (803) 252-4050
Fax: (803) 254-7513
E-mail: charles.henshaw@tholaw.com

March 24, 2010

Reply To: Myrtle Beach

*****VIA CERTIFIED MAIL/RETURN RECEIPT**

Mr. Omar Jaraki
Mrs. Halla Jaraki
4400 Randall Road
Conway, SC 29526

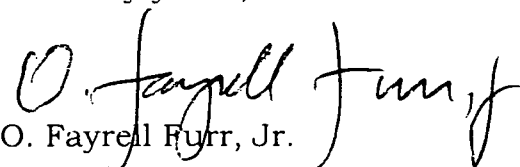
Re: Jane AP Doe vs. Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia
Consultants, Cardiology & Arrhythmias Consultant and Institute of
Electrophysiology, P.C.
Civil Action No.: 2010-CP-26-395

Dear Mr. and Mrs. Jaraki:

Pursuant to S.C. Code Ann. §15-79-125, within 120 days of service of the Notice of Intent, the parties shall participate in a mediation conference. As such, please be advised that a telephone mediation has been scheduled in the above-referenced matter on April 27, 2010 at 10:00 a.m. with Judge John Breeden. If you are represented by counsel in this matter, please have them contact me immediately. If not, you are required to participate in this mediation. The telephone number to be connected to the parties for this mediation is 877-544-8688. When prompted to enter an ID code, please enter 3480864.

With kindest regards, I am

Sincerely yours,


O. Fayrell Furr, Jr.

OFF/tmn

FHO
FURR, HENSHAW & OHANESIAN
ATTORNEYS AT LAW

O. Fayrell Furr, Jr.
*Board Certified Civil Trial Advocate
by the National Board of Trial Advocacy
Also Board Certified by American Board
of Professional Liability Attorneys*

Karolan F. Ohanesian
Pamela M. Secrest

P.O. Box 2909
Myrtle Beach, SC 29578
Telephone: (843) 626-7621
Fax: (843) 448-6445
E-mail: fho@sc.rr.com

A Partnership of Professional Corporations
www.scmedicalmalpractice.com

Charles L. Henshaw, Jr.

1534 Blanding Street
Columbia, SC 29201
Telephone: (803) 252-4050
Fax: (803) 254-7513
E-mail: charles.henshaw@fholaw.com

May 3, 2010

Reply To: Myrtle Beach

Mr. Omar Jaraki
Mrs. Halla Jaraki
4400 Randall Road
Conway, SC 29526

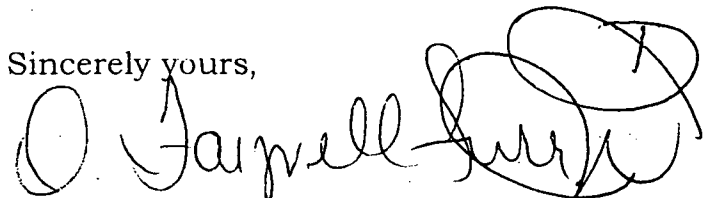
Re: Jane AP Doe vs. Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia
Consultants, Cardiology & Arrhythmias Consultant and Institute of
Electrophysiology, P.C.
Civil Action No.: 2010-CP-26-395

Dear Mr. and Mrs. Jaraki:

Pursuant to your request, the patient in the above case is Amanda Peele.

With kindest regards, I am

Sincerely yours,



O. Fayrell Furr, Jr.

OFF/bb

Halla Jaraki

4400 Randal Road

Conway, SC 29526

JULY

July 09, 2010

This is in response to the civil action: 2010-26-5146

FILED
JULY 09 2010
CLERK OF COURT
JULY 09 2010
CLERK OF COURT

O Faryl Furr Jr.

P O Box 2909

1900 Oak Street

Myrtle Beach, SC 29577

Mr. Furr;

I have to have the following to identify your plaintiff correctly if he or she existed in our records. I do not find anybody by name Jane AP Doe. I need the following and every item of the following:

Name

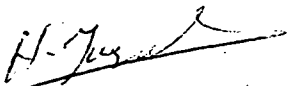
Address

Date of Birth

Social security Number

A copy of the driver license

To positively identify your plaintiff due to the sensitive nature of medical records. Until I receive all the above information about this matter I cannot answer any further question.



Halla Jaraki

843-602-6262

EXHIBIT A

2010 CP-26-5146

-107-8

Omar Jaraki MD

P O Box 810

North Myrtle Beach, SC 29597

July 09, 2010

This is in response to the civil action: 2010-26-5146

FILED
JUL -9 PH 12:20
CLERK OF COURT
JANIE HUGGINS-WARD

O Faryl Furr Jr.

P O Box 2909

1900 Oak Street

Myrtle Beach, SC 29577

Mr. Furr;

This is the second request regarding the above case. So far I have not received any any response from you for proper identifications of your alleged client. I have to have the following to identify your plaintiff correctly if he or she existed in our records. I do not find anybody by name Jane AP Doe. I need the following and every item of the following:

Name

Address

Date of Birth

Social security Number

A copy of the driver license

To positively identify your plaintiff due to the sensitive nature of medical records. Until I receive all the above information about this matter I cannot answer any further question.


Omar Jaraki MD

843-602-6262

EXHIBIT A

2010 CP-26 5146

- 108 -

FHO
FURR, HENSHAW & OHANESIAN
ATTORNEYS AT LAW

O. Fayrell Furr, Jr.
*Board Certified Civil Trial Advocate
by the National Board of Trial Advocacy
Also Board Certified by American Board
of Professional Liability Attorneys*

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A Partnership of Professional Corporations
www.scmedicalmalpractice.com

Charles L. Henshaw, Jr.

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Columbia, SC 29201
Telephone: (803) 252-4050
Fax: (803) 254-7513
E-mail: charles.henshaw@tholaw.com

July 20, 2010

Reply To: Myrtle Beach

Mr. Omar Jaraki
Mrs. Halla Jaraki
4400 Randal Road
Conway, SC 29526

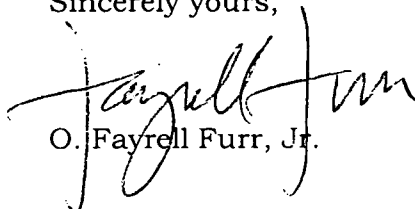
Re: Jane AP Doe vs. Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia
Consultants, Cardiology & Arrhythmias Consultant and Institute of
Electrophysiology, P.C.
Civil Action No.: 2010-CP-26-5146

Dear Mr. and Mrs. Jaraki:

Review of the Court file shows that you filed two letters on July 9, 2010 in the above case requesting identification of the patient. These letters were never received and/or served on me at either my physical address or post office box. On May 3, 2010 I sent you a letter disclosing the identity of the patient as Amanda Peele. This letter was addressed to you at the Randal Road address in Conway and it was not returned as being undelivered by the post office. For clarification purposes, my client's date of birth is 8/2/66 and your medical record number for her according to your records is 0000362. Any additional information requested on my client will need to be made through formal discovery requests. If you have retained legal counsel to represent you in this matter, please let me know their name or have them contact me directly.

With kindest regards, I am

Sincerely yours,


O. Fayrell Furr, Jr.

OFF/bb

-109-

Halla Jaraki

4400 Randal Road

Conway, SC 29526

Sept 20 , 2010

This is in response to the civil action: 2010-26-5146

O Faryl Furr Jr.

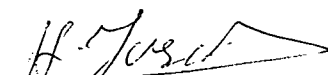
P O Box 2909

1900 Oak Street

Myrtle Beach, SC 29577

Mr. Furr;

Due to the confidentiality of the medical records I have to have a notarized permission from Amada Peele to discuss her medical record with my counselors and any agency or person that I deem necessary in full without any restriction. The notarized letter has to be clear and accompanied with Amada Peele copy of her driver license and social security card.


Halla Jaraki

843-602-6262

HORRY COUNTY
10 SEP 20 PM 1:50
MELANIE HUGHES-WARD
CLERK OF COURT

Omar Jaraki MD

P O Box 810

North Myrtle Beach, SC 29597

Sept 20, 2010

This is in response to the civil action: 2010-26-5146

O Faryl Furr Jr.

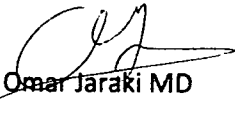
P O Box 2909

1900 Oak Street

Myrtle Beach, SC 29577

Mr. Furr;

Due to the confidentiality of the medical records I have to have a notarized permission from Amada Peele to discuss her medical record with my counselors and any agency or person that I deem necessary in full without any restriction. The notarized letter has to be clear and accompanied with Amada Peele copy of her driver license and social security card.



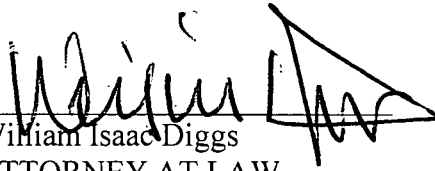
Omar Jaraki MD

843-602-6262

HORRY COUNTY
10 SEP 20 PM 1:50
MELANIE HUGHES-WARD
CLERK OF COURT

CERTIFICATE OF COUNSEL

Pursuant to S.C.A.C.R. 210, counsel certifies that the foregoing Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



William Isaac Diggs
ATTORNEY AT LAW
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
(843)-626-4243

ATTORNEY FOR THE APPELLANTS

This  day of April, 2013
Myrtle Beach, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge
Case No. 2010-CP-26-5146

Jane "AP" Doe,

Respondent,

v.

Omar Jaraki, Halla Jaraki, Cardiology & Arrhythmia
Consultants, Cardiology and Arrhythmias Consultant,
Institute of Electrophysiology, P.C.,

Defendants

Of Whom

Omar Jaraki and Halla Jaraki, are

Appellants

CERTIFICATE OF SERVICE

This is to certify that I have this 11 day of April, 2013, deposited one copy of the Record on Appeal in the U.S. Postal Service with proper postage affixed thereto and addressed to opposing counsel as follows:

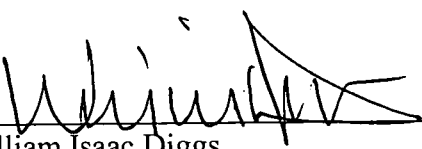
John S. Nichols
Bluestein, Nichols, Thompson & Delgado, LLC
P.O. Box 7965
Columbia, SC 29202

RECEIVED

APR 15 2013

SC Court of Appeals

O. Fayrell Furr, Jr., Esquire
Post Office Box 2909
Myrtle Beach, SC 29578


William Isaac Diggs